

The Rot in the Temple of Justice

Corrupt judicial officials erect obstacles in the way of justice in Nigeria, posing challenges to the new chief justice

By WOLA ADEYEMO

His voice echoed through the courtroom, as he gave instructions and issued threats. The trial judge was in a foul mood. So, lawyers, court officials and others in the courtroom looked on in awe, some afraid of the consequences of a judge's fury. That anger was really not directed at lawyers or parties to the matter at hand. He was angry with his own staff. Something despicable had happened and, according to the judge, "by the action (of the judicial officers), this court has been greatly embarrassed". What infuriated him was the disappearance, from the court file, of a very critical document which had been admitted in evidence at an earlier hearing. Did the registry staff compromise and remove the document to frustrate the case? The judge was, perhaps, piqued because the action could be interpreted to mean that the court had been compromised. The parties to the suit are two prominent citizens of the country. And the case means a lot to the image of the plaintiff, as it is crucial to the credibility of the defendant.

If the judge was shocked, most lawyers are not. Olaniyi Idowu, chairman, Nigerian Bar Association, NBA, Ikeja, Lagos, is one of them. "Corruption is not only about high judicial officers but exists also at the level of the secretariat, like the clerks and other supporting staff of the judiciary", he said last week. According to him, lawyers encountered similar obstacles as regularly as they pursue cases involving their clients in different courts across the country. But they are not keeping quiet. At least, the cases of brazen and unrepentant corrupt staff are reported to the authorities. For instance, at a recent meeting of the Bench and Bar in Lagos, the NBA drew a list of allegedly corrupt judicial officers for Augustine Ade-Alabi, chief judge of the state. Apparently stunned by the kind of reputation the officials had acquired for themselves, the chief judge promised to investigate the matter. He did not have to wait for long. Shortly after that parley, he reportedly stumbled on some secretariat staff of a magistrates' court cutting deals at their duty post. Then it dawned on him that the matter was better ceded to the police.

Now the virus of corruption is not limited to any state judiciary. It is actually one challenge that Idris Kutigi, new chief justice of Nigeria, CJN, is faced with as he takes over from Salihu Belgore who retired early January. Kutigi's appointment was confirmed Wednesday, January 24, 2006, by the National Assembly. Though he was said to have declined to answer some questions at the Senate, senators met and agreed to ratify his appointment. Isa Mohammed, the senator from the judge's constituency in Niger State, lobbied his colleagues for him. Victor Ndoma-Egba, chairman, Media and Publicity Committee of the Senate, said the judge satisfied section 231 sub-section 1-4 of the 1999 Constitution with regards to his qualification.

The senator said the unanswered questions should not be used against Kutigi. He said, "The only way the Senate could know the mind of Kutigi is through his judgments. If you read the law reports, you will see that Kutigi has always stood on the path of constitutionality." The judge, who was with the senators for about one hour, gave assurance that he would work towards the amendment of rules of the court so that "delays

(in court proceedings) can be shortened". That may be a major step towards fighting graft in the judiciary. The new CJN may find out that the story of corruption in the judiciary tells a tale of a respectable institution in crisis. He will encounter judges who groan under the embarrassment of unethical conduct of some judicial officers. So do judges, some of them corrupt, who are tempted by lawyers who desperately want to win cases for clients. Those lawyers offer gratification, in place of sound legal argument. Even then, there are also lawyers who tell stories of how some judges frustrate their cases when their extra-legal demands are not met.

The effect is that the honour of the judiciary is daily atrophied by the conduct of some of those entrusted with the dispensation of justice. Kutigi will probably be surprised that despite sanctions imposed on erring judges in the last four years, there are serving judicial officers who are neck-deep in the game of subversion of justice. Yet, indicted judges have been punished, while the National Judicial Commission, NJC, a body that acts as the conscience of the judiciary, monitors senior judges and takes the responsibility of meting out discipline to those found wanting.

Chuka Okoli, former chief judge of Anambra State, will not forget in a hurry the powers of NJC. He was placed on suspension by the commission for what is considered to be his inglorious act in the controversial impeachment of Peter Obi as governor of the state. Before Governor Virginia Etiaba effected the decision of the commission to appoint an acting chief judge, Okoli even tried to give instructions to other judges as if the commission does not matter. Kayode Bamisile, his Ekiti State counterpart, was also sanctioned for similar misconduct. The former chief judge allegedly compromised himself by appointing on the investigation panel persons believed to be cronies of suspended Governor Ayodele Fayose, to probe the alleged misconduct of the governor. But Jide Aladejana, who stepped into Bamisile's shoes without due process, goes with his boss in line with the council's recommendation. Lazarus Dakyen, the chief judge of Plateau State, also lost his job because of his reluctance to be guided by law in his participation in the processes leading to the removal of Governor Joshua Dariye. Before them were Okechukwu Opene and D. A. Adeniji, who were indicted for taking bribe on the matter of the senatorial election in Anambra State. While Opene allegedly took N12 million, Adeniji was said to have collected N15 million. Though Akin Olujimi, Senior Advocate of Nigeria, SAN, and then federal attorney-general, advised President Olusegun Obasanjo against their dismissal, the President upheld the decision of the NJC. Olujimi based his advice on the procedure adopted by the commission in determining the case.

They are not the only judicial officers who fell victims to the political crisis in Anambra State. Stanley Nnaji, then a judge of Enugu State High Court, was suspended in March 2004 for wrongly assuming jurisdiction on a matter outside his state. The judge had ordered Tafa Balogun, then inspector-general of police, to remove Chris Ngige, who was then the governor of Anambra State. Nnoruka Udechukwu, the state attorney-general and commissioner for justice, petitioned the NJC, complaining that the ruling was in bad faith and against the code of conduct of judicial officers. Nnaji was probably encouraged by the reluctance of the federal government to implement a similar decision of the council on Wilson Egbo-Egbo, another high court judge, for granting an injunction directing Ngige to stop parading himself as the governor. But shortly after Nnaji committed his own misconduct, Obasanjo approved Egbo-Egbo's retirement. The latter is one of the

nine judges so far retired for endorsing unnecessary ex-parte applications. They are not the only casualties of political cases. Five others were implicated in the 2003 Election Petition Tribunal in Akwa Ibom State. They adjudicated on the petition against the re-election of Governor Victor Attah by Ime Umanah, candidate of the All Nigeria Peoples Party, ANPP, at the election. By the time the NJC concluded its job, Matilda Adamu, a judge of the High Court of Plateau State, Christopher P.N. Senlong of the Federal High Court, Lagos, and James Isede, a chief magistrate in the Edo State judiciary, had earned themselves dismissal from the judiciary. D. T. Ahura of the High Court of Plateau State and A. M. Elelegwu of the Customary Court of Appeal, Delta State, were recommended for suspension. The federal government, after approving the verdict of the commission on the higher officers in February 2004, sent their case files to the Independent Corrupt Practices and other Related Offences Commission, ICPC, for trial.

Recommending punishment for erring judges is one of the three functions of the NJC, presided over by the CJN. The commission, which is a creation of the Constitution, became necessary after the startling revelations of the Justice Kayode Esho panel of inquiry that probed allegations of corrupt practices in the judiciary in 1994. The commission has been very active in the last two years. The other two functions of the council are appointment and payment of judges.

A body known as the Performance and Assessment Committee, which is a committee of the NJC, monitors the performance of judges. It is headed by Bolarinwa Babalakin, retired justice of the Supreme Court. The immediate impact of that is the speed with which judges treat cases. Apparently conscious of the fact that they are being watched, judges no longer allow cases to pile up in their courts. Lacklustre performance is one of the reasons a judge may be disciplined. So, Babalakin said it is a reasonable gesture “because if you want to base retirement of a judge on declining productivity, there should be a record of how he or she has performed during his or her tenure as a judge”. The former Supreme Court judge would, however, not be persuaded to comment on “rumours and insinuations” of corruption in the judiciary. Babalakin had presided over the panel appointed by Obasanjo to review the Esho panel report. The recommendations of the Esho panel were not implemented by the regime of late General Sani Abacha that set it up. And, perhaps, preoccupied with the transition to civil rule programme, the General Abdusalami Abubakar administration that succeeded it did not touch the report either. By the time the Babalakin panel undertook the review in 2002, only six of the 47 judges originally recommended for sack lost their jobs. The quantum of evidence that accompanied the Esho panel report had been lost. In fact, of the 100 copies of the report by the first panel, the government could not produce one for the use of the review panel. It was even more frustrating for the Babalakin panel when Esho’s personal copy, sent to the President on request, did not contain the appendix, the section which contains details on the alleged corrupt deals.

It was apparent that an attempt was made to cover up the corrupt acts of the indicted judges. The six who were axed are Dahiru Saleh, chief judge of Abuja High Court; George Uloko, chief judge of Plateau State; Moshood Olugbani of the Lagos High Court; J. U. Obasse and R. I. E. Odu, both of Cross River State High Court; and M. D. Goodhead of the Rivers State High Court. Within the period of eight years that the Esho panel report was allowed to gather dust, three of the indicted judicial officers had died. They are A. I. Obiesie, Anambra State High Court; Ligali Ayorinde, chief judge of Lagos

State; and Bassey Ikpeme, who gave the ruling purporting to stop the popular June 12, 1993 presidential election won by late Moshood Abiola, candidate of defunct Social Democratic Party, SDP.

Perhaps, emboldened by the collaboration of public officers to shield corrupt officials from sanctions, judicial staff are undeterred by probes of this nature. Itse Sagay, professor of Law, said, "The number of rogue judges who have completely gone out of line with the rules and ethics of the profession have increased tremendously". Sagay is particularly saddened by the spread of corruption in the Bar and the Bench, and suspects that "there is something crazy in the atmosphere". Maybe it is the urge to get rich quick. Bamidele Aturu, lawyer, and Princewill Akpanpan of the Civil Liberties Organisation, CLO, believe that it is a societal malaise. Sina Awelewa, a Lagos-based lawyer, agrees with them. Moreover, he said because the "judiciary is the last hope of the common man, corruption in the sector spells disaster."

The result of the Esho probe may have contributed to an earlier perception that corruption is prevalent in the lower courts. Another lawyer, Festus Keyamo, said "the lower courts have been largely drawn into the cesspool of corruption". Those who hold this view believe that there are often some underhand deals involved in the case of holden charge at the magistrates' court level and granting of *ex parte* motion in the high courts across the land.

Sometime last year, a traditional ruler took one of the chiefs in his domain to court for, as he said, unlawfully awarding chieftaincy titles. The lesser chief was granted bail, but the complainant was to be his surety. Doyin Odebowale, his lawyer, had to insist before the chief magistrate modified the bail condition. However, it appears that what is meant for the lower court could also be attractive to the appellate courts. Perhaps, the trend would have been averted had the authorities heeded the warning of Samson Uwaifo, retired justice of the Supreme Court. As he was leaving service in January 2005, the judge warned that the appellate courts were getting infected with the corruption virus. He said the criteria for appointing judges to the courts of appeal were not clear, adding that "it could thus happen that even those about whom there is common knowledge of corruption pass through, as those with skewed appreciation of legal principles and the lazy ones may similarly benefit."

Two years after, there are indications that the appellate courts may have caught the corruption flu or that it is being inflicted on them. Recently, the magazine learnt of a drama in one of the appellate courts. There was a crucial constitutional matter to be adjudicated upon and reports got to justices at the court that one of them might have been compromised. They, therefore, perfected what appeared like a coup, met with the judge and gave a strong reason why he should excuse himself from the case. It was not clear if the judge realised that the cat had been let out of the bag, but sensing that he was a minority, he obliged. The others went into the case and dispensed with it in line with the law. Although no judge at that level has been indicted yet, speculations of corruption have tainted the appellate courts hitherto seen to be above board. The result is that people, including lawyers, now petition against or openly accuse judges of bias or inducement.

Shortly before Mohammed Uwais retired as CJN last year, he was embroiled in allegations of corrupt practices. A body called the Derivation Front had alleged that justices of the Supreme Court took a bribe of N5 billion from Governor James Ibori of

Delta State, who was then facing a legal challenge from opponents who wanted the court to declare him unfit for the office of governor. Perhaps, the allegation of the Derivation Front would have been waved aside, particularly because of the staggering amount of money in the claim. But the authorities, even justices of the apex court, were stunned by the fact that the group had in its possession a copy of the court's lead judgment.

The leakage and the language of the petition were some of the things that gave Uwais the conviction that the trouble was home-made. "When you read this petition, we all agree that this is something from within and I have an idea who it is. It is a justice of this court," he said in an interview with *THISDAY* newspaper. That was the extent of the damage to the image of the highest court in the land. Then the security service had to be called in to investigate the matter. The operatives quizzed the justices of the Supreme Court.

Before the dust settled, another petition, probably by the same authors, this time under a similar name, Derivative Front, was sent in. The target in this case was Uwais, himself. The petitioners claimed that the former CJN had been bribed by a party to an appeal before the court with 13 Honda cars. If the authorities were thinking of throwing the badly written petition to the dustbin, an event changed that decision. The lawyer to Globe Motors, a party to the suit, echoed the allegation in the open court. He accused the panel headed by Uwais of having been influenced by the said bribe to pervert the course of justice. However, Uwais was absolved of any wrongdoing "based on the facts laid before the judicial council when the matter was investigated".

Unlawful inducement is really one of the major spokes in the wheel of justice and politicians are notorious for this. There have been attempts by politicians to take advantage of the weaknesses of some judges. This they do by duplicating cases in different courts of equal jurisdiction. When this fails, they often resort to petitions and blackmail. Some of these allegations have fallen flat, with petitioners either apologising or failing to substantiate their claims.

A counsel in the case of Mohammed Abacha, son of the late Abacha; Hamza al-Mustapha, his father's chief security officer; Mohammed Rabo Lawal, chief superintendent of police; and Lateef Shofolahan, protocol officer to Kudirat Abiola, slain wife of Moshood Abiola, accused Ade-Alabi of demanding bribe from his clients. But after an inquiry was launched into the matter, the lawyer balked and the judge was cleared. Did the lawyer do it, knowing that the judge might not be amenable to manipulation and thereby contrived a plan to force him out of the case? Lawyers spoken to confirm that there exist counsel who, unsure of their ability to win a case, resort to dirty tactics. These include blackmail, bribery and other forms of influence. For instance, a lawyer allegedly took a bribe of about N30 million from a governor who was desperate to foil the impeachment process against him. The lawyer was believed to have delivered the said sum to a principal character who was said to be in a position to skew the matter for the said governor.

Does this confirm speculations that some lawyers serve as conveyor belts for graft in the judiciary? Sagay seemed to have an answer: "There is no doubt that there has been an increase in the number of cheats in the profession and the bench". Odebowale, too, is worried that such corrupt lawyers and judges are becoming even more brazen than the time the Justice Kayode Esho panel was set up. So, why have the NBA and the NJC not been able to arrest the drift? Keyamo has a direct response: "There are no proofs against

them because nobody collects receipts for bribe”.

That is true. But some of those indicted left clues that the NJC and the NBA have used in their investigations. Examples of those who have been sanctioned by the bar are Charles Okeke, Rotimi Akinkotun, E. Okuku and Eze Ndukwe. Okeke and Akinkotun had their names struck off the roll for unprofessional conducts. Okeke was sanctioned for failing to remit \$121,000 to his client, while Akinkotun was punished for the unprofessional way he handled the property of a client. Okeke got a three-year suspension for wrongly benefiting from the will of clients of which he was an administrator to the tune of £20,000. In the case of Ndukwe, he was suspended for one year for failing to repay a loan facility he took from a client. Cases of gross misconduct, no doubt.

Unfortunately the Practitioners Disciplinary Committee often finds it difficult to sanction members for want of evidence. But now, they may be getting help from the anti-corruption agencies. Barely a week to its last conference, the NBA reportedly got a letter from Nuhu Ribadu, chairman of the Economic and Financial Crimes Commission, EFCC. The letter is said to have been accompanied with a list of 27 lawyers, some of them under investigation and some already being prosecuted. The commission believed that it has proven cases of criminal practice against some of those under its investigation. Eight of them have been charged to court. But of the lot, only Tafa Balogun has been convicted of embezzling N17 billion, being property of the Nigeria Police. Some of the properties he allegedly acquired with the money were recovered by the commission. The others are Dotun Adewale, charged for an alleged N5.3 million property deal; Fred Ajudua, who allegedly received over N1.6 million under false pretence; Ricky Tafa for allegedly duping somebody to the tune of \$500,000; Morris Ibekwe for alleged N3.25 million fraud; Simeon Lalong for allegedly collecting N9 million from the Plateau State government in the guise of constituency project; and Bashir Dalhatu for allegedly failing to remit \$15 million to one Joseph Tapia, being compensation from the federal government. These cases are some of the things that the EFCC counts as part of its success. Dalhatu has, in an advertorial, requested that the EFCC chairman should make a public retraction on issues concerning him.

But the EFCC gesture is believed to have caused a frosty relation between NBA and the commission. The NBA rose from that conference criticising the EFCC for assaulting the rule of law in its activities. Lanke Odogiyian, the man who stepped down as NBA president at the conference, soon found that he had hit a sore point. Gani Fawehinmi and Femi Falana, radical lawyers and activists, deferred. The commission was also surprised that the NBA was cold to an agency that was extending a hand of fellowship in the effort to clean the bar of corruption. Osita Nwajah, head, Media and Publicity Unit of the commission, said then in a statement that the EFCC “is disturbed by the increasing involvement of members of the bar in financial scams ... Under the law, the EFCC is obliged to report all cases of ethical misconduct to the disciplinary committee of the NBA for action, and the commission has done so on a number of occasions ... Why is it that Odogiyian is complaining when he is asked to check on the conduct of his own members?”

Is the NBA opposed to efforts to assist it in this regard? Olisa Agbakoba, Odogiyian’s successor, says the Bar is ever willing to welcome such gesture, provided it is backed with facts. That has been the problem that NBA and NJC face in considering petitions against lawyers and judges. So, apart from changing rules, the CJN may have to consider

how to get more support for the NJC in investigating allegations against judicial officials, as well as ensuring proper monitoring of the officials.