

**COMBATING CORRUPTION IN NIGERIA: THE ROLE OF THE JUDICIARY
BEING THE TEXT OF A PAPER PRESENTED BY KEHINDE KOLAWOLE ELEJA,
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*"Corruption will persist, even be the norm until those
with a stake in ending it can oppose it in ways that
cannot be ignored"*

- Micheal Johnston

INTRODUCTION

The consequences of our actions and inactions in our daily lives as Nigerians in the pursuit of means of our livelihood is accountable for our level of growth, development and of course, the apparent unimpressive state of law and order in our country. While some people chose to live by the books – the law abiding citizens, others chose to cheat the system or keep mum when the clarion call is made. The latter group, those who find their ways of cheating the system are those we tend to commonly term as "corrupt". They are the police officers who demand for illegal dues at roadblocks or check points² or from complainants or victims of crimes before discharging their duties, the lecturers who make sexual advances and monetary gratification on students in return for academic grades³, the student who indulge in examination malpractice to earn grades he does not deserve,⁴ the politician that

* Head of Practice, K. K. Eleja & Co., Legal Practitioners and Consultants, Ilorin. e-mail: kkeleja@yahoo.com; kk@kkeleja.net

² Rotimi O., "Police brutalize nursing mother, baby in Ekiti over refusal to 'settle'" available at <http://www.vanguardngr.com/2017/03/police-brutalize-nursing-mother-baby-ekiti-refusal-settle/> last visited on 04/04/2017

³ Afeez H., "Students Force Lecturer to Mop floor, wash toilet" available at <http://punchng.com/students-force-lecturer-to-mop-floor-wash-toilet/> last visited on 4/4/2017

⁴ Ibekwe N., "Nigerian University Suspends Professor caught cheating in Exams" available at <http://www.premiumtimesng.com/news/headlines/217154-nigerian-university-suspends-professor-caught-cheating-exams.html> last visited on 3/ 4/ 2017

bribe election officials and electorate to win election at all costs, the public officers who falsify public records for personal gains⁵, the engineer or technical consultant who jacks up figures in order to remit the excess to his pockets, the petroleum station operators or attendant that adjusts the dispensing pump metres, individuals or corporations with taxable income who evade tax⁶, the individual who suddenly becomes extraordinarily rich overnight and cannot explain his source of wealth, the school dropout who claims to have a licence for practicing a professional career, the petroleum product importer who gets paid for subsidy for unimported products and of course, the judge who tilts the scale of justice to suit his preferred litigant for whatever consideration. I can go on.

The list is limitless. Corruption is a **social problem** that cuts across all sectors of the Nigerian society.⁷ This is more the reason why one is not surprised that the current administration is making the fight against corruption one of its core objectives.⁸ The rot has permeated into all facets of our lives and sadly too, it has left its toll in eroding even our family values. If it is agreed that we all have a share in the blame, the question to ask is; don't we all have a role to play in combating the scourge? Quite apart from individual efforts, certain institutions and organs of government have their own roles to play as agents of social change in the society, and the legal society is not left out. In fighting corruption, the learned, as we most fondly refer to ourselves, have very significant roles to play in all the schemes with which corruption occur in our society.

The aim of this paper is not just to raise our sense of awareness or consciousness to the plague of corruption within our society and the role of each one of us. It remarkably focused

⁵ Ibekwe N., "Nigerian Judge Faces Compulsory Retirement for Falsifying age" available at <http://www.premiumtimesng.com/news/headlines/202091-nigerian-judge-faces-compulsory-retirement-falsifying-age.html> last visited on 3/4/2017

⁶ Ige E., "Three Arrested for Tax Evasion" available at <http://thenationonlineng.net/three-arrested-tax-evasion/> last visited on 3/4/2017

⁷ Ali Y., "The Fight Against Corruption in Nigeria – Myth or Reality" in Ali Y., (ed) "Anatomy of Corruption in Nigeria – Issues, Challenges & Solutions" p. 15

⁸ Nwangbughiogu L., "UNGA 71: Fighting Corruption my Cardinal Objective, Buhari tells World Leaders" available at <http://www.vanguardngr.com/2016/09/unga71-fighting-corruption-cardinal-objective-buhari-tells-world-leaders/> last visited on 4/4/2017

on the role of a particular group or sector in the society i.e. the justice sector. The scope has been limited to the role of the Judiciary in combating corruption in the country. This body, the judiciary, is a creation of the constitution⁹ with regards to superior courts of records as well as state laws which create courts with limited jurisdiction and subordinate to those created under the constitution. This institution is saddled with the duty, among others, of determining disputes brought before it by individuals, corporations and the government itself. The pervasiveness of corruption in our society has therefore left this institution with a daunting task. It has to make pronouncements on allegations brought before it on any of the acts of corruption we find in our society. Furthermore, the judiciary itself is not exempted from the scourge. The disconnect between the court of law harboring corrupt judges and corrupt court officials in its fold is equally disturbing.

This paper will therefore focus on the responsibility reposed in the judicial arm of the government in fighting the scourge of corruption. In achieving this aim, effort will be made at understanding the concept of corruption through definitions and as it is understood in the Nigerian context. It will involve a discussion on the Judiciary as created under the constitution of the Federal Republic of Nigeria, 1999 (as amended). The paper will discuss the role of the judiciary in the context of the one out of four rule. This discussion will also entail corruption within the judiciary itself and conclude with recommendations on how the judiciary should play its role in fighting corruption.

MEANING OF CORRUPTION

It is important to understand the meaning of corruption as well as the dimensions it takes in the various facets of our lives right from the outset before venturing into the roles of the judiciary in the fight against corruption. The quest for **defining corruption** however, like other concepts and ideas **has proved to hardly produce unanimous** results among writers.¹⁰

⁹ See the provisions of Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which gives the Judicial powers to the Superior Courts of Records in Nigeria.

¹⁰ Osipita T., and Oyewo, O., ‘ Legal and Institutional Framework for Combating Corruption’, in Akanki E. O. (ed), *Unilag Reading in Law*, (Lagos: Faculty of Law, University of Lagos, 1999), p. 258

Nonetheless, attempts will be made towards understanding the concept. Etymologically, the word “corruption” comes from the **Greek word “corruptus” which means an aberration or a misnomer.** In its own effort at defining corruption, the United Nations Global Programme Against Corruption (GPAC) says, *“Corruption is an abuse of power for private gain.”*¹¹ The Transparency International, which in 2009 rated Nigeria as the 130th corrupt country out of 180 corrupt countries in the world, defines corruption as *“The abuse of entrusted power for private gain.”*¹² Rt. Hon. Hillary Benn, a former British Secretary of State for International Development declared that-*“Corruption is both a cause and a consequence of poor and outright bad governance....Corruption is most able to thrive where accountability is poor”.*¹³ Also, simplifying corruption by its manifestation, Thuli N. Madonsela said that- *“Corruption involves the abuse of power for private gain. Actual acts range from a simple act of bribing someone to skip a queue or bribing a traffic officer to avoid a speed fine to serious conduct as the irregular award of tenders or even buying political patronage.”*¹⁴

A number of statutes here in Nigeria equally define or seek to make a meaning of the term corruption. Under the Independent Corrupt Practices and Other Related Offences (ICPC) Act, particularly Section 2 thereto, corruption is defined to include "bribery, fraud, or other related offences. The Economic and Financial Crimes Commission Act on its own part deals with what is to be known as economic and financial crimes, which do not in any way depart from the meaning ascribed to corruption. Under the definition section, Section 46 in particular, the Act provides as follows:

... the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug

¹¹ Available at the official website of the United Nations at <http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf> last visited on 4/4/2017

¹² Transparency International available at <http://www.transparency.org/what-is-corruption/> last visited on 4/4/ 2017

¹³Conference proceedings on corruption and governance challenges in Nigeria, January 2010 organized by CLEEN Foundation.

¹⁴ In his paper titled Corruption and Governance Challenges: the South African Experience, at the national conference on corruption and governance challenges in Nigeria, January 2010 organized by CLEEN Foundation.

trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.;

On a global front, the provision of Article 1 of the UN Convention against Corruption defines corruption to include :

“The bribery of national or foreign public officials, bribery in the private sector, misappropriation of property by a public official, influence trading, abuse of functions and illicit enrichment.”

In the Nigerian case of *Biobaku v. Police*¹⁵, Bairamian J (as he then was) seemingly defined corruption as

“The receiving or offering of some benefit, reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties-in other words, as a bribe for corruption or its price.”

It has also been said to be endemic,¹⁶ and seen as the biggest and most embarrassing challenge facing the country today.¹⁷ It also entails economic and financial crimes¹⁸ as well as bribery, and other related offences.¹⁹

¹⁵ (1951) 20 N L R 30

¹⁶ Babatunde O., former Chairman of the Lagos State House of Assembly House Committee on Judiciary at a Media-Roundtable with the theme, “Promoting Ethics and Integrity Within the Courts System-Towards /citizen Justice” organized by the Socio-Economic Rights and Accountability Project (SERAP) in collaboration with the Royal Netherlands Embassy in Abuja.

¹⁷ Oyetibo T., SAN “The role of the judiciary in combating corruption in Nigeria” available at <http://www.premiumtimesng.com/opinion/101606-the-role-of-the-judiciary-in-combating-corruption-in-nigeria-by-tayo-oyetibo-san.html> last visited on 4/4/2017

¹⁸ Section 46 of the Economic and Financial Crimes Commission Act

Corruption is gradually becoming a norm which is largely embraced by the high and mighty, poor and lowly in the nation of Nigeria. Without any caution, one can even perceive corruption as a way of life of many people in Nigeria. If we could go in line with the reasoning of an author, corruption is so pervasive in Nigeria that it needs no definition.²⁰ This line of thought was once treaded by the former Ghanaian President, John Kuffuor in a lecture in Lagos in November 2009 when he claimed that-*“corruption is basically enshrined in our culture.”* This in itself shows how many of us have embraced corruption as one of our kindred. Late Professor Chinua Achebe in his book *“The Trouble with Nigeria”* stated that-*“Anybody who can say that corruption in Nigeria has not become alarming is either a fool, a crook or else does not live in this country.”*

Apart from being a social and economic ill, corruption in its various forms, particularly bribery and extortion is an offence under the law²¹. The widespread of the scourge without being brought before the courts for proper penal attention like other crimes has been attributed to a number of factors as the offence is hardly reported.²² This is because both the offender and the victim are criminally responsible for the crime, unless the victim reports the offence without complying or complies in concert with law enforcement officials for the sole aim of arresting and prosecuting the offender.²³ Other authors have also attributed the low reporting rate of corruption cases to feelings of shame and scandal, fear of prosecution,

¹⁹Section 2 of the Corrupt Practices and Other Related Offences Act.

²⁰ Nwaze., C., "Corruption in Nigeria, Exposed" C&SA Control and Surveillance Associates Ltd., P.2 as cited in Adelodun A. O., "Moral Impropriety as a Specie of Corruption: An Expose of the Public Service in Nigeria" in Ali Y.,(ed) "Anatomy of Corruption in Nigeria: Issues Challenges and Solutions p. 33.

²¹ See For instance, Section 98 of the Criminal Code, Sections 116, 117, 118 of the Penal Code Act, Sections 8 – 26 of the Corrupt Practices and Other Related Offences Act CAP C31 LFN 2004, Sections 14, 15 and 18 of the Economic and Financial Crimes Commission (Establishment) Act CAP E1 LFN 2004,

²² Adeyemi A.A., ‘Corruption in Nigeria: A criminological Perspective’, in Kalu A. and Osibajo Y. (Eds.), *Perspectives on Corruption and Other Economic Crimes in Nigeria*, (Lagos; Federal Ministry of Justice, 1991) p. 2

²³ Ani C. C., ‘Corruption in Criminal Justice Administration in Nigeria: The Role of the Legal Profession’, in Guobadia D.A. and Obegolu E. (eds.) *et al Nigerian Bar Journal* Volume 7 No. 1 (Abuja; Nigerian Bar Association, 2011), p. 104

feelings of guilt, fear of reprisals as well as lack of confidence in the system of administration of justice, which may, itself, be ridden with corruption.²⁴

PERVASIVE NATURE OF CORRUPTION IN VARIOUS SECTORS IN NIGERIA

Corruption is so pervasive in Nigeria that it has turned public service for many into a kind of criminal enterprise; this has fueled political violence, denied millions of Nigerians access to even the most basic health and education services, and reinforced police abuses and other widespread patterns of human rights violations.²⁵ It has also been stated that the multi-internal effects of corruption include under-development, lack of basic infrastructure like good road networks, misuse of natural resources, inadequate power and water supply, mediocrity in professional and leadership positions, defective leadership outputs, fuel scarcity in an oil producing nation, falling standards of education and work output, high unemployment rates, the ever-widening gap between the rich and poor declining value of the Naira, social insecurity and other vices etc.

The multiplier effect has been the mass spread of poverty and our unenviable position in the list of poor and under-developed countries amidst rich natural resources. The role of corruption in the ineffective fight against insurgency and violent crimes in Nigeria can also not be overemphasized. At the risk of not joining the media wars, an ordinary Nigerian will want to believe, even before the conclusion of the various cases before the courts on the arms deal saga,(that is popularly referred to as Dasuki gate) that it was money meant for security purposes that was otherwise diverted for other selfish purposes. Issues like the Nigerian Immigration Service recruitment saga where lives were lost during a recruitment exercise also calls for sober reflection.²⁶

²⁴ *ibid*

²⁵Conference proceedings on corruption and governance challenges in Nigeria, January 2010 organized by CLEEN Foundation.

²⁶ Funmilola Ajala ‘ Immigration Recruitment: Beyond the Death’ <http://royaltimes.net/features/immigration-recruitment-beyond-death/> last visited on 10th May, 2014

As earlier stated, the diverse sectors of the economy of Nigeria are stricken of corruption. In the education sector, many manifestations of corruption are evident. This includes illegal sales of handouts to students with sanctions for the erring students by lecturers, selling of examination papers to students in both internal and external examinations, awarding grades to students who are on the verge of failing or those who have outrightly failed and seducing female students in exchange for marks, and bribing of lecturers to alter results. Professional examinations are manipulated. Within the university system, some students resort to “sorting” (finding ways of purchasing of high and unmerited mark from a lecturer in order to enhance the grade in their final examination.²⁷ Lecturers and students print fake receipts, which they use in collecting school fees, and some unsuspecting students are usually discovered by the audit department.²⁸ Several schools also parade themselves as special centres for the sole aim of perpetuating examination malpractices in NECO, WAEC and JAMB, among other external examinations.

In the health sector, there have been diverse allegations and indeed evidence of babies delivered in various hospitals being stolen and sold by health workers. Government officials help themselves with funds meant to improve the conditions of our hospitals, so do doctors, nurses and other personnel in these facilities. Doctors issue any form of certificate, sickness, birth, death or whatever for just a fee, even when the person in whose name this certificate is being issued is not near any of the conditions.²⁹ There have also been the issues of manipulation of results and drug administration. Fake, substandard and expired drugs are been distributed or administered in some instances with the attendant negative consequences. Diagnostics and other important machines are not maintained due to corruption. Generating set meant to augment power supply are not operated in some instances because money meant to procure fuel has been embezzled or diverted.

²⁸ Oyinola O. A., "Corruption Eradication in Nigeria" available at <https://www.questia.com/library/journal/1G1-256778342/corruption-eradication-in-nigeria-an-appraisal>

²⁹ Niran Adedokun-No Mr. President, corruption is a very big problem-published in Punch Newspaper on 4th April, 2014

In the power sector, electricity bills are dropped on the citizenry when they haven't consumed any power at all. People pay for the electricity that was never supplied to them and the fees are always ridiculously exorbitant. If there is a problem that needs rectification, the officials always require tips before they perform the duties they are being paid for. Complaints over electricity are hardly heeded to nor caused to be addressed. On the part of the consumers, it has now become a common habit to cheat the system by overriding the consumption level and illegally making connections while electricity cables and transformers are stolen on a daily basis. The perennial power outage which is a recurring phenomenon in most cities in Nigeria despite the very expenditure by the Federal Government is also traceable to corruption.

In the petroleum sector, many atrocities have been committed by those in the leadership of the Nigerian National Petroleum Corporation (NNPC). At a particular instance, a declaration of the missing or unremitted sum of \$12bn-later \$20 billion into the Federation account by the NNPC blown opened by the then Central Bank governor, Lamido Sanusi. Rather than find a solution, the whistle blower was suspended from office and a forensic audit ordered later. It was later claimed by the Federal government that only \$10.8 billion was missing. Subsequently at a conference in Abuja, the Group Executive Director, Finance and Accounts of the NNPC explained that a total sum of \$8.49bn was spent on subsidy claims, while \$1.22bn was spent on management and repairs of petroleum pipelines; \$0.72bn was incurred on products and crude oil losses, while another \$0.37bn was expended on holding the country's strategy product reserves.

As if that was not enough from that sector, news filtered into the nation again that-the Minister of Petroleum Resources, Mrs Diezani Alison-Madueke was accused to have chartered a Challenger 850 jet for her trips. She was alleged to have spent a whopping ₦10.2bn on trips in the last two years of her office as a Minister. Another two jets were uncovered, Global Express XRS and another. A return trip on the Global Express is 600,000 Euros. The dust of all these allegations seem to have settled as nothing has been heard about it again. The allegations against Andrew Yakubu, former NNPC boss of recent regarding cash discovered in his "bunker" to the tune of US Dollars 9.7 million and UK Pounds 74,000 is equally alarming.

In the Defence Sector, revelations of monumental corruption have been made. It is no longer news that a Former Chief of Defence Staff, Service Chiefs in the Air Force, Nigerian Navy and some other Senior Military officers, mostly retired are currently facing trial in different courts in Nigeria for corruption of gargantuan dimension. Landed properties in choice locations across the country and huge sums of money in banks beyond their legitimate means are traced to them. This was in retrospect given as a crucial explanation for the abysmal performance of the Armed Forces especially in the fight against insurgency in the North East. The resultant loss in human and material terms cannot be quantified. The loss has not abated till date. The Nigeria police are not left out. The Tafa Balogun issue, among others is still fresh in the memory of those who are students of history.

It is perhaps appropriate to sum it all up in the words of Bada, JCA in *DANGARBA V. FRN*³⁰ where His Lordship stated the position in the following words:

"Corruption has eaten deep into our system that this country is almost at a standstill. There is lack of transparency in every sector and it is about to assume a normal way of life which is dangerous for the existence of this country"

It is worth stating at this juncture that despite very rich natural endowment on Nigeria by way of natural resource, mineral resource and human resource the scourge of corruption has stultified the potentials of this nation which was created to be great by the Almighty, nothing captures this sad trajectory more than the observation of **Susan Rice, a Former US Assistant Secretary for Africa** when she declared thus; "Nigeria is too rich to be poor, too poor to be rich"³¹

THE NIGERIAN JUDICIARY

The Nigerian Judiciary is an arm of the government created by the constitution with its own powers.³² The judicial powers under the constitution are vested in the Courts created by the

³⁰ (2014) 12 NWLR (Pt. 1422) 575 at 611 Paras F - G

³¹ Bashir I, H., "Nigeria: Poverty is North really worst Hit" available at <http://allafrica.com/stories/200808080260.html> last visited on 04/04/2017

³² See the Provisions of Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Constitution or those courts established by the National Assembly or States Houses of Assembly with their own jurisdictional limits. This arm of government, which is constituted by justices, judges, kadis, magistrate, Area court and Customary court judges etc, is empowered to hear and determine disputes between persons, or between government or authority for the determination of questions relating to their civil rights and obligations. This power is only qualified by the issues concerning the fundamental objectives and directive principles of state policy and existing laws made on or after 15th January, 1966.³³

A number of courts are established under the constitution to carry out this responsibility of resolving disputes and interpreting laws. This is however not to rule out the establishment of any other courts by the National Assembly or States Houses of Assembly, but subject to the jurisdictional supervision of the Superior Courts of record.³⁴ The Supreme Court of Nigeria ranks top above other courts in hierarchy and has a finality in the determination of issues brought before it, either in its original or appellate jurisdiction. It is followed in the hierarchy by the Court of Appeal, which in turn is followed by the Federal High Court, State High Court and of late the National Industrial Court. The Code of Conduct Tribunal³⁵ is also a necessary institution for the purpose of our present discourse. These courts are manned by justices or judges who must hold a certain qualification before being appointed, and supported by court officials for the smooth running of the court.

The judiciary has its own regulatory body known as the National Judicial Council created under the constitution.³⁶ The States' Judicial Service Commissions exist for courts created by States of the Federation which supervises other courts created pursuant to the state laws. The National Judicial Council is responsible for recommending prospective judges and justices for appointment.³⁷ It is equally the body that recommends sanctions for erring

³³ See the Provisions of Section 6 (6) of the Constitution of the Federal Republic of Nigeria, 1999.

³⁴ Ibid.

³⁵ The Code of Conduct Tribunal is created pursuant to the Provisions of the Code of Conduct Bureau and Tribunal Act, CAP C23 to deal with complaints of corruption by public servants.

³⁶ See the provisions of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Part I thereto, Paragraph I.

³⁷ See for instance the Provisions of Sections 231 (1) & (5), 238 (1), 250(1), 254B(1), 256 (1) and 261 (1)

judges, among other duties vested in it by law. These in sum represent the entire gamut of the judiciary in Nigeria.

It is important to note that as part of the Nigerian structure, this body is saddled with a daunting task of not only settling disputes brought before it, but also responsible for maintaining necessary balance in the society. For, when the chips are down, recourse can only be made to the judiciary to declare what the law is. It is in keeping with the paramount duty that cases relating to corruption are brought before the courts. By extension, the courts have a duty to interpret the law when these cases are brought before them concerning corruption. Indeed it is only the courts, properly constituted that are vested with the power to pronounce any person guilty of corrupt practices and consequently imposes punishment. This is notwithstanding the perception by anti-graft agencies and the general public that some people or individuals are corrupt. The bulk really stops on the table of the judiciary as to this all important determination.

ROLE AND CHALLENGES OF JUDICIARY IN COMBATING CORRUPTION

The fight against corruption is one that has always been a phenomenon in our country. Right from independence, allegations of corruption has been around us up till today. Each and every institution saddled with one role or the other to play have made efforts over the years to rid the country of corruption and the judiciary is not left out. The powers of the Courts making up the Nigerian Judiciary are clearly spelt out under Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). A careful perusal of the law shows that a clear mandate is given to the Judiciary to interpret laws and settle disputes between individuals and groups. The exercise of this power is not unconnected to the inherent duty to review actions by the government as it obtains under the doctrine of

separation of powers, enforcement of fundamental rights, maintaining rule of law, administering the various penal legislations and punishing violators of the law.³⁸

The necessary link to draw here with our earlier definition of corruption may tilt slightly to the side of the duty of the courts with regards to penal sanctions. Statutes like the Penal Code, Criminal Code, EFCC Act, ICPC Act, Money Laundering Act, Advance Fee Fraud and Other Related Offences Act, Code of Conduct Bureau and Tribunal Act, all have penal sanctions relating to offences which are closely knit with the definition of corruption. Once a suspect is found wanting for any of the violations under these laws, recourse is made to the courts by the prosecution and offenders are charged, while the court is to determine their guilt and sentence accordingly. This therefore makes the judiciary one of the principal players in the scheme of fight against corruption. In order to carry out this task therefore, the judiciary needs to be independent, impartial and informed. The judges that make up the courts must be fair, just, equitable and must not allow themselves to be influenced by extraneous considerations.³⁹

The courts over the years have convicted corrupt individuals brought before them on corruption charges, and on some occasions, the judiciary has been reduced to criticisms of letting corrupt individuals off the hook. A passionate appraisal of the prospects and constraints facing the judiciary in discharging their mandate is therefore necessary at this juncture. If we truly understand the challenges facing the judiciary, we could then draw a yardstick to measure the extent to which the judiciary has discharged its mandate and the way forward.

The general role of the Judiciary in the scheme of corruption does not arise till matters are brought before the court on corruption charges. When issues relating to corruption are tried in courts, the judges have to make pronouncement on these cases, convicting an accused or discharging him as appropriate. The determination of cases before our courts are not based on conjectures, or assumptions or public opinion, courts must be guided with hard facts

³⁸ Kawu S.D., 'Extermination of Corruption: The Role of the Judiciary' in Yusuf Ali (ed) 'Anatomy of Corruption in Nigeria: Issues, Challenges and solutions' p. 425 (February 2016: Abuja) Yusuf Ali

³⁹ Akanbi M, M, A., Pioneer Chairman of the ICPC during a keynote address at the Opening Ceremony of the Nigeria Association of Law Teachers at the University of Ilorin, 23rd April, 2013.

presented to it in order to reach a decision.⁴⁰ In carrying out its role in combating corruption therefore, a court has to base its findings on the facts presented before it. The fact cannot be denied that these judges or justices that make up the court are part and parcel of the society and are not oblivious to the happenings around them, in the press or the public opinion on some issues brought before them. That notwithstanding, the courts have to decide cases based on the facts and pieces of evidence placed before them and not otherwise.

In carrying out its role, the judiciary only holds a segment of the piece of the whole pie. **They cannot investigate allegations of bribery or corruption, they cannot prosecute offences nor defend them;** all the judiciary can do is to decide the cases based on the facts and pieces of evidence placed before them. The judiciary therefore holds one-fourth in the scheme of adjudication. Although it is a common belief by the populace that in carrying out their duties of adjudication on cases bordering on corruption, some judges and judicial officers are often compromised. This belief, while it may be true in a very few instances, does not depict the correct situation of things as far as majority of justices and judges are concerned. Even though some judges were recently arraigned on allegations of corruption, it is only after the conclusion of their trial one may conclude that they are guilty or otherwise. The element of proof is the key in this regard. Where proof is wanting, allegations of corruption may not succeed. At the risk of going to deep into the annals of reports, the recent discharge and acquittal of Hon. Justice Ademola of the Federal High court from offences relating to corruption by the Federal Capital Territory high Court is a good example in this regard.⁴¹

The role of a judge in combating corruption is therefore limited, but at the same time, far reaching. With the limited power to interpret the law the way it is and not how it ought to be, a judge is simply to exercise this power based on materials placed before him. A bulk of the work rests on the investigation team, the prosecutor who presents the case, the quality of

⁴⁰ Courts are not allowed to rely on speculations. See the cases of *Orhue v. NEPA* (1998) 7 NWLR (Pt.557) 187; *Oguonzee v. State* (1998) 5 NWLR (Pt.551) 521; *Animashaun v. U.C.H* (1996) 10 NWLR (Pt.476) 65; *Adefulu v. Okulaja* (1996) 9 NWLR (Pt. 475) 668 *Akpabio V The State* (1994) 7 NWLR (pt.359) 635 at 669 - 670

⁴¹ Okakwu E., "Court Clears Justice Ademola, Wife of Wrongdoing in Corruption Allegations" available at <http://www.premiumtimesng.com/news/headlines/227966-breaking-court-clears-justice-ademola-wife-wrongdoing-corruption-allegations.html> last visited on 8/04/2017

evidence proffered by the prosecution and the defence who brings up all available defences open to the defendant. Taking the situation a bit further, our laws only make an accused person or defendant culpable if the case is proved beyond reasonable doubt, against him by the prosecution.⁴² This standard of proof, even though has been defined not to be beyond all shadows of doubt,⁴³ still remains a huge challenge in seeing the manifestation of the role of the judiciary in curbing corruption. It is within these spheres of legal restrictions that the judiciary must keep its head above the waters and bring the culprits to book.

As much as we agree that the judiciary holds just one-fourth of the responsibility in trying offences, the arduous task of evaluating evidence, giving reasons to support their opinions, being the *dominis litis* and being the one to make the final pronouncement on issues makes the one-fourth scenario seems larger than the rest. A huge task therefore lies in the hand of the judges to do justice, even if heavens will fall.

We cannot also deny the fact that the coming of the concept of plea bargain in our jurisprudence has added a twist to the plot.⁴⁴ The Economic and Financial Crimes Commission Act and the Administration of Criminal Justice Law of Lagos State had hitherto provided for the use of plea bargain. More recently, the Administration of Criminal Justice Act, 2015 also put an end to the continued impasse about the legality of the concept of plea bargain. With its introduction into the criminal justice system, plea bargain has somehow found a niche and became synonymous only with cases bothering on corruption charges. The limited role which the judge plays in the plea agreement, even though laudable in some respects, can only mean that the judges do not have a say in the consideration of plea deals between the prosecution and the accused person or defendant.⁴⁵ This equally has limited the responsibility of the judiciary to confirmatory role alone, and not the traditional role of adjudication, to a considerable extent.

⁴² See the case of AKINLOLU v. STATE (2015) LPELR - 25986 (SC)

⁴³ See the case of OSETOLA & ANOR v. THE STATE (2012) LPELR - 9348(SC)

⁴⁴ See generally the Provisions relating to Plea Bargain under Part 28 of the Administration of Criminal Justice Act, 2015

⁴⁵ The Provision of Section 270 (8) of the Administration of Criminal Justice Act, 2015 is very clear on the position that a Judge is not to participate in the plea agreement between the prosecution and the defendant.

The state of the laws relating to corruption has also been itemized as one of the challenges facing the judiciary in its fight against corruption. There are concerns that the provisions of the hitherto laws relating to corruption do not meet up with the present situations we find in our societies today. While a judge is empowered to only interpret the law and not to make the law, the provisions of the law relating to sentencing may be a far cry from the reality and gravity of the offence charged. The case of **Atiku Kigbo**⁴⁶ who was convicted for stealing billions of Naira from the Pensions Fund and converting same to his own use but whom, upon conviction, was only sentenced to two years imprisonment and N750,000.00 comes to mind in this circumstance. It is gradually becoming a folklore among Nigerians that the thief who steals a goat or chicken or any food item gets a higher sentence than a public officer who embezzles millions of Naira. This imbalance needs to be checked, and it is the duty of the legislators to see to the harmonization of our various laws.

The independence of the Judiciary has equally been a subject of discourse over the years. The levels of self regulation and revenue have been burning issues over the independence of judiciary. On the one hand, the appointment and removal of judges that make up the judiciary lies with the Executive arm of the government while the Legislative arm makes a confirmation. The only duty of the National Judicial Council in this respect lies with the recommendation of judicial officers, a decision which may find favour or otherwise with the executive. More recently, the appointment of the Chief Justice of Nigeria became a daily dose in the media. The confirmation of Hon. Justice Walter Samuel Onnoghen, GCON as the Chief Justice of Nigeria only came after a long impasse which was characterized by conspiracy theories. With regards to revenue, the Nigerian Judiciary still depends on other arms of government for its finances.

Apart from the challenges evident in the judiciary, the institution itself is fraught with corruption allegations. I need not go too far in driving home this point. Various allegations persist about corrupt judges and the media has been recently active on cases relating to judges and court officials on corruption. A recent survey by the Economic and Financial Crimes Commission and National Bureau of statistics with the support of United Nations

⁴⁶ Akowe T., "Labour Seeks Death Sentence for Corrupt Public Officers" available at <http://thenationonlineng.net/labour-seeks-death-sentence-for-corrupt-public-officers/> last visited on 7/8/2017

Office on Drugs and Crimes found thus **“Nigerian Courts of law receive the biggest bribes from citizens among all institutions in which corruption is rampant”**⁴⁷ the report stated further **“though bribery in the judiciary was less frequent than in many agencies, it required the biggest transactions.”**⁴⁸ It is therefore apt to conclude that where the judiciary itself is weighed down by corruption within its own ranks, a fight against corruption seems herculean. Interestingly, other court officials are also involved in these schemes. The National Judicial Council remains the regulating body for erring Judicial Officers and the body has over the years suspended erring judges or advising them to go on compulsory retirement when allegations of corruption are proved against them. The recent clampdown on some judges by the Directorate of Security Services (DSS) on the claim of the refusal of the NJC to wade off corrupt judges leaves much to be desired. It is indeed a sad trajectory in the anal of Nigerian Judiciary.

One other vexed challenge confronting the judiciary in corruption cases is slow pace of hearing and determination of cases. It takes years for such cases to be determined leading in many instances to dearth of evidence due to unavailability of witnesses or important records.

CONCLUSION AND RECOMMENDATIONS

The foregoing has been an attempt to describe the role of the judiciary in the fight against corruption. Effort has been made to bring the definition of corruption to light from different perspectives and notions. The makeup of the Nigerian Judiciary under the constitution of the Federal Republic of Nigeria, 1999 has been equally highlighted and the principal role that the judiciary plays in the scheme of corruption has been explained. It has also been explained that in carrying out its statutory duty, the judiciary has certain challenges which could inhibit its fight against corruption.

It is argued that while some of the challenges itemized above could be adequately taken care of, there is also the need to strengthen the institution by making it better equipped for the

⁴⁷ Supra Note 16.

⁴⁸ Ibid

cases and disputes relating to corruption brought before it. We are now in a generation where technology is gradually the mainstay of everything we do. It is therefore high time the judiciary itself is braced up and better equipped to solve the issue of delay in administration of justice and also meet up with the growing trend in information technology. The era of long handwriting should be discarded to save time and judges and court officials should be properly trained with the use of technological devices.

The prosecution of offences before courts should also be strengthened by an adequate enforcement of the procedural laws. The coming of the Administration of Criminal Justice Act, 2015 has brought innovations that can assist the judiciary in carrying out its duties. The stakeholders in this regard should therefore see to the full implementation of the Act, not only in Federal Courts or Courts of the Federal Capital Territory alone, but also in urging the various states of the Federation towards its adoption. There should equally be a witness protection programme, particularly for the whistle blowers in order to see more cases of corruption being reported and tried successfully in courts. The Federal Government's policy on whistle blowers has gained much popularity in such a short time. The prospective whistle blowers therefore need assurances to be able to come forward and give evidence to assist the courts in carrying out its duty.

It is also important to provide conducive environment for the judges in carrying out their roles in stamping out corruption. Remuneration of the judges should be made to be commensurate with a life style that would guarantee contentment and at the same time avoid any temptation to fall prey to bribes from litigants. The National Judicial Council itself must come on board with initiatives to ward off corruption and corrupt judges from the judiciary. It should not be a matter of compromising justice at the expense of fellowship, as it is commonly believed now. Erring judges must be weeded out and recommended for prosecution and the ones that remain must be ready to do justice, even if heavens will fall. The procedure of appointment of judges should be revisited and a mechanism should be evolved to ensure that only people of proven integrity are appointed to the bench.

Every stakeholder in the administration of justice sector must play his role well and in accordance with the law and rules to ensure seamless and transparent administration of criminal justice. The Nigerian populace especially the mass media must refrain from

condemning the judiciary for delivering verdict one way or the other in corruption cases because the verdict of the court is a departure from their own perception of a case, otherwise, the judiciary may be arm twisted and blackmailed to render verdict based on public opinion, which in its self is a species of corruption.