

The Challenges of the Appellate Court Structure in Nigeria: The Way Forward

**By
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Abstract

For Nigeria to attain the much desired socio-economic, political development, stability and suitability, the presence of an effective and efficient Justice system is paramount, which will establish and guarantee the maintenance of laws and regulations of the state citizens behaviors and relations. There is no doubt the Nigerian Justice System is faced with numerous problems, therefore proper explorations need to be made into the justice system to seek the ideal, explore what the citizens will gain from it and the real situation. This is in order to uncover the trend, institutional roles and impediments and make recommendations on how to achieve optimum effectiveness and efficiency of the system for the overall development of the Nigerian State and citizenry. This paper seek to examine the effect of work overload in Justice Administration in Nigeria; how the Court structure in Nigeria can be improved within the context of federalism; the possibility for the appellate Courts to be restructured by necessary constitutional amendment to make room for Specialization in the mode of sittings at the Appellate Courts; to equally find out how case management can be accelerated in order to minimize delays in Justice Administration. Doctrinal method of research is adopted which involved the systematic analysis of statutory provisions and of legal principles. It is my finding that there is the need for the overhaul of the system to ensure efficiency, speediness and effectiveness of the process. The paper recommended the possibility of restructuring the Court System by necessary Constitutional amendment and government policies to improve justice delivery in Nigeria.

Keywords: Justice Administration, Federalism, Court Structure, Appellate Court

1.1 Introduction

The delay in Justice Dispensation in Nigeria has been a cog in the wheel of Justice for a long time now, and this has led to the high loss of confidence in the Judiciary by the common man on the street. Without mincing words, the Justice System in Nigeria is so slow that litigants often resort to the use of police and other means to settle their Problems as a faster means than approaching the Courts.¹ Justice plays a

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¹Keyamo, F. Unbundling-Courts-in-nigeria (26 November, 2019) <https://www.dailytrust.com.ng/unbundling-Courts-in-nigeria.html>

significant role in every State and society, being the first quality of all human and social institutions. The establishment of laws and the Maintenance of Regulation would have to be transformed if they fail to dispense justice. It is so for every State and Society that cherishes sustainable Peace, Order and Prosperity.

Nigeria as a Country practicing Federalism as a system of Government, has its Court system established under Sections 6 (1) (2) and (3) and Sections 230-294 of the 1999 Constitution of the Federal Republic. The system provides a single Supreme Court as the apex Court and seventeen Court of Appeals spread across the six geopolitical zones of the Country. The Constitution provided that the Eighteen Appellate Courts are saddled with the responsibilities of handling all appeals emanating from the Lower Courts across the nation. Owing to the country's huge population, attitude of Nigerian's towards Courts, coupled with the system inefficiency resulted to serious work overload in the Appellate Courts in Nigeria. Despite a population of close to 200 million people, Nigeria has only one Supreme Court with a maximum number of 21 Justices and seventeen (17) Courts of Appeal with a maximum number of 41 Justices to entertain appeals from 36 States High Courts in Nigeria. This has resulted to Work Overstress in the Appellate Courts. Recent findings indicated that during the 2018/2019 legal year, 16 Judges of the Supreme Court were able to determine 1097² cases out of thousands cases appealed from the Court of Appeal during the period. Also in the Court of Appeal, there are forty-nine Judges who are expected to determine cases coming from; the Federal High Court, the High Court of a State/FCT, the Customary Court of Appeal of a State/FCT and the Sharia Court of Appeal of a state/FCT. This resulted to filing of 30, 582 cases in 2018/2019 out of which 16, 396 are fresh cases and 14, 186 are carried over from 2017/2018 legal year out of these number 13, 961 were disposed during the period.³ The Nigeria's Appellate Court System therefore is a system under severe stress. Signs of Stress are Clearly Obvious: Overwhelming arrears of work, Limited collegiality, and unsatisfactory output quality⁴. Unless the present caseload pressure is released somehow, the system will buckle imminently.

As an Organization, the Supreme Court has changed little during the last half-century; it has adapted to new challenges and changing roles almost without any significant structural or Operational alteration. Samuel Huntington suggested that, whether an organization outlives its original functions is an indicator of the adaptability of that organization, a benchmark of institutionalization⁵. Within its first

² Justice Ishaq Bello, FCT Judiciary disposed 13,961 during 2018/2019 legal year, (Premium Times News), www.premiumtimes.com/regional/north-central/357588-fct-judiciary-disposed-13961-during-2018-2019-legal-year-cj.html 14 October, 2019

³Ibid

⁴Ukhuegbe, S. Jurisdictional Reform and the Role of the Supreme Court of Nigeria — The Path to a Policy Court. 2011 10(2) SSRN Electronic Journal.<https://www.research.net/publication/256011646>

⁵ S.P. Huntington, Political Order in Changing Societies (New Haven: Yale University Press, 1968) at 13.

decade, the Supreme Court evolved from a colonial intermediate Court of Appeal, subordinate to the Privy Council, to a final Court of Appeal, and shed almost all the original jurisdiction initially associated with it. The Supreme Court serve not only as a final Court of appeal, but the only Appellate Court for the country. This status of a first-level Appellate Court meant that it continued to function very much as it did earlier as an intermediate Court of Appeal even though its role was now that of a final Court of Appeal. There was no change in caseload volume or variety either. This ensured that the dominant functional Orientation of the Supreme Court of Nigeria was always error-correction.

The Creation of the Present Intermediate Court of Appeal in 1976 initially saw a Revision of the Jurisdiction and Role of the Supreme Court, which relieved it of most of the Mandatory non-Constitutional Appeals it was hitherto burdened with. This eminently sensible reform - making a Second Appeal largely discretionary - lasted only three years. Since then, access to the Supreme Court has been on similar terms as the Court of Appeal. Thus, although a second-level Appellate Court during the last three decades and half, the business of the Supreme Court has been constant. This proved unsustainable. Unless the ever-growing Caseload Pressure from the Court of Appeal can somehow be capped, the Supreme Court System will Collapse under the Weight of its Docket. The neglected solution, which was partially implemented by the aborted 1976 reform, is for the Court to give up the error-correcting role that defined its function as a first-level appellate Court for a policy role of determining important or urgent legal issues of public importance, with unfettered discretion to choose cases it will decide. Merely curbing jurisdiction, although undoubtedly a necessary element, may be insufficient to achieve the desired goal⁶.

Though, for most of its history the jurisdiction of the Supreme Court has reflected a predominantly error correction mandate. This perhaps came naturally, as it was also the role performed by its immediate predecessors – the West African Court of Appeal and the Full Court Chamber of the old Supreme Court. As first-level Appellate Courts, they primarily performed the role of correcting errors of Trial Courts. With a second-level Appellate Court, on the other hand, this function becomes less important. Hence the Public Service Reform Commission in justifying the need for an intermediate, first-level Appellate Court, stressed the importance of the Apex Court – the Supreme Court – being concerned not with error-correction but with important legal issues of national importance. This recommendation partly guided the Court reform of 1976. Lately, the need to curb the jurisdiction of the Supreme Court is back on the front burner. The urgency of this is underscored by the Judges' Memorandum to the National Assembly in 2004.

The case load on appellate Courts is a reflection of the work stress in the lower Courts in the Country. Magistrate Court for instance has Jurisdiction to handle criminal, civil and recovery of premises matters, then we have customary Court

⁶ Ibid

handling certain civil customary matters, while Sharia Courts Court handle issues relating to Islamic Law. A very good look at the Jurisdictional powers of these Courts, will show an overlapping duties of Courts and consequently an overburdened magistrate, Sharia Court Judge or Customary Court Judge as the case may be.

1.2 Structure of Court System in Nigeria

1.2.1 Supreme Court of Nigeria

The Supreme Court is the apex Court in the Nigerian Court ranking. It began functioning in 1963 after Nigeria was declared a Federal Republic, following the setting of a Constitution which came into force October 1963⁷. The appellate jurisdiction of Privy Council was abolished with the cancellation of Section 120. Judicial committee served as the Apex Court. A new view of the Court was set forth in article 230, stating that this institution is headed by a chairman, with whom 21 judges work. Their decision is law and must be fulfilled. Repeated reviews are not practiced except in cases when the president and the governors are examined. In such situations, any person who is considered to have violated the Nigerian legislation may be granted a reprieve. Also, Supreme Court rulings can be revoked by law or by the Supreme Court itself if its participants decided to change their decision.

The Supreme Court is currently located in Abuja. It has the highest jurisdiction. Consequently, appeals of other Courts in relation to previously taken decisions are not considered. This concerns any issues of internal and international character. The Supreme Court also reserves the legal right to prevent any other Nigerian Court from carrying out a hearing.

1.2.2 Court of Appeal

Next on the hierarchy of Nigerian Courts is the Court of Appeal. Unlike the Supreme Court which has a single office in Abuja, the Court of Appeal has several units located in different regions of the country. The institution was set up in 1999⁸; its creation is documented in section 237. It is headed by a Chairman who has 49 judges working with him. The Court of Appeal is a decisive force when it is necessary to establish whether results are correct following governorship or presidential elections, after a request has been made via other Nigerian Courts. When it comes to appeals, this Court has the same unlimited power as the Supreme Court normally has. It considers results of the collation of ballots and appeals of all civil jurisdictions.

1.2.3 Federal High Court

As in the previous case, several units of the Federal High Court exist all over the country; they are located in more than 15 regions. The existence of this judicial body is prescribed in Article 249 of the Constitution⁹. The leading position belongs to the

⁷ The Republican Constitution, 1963

⁸ The Nigerian Constitution, 1999

⁹ Ibid

Chief Judge. It also has a number of other judges working under the instructions of the National Assembly. The Court can function correctly only if it contains at least 1 Judge of Court.

Jurisdiction for civil cases is prescribed under section No. 251 (1)¹⁰ of the Constitution. There is an appellate jurisdiction, as well as all powers of state SC. Questions of interpretation of Constitution, observance of human rights, relations between bankers and their clients are considered in this institution.

1.2.4 State High Court

It also called the High Court of FCT (Federal Capital Territory). The establishment of this organization in Abuja is prescribed in article 255 of the Constitution¹¹. Article 270 describes the establishment of such judicial bodies in all regions. It is led by a Chief Judge who also has a number of other judges working with him. The High Court has major rights prescribed by the Constitution over several matters in the country; this applies to criminal and civil proceedings. Appeals are acceptable from decisions of District, Magistrate and other lower Courts.

1.2.5 National Industrial Court

Establishment of this Court is prescribed in article 254A of the Constitution¹². This organization has a President who is its leader. The law of the National Assembly prescribes a number of judges to work under the National Industrial Court; it also has various departments providing administrative convenience, and has offices located in some regions of the country. The staff of this Court are mostly involved in civil proceedings and other aspects prescribed in article 254C.

1.2.6 Sharia Court of Appeal

The creation of this organization is prescribed in article 260 of the Constitution¹³. Article 275 refers to a free establishment of such institutions in any region located in Nigeria. It is headed by a Grand Kadi and also has a number of other Kadis working with him. This Court is concerned with the affairs of citizens if they concern Islamic personal rights. 7.

1.2.7 Customary Court of Appeal

The formation of this organization is prescribed by article 265 of the Constitution¹⁴; it was created to service the FCT. Article 280 describes the possibility of forming such an organization in any region that is a part of Nigeria. It is headed by a President and the National Assembly determines the judges to work with him. It is involved with civil proceedings when it comes to customary proceedings.

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

1.2.8 Magistrate Court (District Court)

The House of Assembly establishes such institutions by its orders, although they aren't prescribed in the Constitution. The Magistrate Court performs summary judgment without statements and instructions from the parties involved. District and Magistrate Courts have similar functions but the first name is most often used in the northern part of the country, while the second is used in the southern areas. All of them are engaged in both criminal and civil law; and each region has its unique rules.

1.3 Challenges of Justice Delivery in the Nigerian Court System

The Justice delivery in the Nigerian Court system is bedeviled with several challenges which causes ineffectiveness of the Court System in the country. The following are considered as some of them;

1.3.1. Work Overload

It appears that Judicial System in Nigeria is perceived to be in crisis. Civil and Criminal cases takes too long and cost too much¹⁵. Though there is no consensus on exactly what Judicial efficiency means or how to measure it¹⁶, but it's a wide belief that the Supreme Court of Nigeria is a system under severe stress. According to Festus Keyamo (SAN) "Nigerian Supreme Court is the busiest in the World"¹⁷. This shows that unless the present caseload pressure is released somehow, the system will buckle imminently¹⁸. Signs of stress are clearly obvious: overwhelming arrears of work, limited collegiality, and unsatisfactory output quality. As an organization, the Supreme Court has changed little during the last half-century¹⁹. Under the present Nigerian Court system, Court of Appeal and Supreme Court in Nigeria are the Courts of final appeal from which none lies except to God.

Despite a population of close to 200 million people, Nigeria has only one Supreme Court with a maximum number of 21 Justices and Seventeen (17) Courts of Appeal with a maximum number of 41 Justices to entertain Appeals from 36 States High Courts in Nigeria. This has resulted to work overstress in the Appellate Courts. Recent findings indicated that during the 2018/2019 legal year, 16 Judges of the Supreme Court were able to treat 1097²⁰ cases out of thousands cases appealed from the Court of Appeal during the period. Also in the Court of Appeal, there are forty-

¹⁵ Florencio Lopez-de-Silanes, Juan Carlos Botero, Rafael la porta Judicial Reform, Article in The World Bank Research Observer · March 2003

¹⁶ Ibid

¹⁷ Keyamo F. (SAN), I'll unbundle Supreme Court if made AGF, The nation news. <https://www.p.newsmisgeria.com/2019/07/26/ill-unbundle-the-Supreme-Court-if-appointed-agf-keyamo/> July, 2019 Accessed on 5December, 2019

¹⁸ Ukhuegbe, S. Jurisdictional Reform and the Role of the Supreme Court of Nigeria — The Path to a Policy Court. SSRN Electronic Journal September 2011

¹⁹ Ibid

²⁰ Justice Ishaq Bello, The Chief Judge of the Federal Capital Territory (FCT), Premium Times News, October, 2019

nine Judges who are expected to handle cases coming from; the Federal High Court, the High Court of a State/FCT, the Customary Court of Appeal of a State/FCT and the Sharia Court of Appeal of a State/FCT. This resulted to filing of 30, 582 cases in 2018/2019 out of which 16, 396 are fresh cases and 14, 186 are carried over from 2017/2018 legal year out of these number 13, 961 were disposed during the period.²¹ Therefore, from the above analysis, each Court of Appeal Judge is expected to handle not less than 341 fresh cases annually. It should also be noted that the cases dispensed during the year under review was less than the total number of carried over cases from the previous years, while the current year 2017/2018 recorded 16 thousand cases, more than the carried over cases.

1.3.2. Federalism

Nigeria being a Country Practicing Federal system of government has only one Supreme Court. A Federal System of Government is one that divides the Powers of Government between the national (federal) government and state and local governments. According to the structure of federal system, arms of government and their responsibilities are shared according to the federating units. However, the federal system is one despite having power devolution among the levels of government, but still maintains only seventeen (17) Courts of Appeal and one Supreme Court to entertain all appeals emanating from the 36 states of the Federation and FCT Abuja.

Federalism is a constitutional mechanism for dividing power between different levels of Government so that federating units can enjoy substantial, constitutionally guaranteed autonomy over certain policy areas while sharing power in accordance with agreed rules over other areas. Thus, federalism combines partial self-government with partial shared government.²²

The term federalism is derived from the Latin word *foedus*, which means "formal agreement or covenant." It includes the interrelationships between the states as well as between the states and the federal government. Governance in the United States takes place at various levels and branches of government, which all take part in the decision-making process. From the U.S. Supreme Court to the smallest local government, a distribution of power allows all the entities of the system to work separately while still working together as a nation. Supreme Court Justice Hugo L. Black wrote that Federalism meant a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. The US Court system and South African Court System are good examples of true Federalism.

²¹Ibid

²²Elazar, D. J., Exploring Federalism. (1 Edition. Tuscaloosa, AL: University of Alabama Press) 1987

The United States Operates a Federal system, with a central Federal Government and individual government for each of the fifty States. As with other branches of Government, each of the states has their own complete judicial system (State Courts) as does the United States itself (Federal Courts). While the South African Court Structure provides for the Constitutional Court that determines all matters pertaining to the Constitution and matters relating to the provinces then the Supreme Court of Appeal which determines Appeals from the High Courts, the high Courts, circuit Courts special income tax Court, Labour Courts, Land Claims Court, and magistrate Courts. A good look at the two Courts system will reveal that while the US Court system is decentralized in terms of structure the South African Court Structure is decentralized in terms of jurisdiction.

1.3.3. Lack of Specialization

According to Section 230 of the Constitution of Nigeria²³ which provides that the Supreme Court shall compose of the Chief Justice of Nigeria and such other Justices not more than 21, appointed by the President on the recommendation of the National Judicial Council (NJC) and subject to confirmation by the Senate. Sub-Section (3) further provides for the qualification of the Supreme Court Justices as being a Legal practitioner in Nigeria and has been so qualified for the period of not less than fifteen years. However, the need for specialization in the appointment of Supreme Court Judges cannot be overemphasized considering the nature of appeals emanating from all over the country which include all aspects of law such as Islamic Sharia law, Customary law, Criminal Cases among others. This buttress the need that those judges should be so qualified and have expertise in their respective fields. Judges that are learned in Islamic law should entertain cases pertaining to Islamic Law and those judges that are experts in criminal law should sit on cases pertaining to criminal law in order to avoid misapplication of law or legal principle. This restructuring will enhance speedy adjudication of matters pending before the appellate Courts in the country. Thus, Judges of Supreme Courts should be experts in their own specialized fields so that expertise will be improved as the saying goes “*Jack of all trades is a master of none*”

1.3.4. Delay in Justice Administration

The Justice system in Nigeria is so slow that delay is characterized as one of the challenges of Justice System in the Country. This challenge has led to the high loss of confidence in the judiciary by the common man on the street, which necessitate him to resort to other means of settling disputes. This problem however, is identified as a result of work overload in the Supreme Court, and lack of specialization of the Judges in the subject matter, procedural constraints and overwhelming areas of cases.

²³ Constitution of the Federal Republic of Nigeria 1999 (*as amended*)

According to Chief Judge of Nigeria (CJN), Justice Ibrahim Tanko²⁴, Justices of the Supreme Courts are overloaded with work. The CJN, who blamed the development on Nigerians' preference for litigation, suggested a constitutional amendment to stop the termination of interlocutory appeals at the Supreme Court.²⁵

As rightly observed, Nigerians are the most litigious people on earth. In every little disagreement, we rush to Court; and in every lost case, we rush to appeal even up to the Supreme Court, no matter how infinitesimal the issue might be. That has obviously accounted for several appeals pending in Supreme Court. The attitude of some of our lawyers, too, is less salutary.²⁶

1.3.5 Distance Barrier

Lawyers and sometimes litigants would have to travel long distance in order to appear on behalf of their clients in the various Court of Appeals across the country and when the case goes to the Supreme Court which only resides in Abuja, the various counsel would have to appear before the courts no matter where they are coming from this in turn will lead to an added financial responsibility on the appellants and any absence from any of the parties will lead the case to be adjourned consequently adding to the delay in the disposal of such cases.

1.4 Conclusion and Recommendations

It is recommended that the Geo Political Zones ought to have their respective Supreme Courts with well-defined jurisdictions. Cases from the Federal High Courts may proceed and terminate at the National Supreme Court but matters arising from High Courts of States could conveniently terminate at a Zonal Supreme Court. The NJC should constitute such Courts from the pool of Supreme Court Justices. This might help attenuate the current situation of long delays in disposing of Appeals before the Apex Court. This help reduce the work load in the current Supreme Court as each state should have its own Court of Appeal which will ultimately reflect a true federalism that will ensure the much needed autonomy of each state. Equally, lawyers will no longer travel to other states for appeals thereby case load on the current Court of Appeal will drastically reduce. Thus, speeding the appeal process.

This paper justified that all laws, their establishments and maintenance/regulation would have to be transformed if they fail to dispense justice. It is so for every state and society that cherishes sustainable peace, order and prosperity. In other words,

²⁴Tanko, M. (CJN): Supreme Court Justices Overworked and underpaid. Prime news, <https://www.google.com/amp/s/www.primenewsnigeria.com/2019/09/24/Supreme-Court-justices-overworked-underpaid-cjn-tanko-muhammad/amp>. Tuesday, September 24, 2019

²⁵ Ibid

²⁶ Ibid

Justice System and its administration in every state is the reflection of that state's extent of civilization, the dispensation of justice and development. One of the ways of evaluating effective Justice System is by the number of cases that it manages to dispose and the time taken and even the process involved. The Nigerian Judiciary reported to be the last hope of the common man, crumbles under the weight of a heavy caseload. The criminal Justice system in the country endures prolonged delay in the administration of Justice, there is also the congestion of Court with inadequate infrastructure, the congestions of prisons with daily influx of either accused persons or awaiting trial. A cardinal principles of Justice system under the Nigerian Legal System is presumption of innocence until proven guilty. Consequently, Justice delayed is also Justice denied. Thus, the need for this much needed restructuring in order to attain the ideal Court system for Nigeria. Thus Sections 6 (1) (2) and (3) and Sections 230-294 of the 1999 Constitution of the Federal Republic of Nigeria should be amended to reflect the solutions mentioned above.