IS IT CONTEMPT OF COURT OR ABUSE OF JUDICIAL POWER?

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Introduction:

I feel honoured to be invited to present a brief paper in honour of a distinguished jurist and titan, Hon. Justice S.M.A. Belgore, G.C.O.N., Chief Justice of the Federal Republic of Nigeria. I am overwhelmed by the invitation taking into consideration the status of the celebrant. I must confess that this paper is not foolproof and I take full responsibility for the gaps or omission you may observe.

No subject for now would be more important than the aforementioned. All worshippers in the temple of justice must drink voraciously from the fountain of civility. Balancing the excesses of the Bar with the high handedness of the Bench is by no means an easy task, but we must strike a balance and achieve some acceptable level of decorum and civility in and out of Court. My task is to attempt to strike that balance and proffer solutions to a problem. It is a problem, of the gravest emergency.

Definition:

Before a definition suffices, it is imperative to take a closer look at the pronouncements of *Lord Tucker in Izuora v. The Queen.*[1]

> "*It is not every act of discourtesy to the Court by Counsel that amounts to contempt, nor any conduct which involves a breach by Counsel of his duty to his client. In the present case the appellant's conduct was clearly discourteous, it may have been a breach of the rules and it may perhaps have been a dereliction of his duty to his client but in their Lordship's opinion it cannot properly be placed over the line that divides mere discourtesy from contempt.*"

The aforementioned dictum by Lord Tucker drew the necessary distinction that must be drawn by all judges between acts of discourtesy and acts that have gone over and beyond that thin line that divides discourtesy and contempt of Court. Acts of discourtesy are acts of incivility, uncouth behaviour and acts of rudeness. These are not necessarily acts of contempt of Court. Contempt must not be equated with conduct which will inevitably obstruct or disrupt the proceedings of court. The question that must be asked is, does the act diminish the dignity of the court? A distinction must be drawn between what may annoy

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1. (1953)13 WACA 313 at page 346

a Judge and what amounts to contempt. It must also be noted that the power to punish for contempt is not a power to be recklessly used to assuage the injured feelings of the presiding judge. It is not contempt of court when a judge does not agree with Learned Counsel's method of advocacy. Counsel has a constitutional right of audience. How he chooses to present his case is his own style. It would be unconstitutional and an abuse of office for a Judge to abridge Counsel's right of audience by dangling or invoking his powers of contempt. Counsel owes to the Court the duty of assistance and duty of utmost respect, but he owes his command and with all the skill he possesses.

It is not contempt and it will never be where counsel refuses to be directed by the court as to how he should present or argue his case. Judicial interruption can be irritating to counsel. And his natural reaction to such interruption cannot be equated with contempt. It is at this juncture, I will delve into a fuller and exhaustive definition of contempt.

According to **The Dictionary of English Law**[2]

> *Contempt of Court is where a person who is a party to a proceeding in a Superior Court of record fails to comply with an order made against him or an undertaking given by him or where a person whether a party to a proceeding or not does any act which may tend to hinder the course of justice or show disrespect to the Court's authority. Contempts are direct, which only insult or resist the powers of the Court or the persons of the judges who preside there; or consequential, which without such gross insolence, or direct opposition plainly tend to create a universal disregard of their authority. Contempt may be divided into acts of contempt committed in the court itself (IN FA CIE CURIAE) and out of court. Among the former, are all acts, as talking boisterously, applauding any part of the proceedings, refusing to be sworn or to answer a question as a witness, interfering with the business of the Court… and refusing to acquiesce in the ruling of the Court or speaking disrespectfully of or to the judge … Among the latter is the attempt by intimidation to cause any suitor to discontinue his action, kidnapping or corrupting or attempting to do so … obstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court, etc.*

This definition is exhaustive. I shall attempt to consider the key ingredients of the definition. The key ingredients are:

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2 . 4th Edition at page 217

(a) Failure by a party to an action to comply with the order of Court.
(b) Hinder the course of justice
(c) Show disrespect to the authority of the Court
(d) Insult the person of the judges who preside

Difficulties could arise when the contempt consists of insult to the person of the presiding Judge. One of such difficulties is the fact that the Judge insulted is the complainant and the Judge. Where a Judge insulted, summarily tries and summarily convicts and imprisons, he may be legally within his rights but such summary proceedings do create an embarrassing situation and a cause for concern.

The solution has been well encapsulated by Oputa (JSC) as he then was. His Lordship said[3] ***inter alia*** as follows:-

> *The test whether or not a judge takes himself, too seriously or thinks too much of himself is in his attitude towards contempt of his court. Undoubtedly, one of the most important power of a Judge is his power to make orders. If these orders are disobeyed, the Judge has one weapon in his armor, which he can always use. He can punish the defaulting and disobedient party for contempt of court either by fine or imprisonment. All contempts of court have one thing in common- they obstruct one or other of the streams of justice. If the contempt is in the face of the court (in facie curiae) it is tried summarily by the Judge who may be the very Judge who had been injured by the contempt. How he deals with the contempt shows and proves his maturity.*

I must stress that the commonest scenes in court are usually situations where a Judicial Officer provokes a Counsel and the same Judicial Officer will take cover under the canopy of contempt. On no account should a Judicial Officer loose his temper, never. He should not provoke an attack, his utterances, must be devoid of sarcasm and vituperations. Respect must be earned, you don't demand for it. A classical case where an Acting Chief Magistrate acted beyond the boundaries of civil language is the case of *Adeyemi Candide – Johnson v Mrs. Esther Edigin.*[4] The facts of this case are simple and straight forward: the respondent was an Acting Chief Magistrate Grade 2, in Kano, the appellant here

in appeared in the court as counsel. Consequent upon what transpired at the court, the respondent ordered the detention of the appellant for a couple of

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3. Ten Commandments for the Judge; Hon. Justice Chukwudifu Akunne Oputa: Paper delivered at the Faculty of Law UNN 21st of March 1981
4. (1990) 1 NWLR (part 129) at p. 660

minutes at the cell. She (the respondent cited the appellant for contempt). Decrying in the strongest of terms per ACHIKE J.C.A. Held in[5]

> *Apparently, when tempers rose rather meteorically, the respondent, exacerbated by the situation, unleashed this incisive question: When did you leave the Law School? The response was equally unrelenting: I will refuse to – answer that question in the rudest manner. It was the refusal to answer his question, according to the record, that broke the camel's back, and led to the detention of the appellant for contempt of court. It was unfortunately, to say the least, for the respondent, to have taken leave of her exalted bench, invited counsel to extra-judicial dialogue and thereafter descended into the area of vituperative conflict with him.*

It is glaring that learned Acting Chief Magistrate abandoned the dignity of her court to pursue personal glory. Questions bordering on the age of counsel was glaringly and patently meant to injure Counsel's ego. In Ratio (supra) his Lordship was unsparing:

> *I think that the invocation of the power of contempt in the instant case bordered on abuse of Judicial authority: It is clearly improper and will expose the administration of Justice to ridicule if a Magistrate or a presiding Officer of an inferior court were invested with such extraordinary powers to provoke unnecessary extra-judicial verbal exchange with Counsel or member of the public and yet invoke against him the lethal and drastic power to punish for contempt.*

Also in *Ikonne v. C.O.P. & Justice Nnana Nwachukwu*[6] Aniagolu, J.S.C., described it as "untrammeled abuse of judicial authority."

In Sunday Okoduwa & 6 Others v The State[7], Nnamani, J.S.C., of blessed memory stated as follows:

> *It is not a contempt of court to criticize the conduct of a Judge or the conduct of a court even if such criticism is strongly worded provided that the criticism is fair, temperate and made in good faith."*

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5 Ratio 5 p. 662

6. (1986) 4 NWLR (Part 36) page 473 at 496.

7. (1986) 2 NWLR (Pt 76) 333 at 335 ratio 1.

At page 345 his Lordship held,

> "*From what appears later in this judgment as to the undue intervention of the learned trial Judge in the proceedings, it cannot be said that the request for transfer was not a fair one, nor can it be said that whatever implied 'criticism of the court was contained in the request for transfer, was not fair and was not conveyed in civil and temperate language. The bludgeoning of counsel had its desired effect as I shall show hereunder. The conduct of the learned trial Judge was not only unfair but it was exceedingly high handed. It is hereby deprecated. Ratio 3: The rationale for punishment for contempt is the need to vindicate the dignity of the court and thereby protect due administration of justice rather than to bolster the power and dignity of the Judge as an individual.*

The Supreme Court in ratio[8] (supra) went to condemn this unwarranted abuse of power.

The Court held:

> *The learned trial Judge's invocation of his power to punish for contempt of his court is an unwarranted exhibition of naked judicial power which put counsel and their clients in fear of the court and eroded an important trammel of fair trial.*

The key here is maturity. Learned Counsel may say things irritating to the Judge. In such a situation experience and maturity will inform the Judge that it is best to maintain a dignified silence. Maturity will dictate sober and level-headed self-control. The way forward could be classified in this order.

(1) Be more lenient
(2) Take little notice
(3) Coolness under fire

(a) Be more lenient:

Courts are advised to mellow down even in the face of extreme provocation.

8. See key Note Address of 19 SS Law Week page 7.

(b) Take Little Notice

A judge must be endowed with patience that is coupled with judicial dignity and tolerance to face extremely irritating situations. A Judge must display dignity, maturity and kindness. An impatient Judge is no judge. He can never be in control of his court. Impatience can lead to precipitate action. It is always better and safer to ignore little details, discourtesies, in the words of Hon. Justice S. O. Uwaifo JSC: "Small matters"

(c) Coolness Under Fire:

There are times when the tension in the courtroom becomes palpably high and heavily charged. In such a situation coolness becomes an amiable judicial attribute. The Judge should not be provoked even "under fire" A Judge should keep his head when all about him, are losing theirs. If the Judge keeps cool, tempers will also cool down, and the proceedings will continue as though nothing happened. According to Hon. Justice Kayode Eso, JSC, as he then was.

> *A Judge should never be rude, as a result of, or over-sensitive to remarks made even against him in court.*

In Re *O.C. Majorho v. Professor M. A. Fassassi*[9]

> *The issue was whether the Supreme Court Panel hearing the appeal can be properly accused of bias or partially and thus disqualified from further hearing of the appeal, in view of the earlier Order made by it ordering the personal attendance in court of all parties to the appeal.*

In that case, Learned Counsel for the appellant, Chief Rotimi Williams, O.C. SAN openly accused the Court of partiality and demanded a clear undertaking of the Court's impartiality. Eso JSC observed inter alia as follows:

> *I am not aware of a single instance in the whole history of the Supreme Court when the Court has been requested to give an assurance of impartiality. I do hope that that day will never come when this court will be inhibited from asking any question which it considers necessary in pursuance of the interest of justice. The honesty and integrity of a Judge cannot be questioned, but his decision may be impugned for error, either of law or of fact…*

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9 (1987) 3 NWLR (Pt. 117) Page 81

The Supreme Court did not invoke its power of contempt. Lord Denning, M.R. puts this point more succinctly in *Metropolis Exparte, Blackburn*,[10]

> *This is the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise, more particularly as we ourselves have an interest in the matter. Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. We will never use it to suppress those who speak against us. We do not fear criticism nor do we resent it. Counsel has criticized the court but in so doing he is exercising his undoubted right. That article contains an error, no doubt, but errors do not make it contempt of court. We must uphold his right to the uttermost. The court should not be impatient, immature and super-sensitive.*

Ideal Cases

It must be noted that, patience, maturity, and keeping "cool under fire" should not be equated to mean that under no circumstance may the Court invoke its power to commit for contempt. Courts are enjoined not to commit for discourtesy but it must act with dispatch in proper cases of contempt. Proper cases include gross scandalous and insulting language calculated to detract from the dignity of the court, acts of violence, talking boisterously, interfering with court proceedings.

The court can only conduct its business in an atmosphere of peace, calm and tranquility. Any act that disrupts the peace, calm and tranquility of the court constitutes a proper case of contempt.

Secondly, contempt could be classified under the class called constructive contempt. This class includes failure or refusal to obey court orders including subpoenas, tampering, interfering with or intimidating witnesses, obstructing officers of the court in their way to their duties, writing disrespectfully of the authorities of the court, commenting on pending proceedings, threats to judicial officers to make them abandon or relinquish their duties etc. Let us at the juncture have a closer look at a few judicial pronouncements.

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10. (196S) 2 QB – 150 at page 154

Lord Denning M.R. in *Attorney-General v. Butter,*[11] has this to say:
There can be no greater contempt than to intimidate a witness before he gives evidence or to victimize him afterwards for having given it.

"How can we expect a witness to give his evidence freely and frankly, as he ought to do if he is liable, as soon as the case is over, to be punished for it by those who dislike the evidence he has given? If this sort of thing could be done in a single case with impunity, the news of it would soon get round. Witnesses in other cases would be unwilling to come forward to give evidence, or if they do come forward, they would hesitate to speak the truth for fear of the consequence."

The above pronouncements adequately summarizes one of the worst forms of contempt.

Conclusion

I will not conclude this paper without observing that there are no fixed guidelines or uniform yardsticks for measuring appropriate cases of contempt. The key is moderation. Let it be noted that as contempt of court tends to hinder, inhibit the attempt to arrive at justice.

Justice can only thrive in a relaxed atmosphere. Both the Bench and the Bar should exhibit mutual respect. And respect begets respect and tolerance begets tolerance. The dignity of the trial Judge should rest on finger foundations – honesty, intellectual fertility, hard work, temperance, courage, patience and impeccable integrity.

A rude Lawyer is a lawyer that suffers from inferiority complex, Abuses and uncouth behaviour will never be part of advocacy. Straying from material issues, disorderly presentation, injudicious and vexatious cross-examination; lack of earnestness in court; irresponsible behaviour is a hallmark of a frustrated lawyer and a failed practice. The watchword and key is moderation and mutual respect from both sides.

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11. (1963) 1 QB Pages 676