

## **DIGNITY IN COURTS' JUDGEMENT: A VERITABLE TOOL IN DEVELOPING A SUSTAINABLE LEGAL INSTITUTION IN NIGERIA, JUXTAPOSING THE *OMOLUABI* CONCEPT**

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### **Abstract**

*Dignity has been defined as 'a way of appearing or behaving that suggests seriousness and self-control'; the quality of being worthy of honour or respect'. Dignity is a concept that is well known, well entrenched and permeates every stratum of African culture from settlement of disputes to interaction between people in terms of contract, marriage, learning a trade or vocation and occupying a top position in the society.*

*Dignity among the Yorubas of the Southwest of Nigeria is akin to the concept of 'omoluabi'. This concept defines what a person is and what he or she would become in life in the eye of the society and how far his/her achievements can go. It is also co-terminous with the saying that 'character open doors or closes it', of course depending on which character the person exhibits, whether good or bad.*

*The concept is however, being fast eroded in the cultures the world over due to cultural change in terms of interaction with other cultures, corruption and socio-economic diversifications, and this has affected all strata of developments, whether positively or negatively.*

*In this paper, we applied this concept to judgments of courts in Nigeria in terms of the personality and character of the Judge, treatments of the judges, the inputs to and outputs of judgments, as well as the execution or enforcements of such judgments.*

***Keywords: Dignity, Culture, Development, Sustainable development, Judgment.***

### **Introduction**

The exalted position of a judge is dignifying and the occupier of such position is expected to showcase dignity. A judge should be exemplary in all facets of life, whether in carriage or speech. In the Court room, a judge must be guided by the ideal characteristics of an "Omoluabi", which are embedded in the notions of independence, impartiality, Competence, Efficiency and Comportment. Both impartiality and independence are understood to safeguard the objectivity and fairness of judicial proceedings. As to impartiality, the UN Human Rights Committee stated that it "*implies that judges must not harbour any preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties.*"<sup>1</sup> On the other hand, judicial independence safeguards the judiciary against any interference by state organs or private persons with the performance of judicial duties. Thus, while impartiality reflects open-mindedness on the part of the judges, independence describes functional and structural safeguards against extraneous intrusion into the administration of justice.

In addition to impartiality and independence in their strict sense, it is essential that the judiciary inspires confidence in the public that judicial proceedings are actually carried out in conformity with these principles.<sup>2</sup> This is in line with the English maxim that *justice must not*

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<sup>1</sup>Human Rights Committee, Communication No. 387/1989 (*Karttunen v. Finland*), UN Doc. CCPR/C/46/D/387/1989, para. 7.2.

<sup>2</sup> P. Radler *Independence and Impartiality of Judges – Human Rights Library* [hrlibrary.umn.edu/fairtrial.wrft](http://hrlibrary.umn.edu/fairtrial.wrft). accessed March 11, 2019.

only be done, it must also be seen to be done.<sup>3</sup> In this way impartiality and independence are both extended to safeguard situations where there is legitimate doubt that the court acts in an independent and impartial manner. In the exercise of his duties, the Judge must also be guided by the principles of *audialterampartem* and *nemojudex in causasua*, which are literally translated respectively to 'a judge should hear both sides of a case before arriving at judgment' and 'one cannot be a judge in one's cause'.<sup>4</sup>

Aside the principles of impartiality and independence, Competence, Efficiency and Comportment are also sterling qualities a judge must possess.<sup>5</sup>

The 'Omoluabi'<sup>6</sup> concept of the Yorubas<sup>7</sup> connotes the acceptable standard of behavior expected of someone in the society especially someone occupying an exalted office as that of a judge. A judge who is an 'Omoluabi' is expected to be impartial and independent of external influence in arriving at his judgments. Such a person should be efficient and competent in that area, which he adjudicates on and must apply knowledge and wisdom in his decisions. This is akin to Lord Denning MR's dictum in *Metropolitan Properties Co. (FGC) v. Lannon*, thus:

The court will not inquire whether he did in fact, favour one side unfairly. Suffice is that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: 'The Judge was biased'.<sup>8</sup>

### The "Omoluabi" Concept

"Omoluabi" can be literally translated into English to mean a virtuous person or a morally upright person. It can also mean in one word 'a gentleman' though it has been posited that this translation is not exhaustive of the meaning of the term.<sup>9</sup> It can be said to mean an 'ideal being'.<sup>10</sup> It embodies 'Iwarere' (Good Character/behaviour) 'Iwa tutu' (Gentleness), 'Iwairele/iteriba' (Respect).<sup>11</sup> Other attributes or qualities of an 'Omoluabi' are 'Oro siso' (Spoken word, the Yorubas accord great respect for intelligent and expert use of language); 'Inurere' (Good mind, having a good mind towards others); 'Otito' (Truth); 'Iwa' (Character/Behaviour); 'Akikanju' (Bravery); 'Isetakuntakun' (Hardwork) and 'Opolo pipe' (Intelligence)<sup>12</sup>. An Omoluabi is one who combines all these virtues.<sup>13</sup> To Akanbi and Jekayinfa:

The end of Yoruba traditional education is to make every individual Omoluabi. To be Omoluabi is to be of good character. That is why the goal of Yoruba traditional education has always been to foster strong character in

<sup>3</sup>Lord Hewart in *R v. Sussex ex parte McCarthy*.(1924) 1 KB. 256, (1923) All ER Rep 233.

<sup>4</sup>These principles are rooted in Common law and are referred as the twin pillars of natural justice, which should guide a Judge in conducting a fair trial and arriving at a decision.

<sup>5</sup>R.I.B. Adebisi, "The Impact of Judicial Education on Judicial Reform in Nigeria" A Paper presented at the Refresher Course for Judges and Kadis on Modern Judicial Practice and Procedure (2017) nji.gov.ng

<sup>6</sup>'Omoluabi' is the Yoruba terminology for a virtuous person or a morally upright person.

<sup>7</sup>Yorubas are concentrated in the South western part of Nigeria. They are also found in Republic of Benin, Trinidad and Tobago, Brazil, United States and Jamaica. Olusola Victor Olanipekun op.cit.p.218

<sup>8</sup>(1969) 1Q.B. 577. Lord Denning's dictum expanded the earlier dictum of Lord Hewart in *Rv. Sussex ex parte McCarthy*. (1924) 1 KB.256, (1923) All ER Rep 233.

<sup>9</sup>Olusola Victor Olanipekun, "Omoluabi: Re-thinking the Concept of Virtue in Yoruba Culture and moral System" *Africology: The Journal of Pan African Studies*(October 2017) vol 10 no 9. [www.jpanafrican.org](http://www.jpanafrican.org) accessed March 11 2019. P. 219

<sup>10</sup>Akinyemi .A. ," Orature and Yoruba Riddles" (2015) New York: Palgrave Macmillian Civic Education, Peace Building and the Nigerian Youths. [www.thetidewsonline.com](http://www.thetidewsonline.com) accessed March 12 2019.

<sup>11</sup>Ibid. Olusola Victor Olanipekunop.cit. p.218. Bewaji John Ayotunde "Ethics and Morality in Yoruba Culture" Companion to African Philosophy, London: Blackwell (2004in KwasiWerdedued) p. 399

<sup>12</sup> ibid

<sup>13</sup>Fayemi, Ademolakazeem, "Human Personality and the Yoruba Wordview: An Ethico - Sociological Interpretation"

the individual and to prepare each person to become a useful member of the community<sup>14</sup>

Conversely, unethical behaviours and morally disapproved conducts are ‘*iwabuburu*’ ‘*aidaa*’ (evil or lawlessness); ‘*Iwaibaje*’ (bad character) ‘*Imele/Ole*’ (Laziness); ‘*Ole jija*’ (acts of stealing); ‘*iro*’ (lies); ‘*ainiteriba*’ (disrespectful attitude) and ‘*Ojukokoro*’ (Covetousness).<sup>15</sup> The Yorubas of Western Nigeria considers the issues of morality or ethics as one of the most fundamental in the existence of humans.<sup>16</sup> Being an Omoluabi goes beyond oneself, but also speaks volume of the family or society someone belongs to.<sup>17</sup> In other words, an individual has to consider not only how a course of action will affect him personally but how it will affect his family directly or indirectly and his community at large.<sup>18</sup>

The Yoruba concept of *Omoluabi* is likened to some western philosophers’ notion of virtue as integral to human living. Aristotle<sup>19</sup> portends to provide answers to questions like *what is the right action? What kind of person should I be?* Aristotle’s answers to these questions proposed virtue as central for human life.<sup>20</sup> Of utmost significance is Aristotle’s conception of the study of ethics as practical endeavour aimed not at theoretical knowledge but at improving human lives.<sup>21</sup> Lynn Mc Fall also proposed virtue (integrity) as central for human life.<sup>22</sup> Some African scholars have argued that the Aristotelian conception of virtue can be likened to the Yoruba concept of *omoluabi* with slight modification<sup>23</sup>.

### **The *Omoluabi* Concept and the Yoruba Adjudicatory System.**

The Yorubas are concentrated in the South western part of Nigeria.<sup>24</sup> They inhabit an area that stretches about 120 miles along the coast of the Gulf of Guinea and from the Benin border to about 200 miles inland into the Savannah belt of West Africa.<sup>25</sup> Historically, the origin of the Yorubas is divided into two parts. One account says the founder of the Yorubas, Oduduwa came directly from heaven to Ile-Ife, the ancestral home of the Yorubas,<sup>26</sup> while the other account says that the Yorubas migrated from Egypt, North-Eastern part of Africa to Ile-Ife between the 7<sup>th</sup> and the 10<sup>th</sup> Centuries.<sup>27</sup> A point of convergence in the two accounts is that Ile-Ife is the ancestral home of the Yorubas and from thence, other Yoruba cities, towns and villages were founded.

<sup>14</sup>Akanbi and Jekayinfa cited in Olusola Victor Olanipekun, “Omoluabi: Re-thinking the Concept of Virtue in Yoruba Culture and Moral System” *Africology: The Journal of Pan African Studies*(October 2017) vol 10 no 9. [www.jpanafrican.org](http://www.jpanafrican.org) accessed March 11 2019

<sup>15</sup>Akinyemi.A., Op.Cit.p.

<sup>16</sup> Barry Hallen, “The Philosophical Humanism of J. OlubiShodipo” in Akinrinade Sola; FashinaDipo and Ogunbile David (eds) *The Humanities, Nationalism and Democracy* (2006 Ile –ife Faculty of Arts ObafemiAwolowo University Publications) p. 361

<sup>17</sup>Bewaji John Ayotundeop.cit p 399

<sup>18</sup> *ibid*

<sup>19</sup> Aristotle is an ancient philosopher and indeed one of the leading philosophers of western tradition, who was a student of Plato.

<sup>20</sup> John Perry and Michael Bratman (eds) *Introduction to philosophy Classical and Contemporary readings* (1986: New York Oxford) pps. 623-630

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

<sup>23</sup>Olusola Victor Olanipekunop.cit. p.218. The Yoruba concept of Omoluabi is broader and more encompassing than Aristotelian concept.

<sup>24</sup> *Ibid* note 6

<sup>25</sup>OnifadeTemitayoAbayomi, “Perspective to Values and Character in Traditional Yoruba Societies” [www.academia.edu](http://www.academia.edu). 1, accessed March 13, 2019.

<sup>26</sup>KemiAtandallori, “The Yorubas: Myth of origin” [www.academia.edu](http://www.academia.edu) accessed March 13, 2019.

<sup>27</sup>OnifadeTemitayoop.cit p.1

There is also a consensus that Oduduwa is the progenitor of the Yorubas, thus, the Yorubas are bound by this common progenitor, a common language and a rich spirituality.<sup>28</sup>

Prior to the advent of colonial rule, the political headquarters of the Yoruba kingdom was the old Oyo Empire called Oyo-Ile, which was founded around 1400CE.<sup>29</sup> The Oyo kingdom headed by the 'Oba', who was referred to as the 'Alaafin', not only controlled all Yoruba settlements but also the Fon Kingdom of Dahomey (now the Republic of Benin). The old Oyo Kingdom was disintegrated around 1796 and the present abode of the Oyo called Oyo Alaafin was founded around 1835, which also continued as the political capital of the Yorubas until the British system via indirect rule was introduced. The hierarchy of authorities among the Yorubas places the 'Oba' as the first, which is followed by the chiefs. Among communities and families, the 'Baale' and the elders occupy a vantage position in governance and administration of justice. The Yorubas are generally vast in arts of diplomacy and decorum in behavior and manners. They exhibit the 'Omoluabi' characteristics such as wisdom and shrewdness in judgment; oratory skills; self-control, especially when under provocation. They are dignified in sorrow and restrained in success and most importantly showcase an excellent character.<sup>30</sup> Other ideals, which play significant roles in the definition of good character, regulation of conduct and administration of justice include truthfulness, humility, compassion, temperance, trustworthiness, love and respect for elders.<sup>31</sup> The Yoruba character is not that of aggression but of temperance. Thus, this Yoruba saying supports this assertion:

'*Esol'ayegba*' - The World should be approached with caution

'*Pele, peleniejongunagbon*' - The snake does not climb the coconut tree in a hurry

'*Oni suuruniyogun aye*' - The patient inherit the world.<sup>32</sup>

Oduifa (unwritten scriptures) emphasizes the attribute of '*iwapele*' (gentleness/good behavior).

The Yoruba concept of '*Omoluabi*' prohibits acts like 'Laziness', 'Lying', 'Cheating', and 'Stealing.' This is evident in the Yoruba proverb:<sup>33</sup>

'*Eke o sunwonl'araeni*' - Falsehood is not right for one

'*Odale o sunwonl'araeniyani*' - Covenant breaking is good for no man

'*B'eniyambanyo 'le, Ohunbuburu a maayo won se*' - If anyone surreptitiously breaks covenant, ills surreptitiously will befall them.

The principle of fairness to both parties in settling a dispute is emphasised just as modern day adjudicatory system of the twin pillars of natural justice. '*nemo iudex in causa sua*' and '*audi alteram partem*', which translate respectively into '*one must not be a judge in his own cause*' and '*one must hear both sides before arriving at a decision.*' This is evidenced in the popular Yoruba saying:

'*Agbojoenikan da, agbaosikani*' – He who based his judgment on a party's complaint is a wicked elder.

In line with the principle of fair hearing and justice is the proverb:

<sup>28</sup>ibid

<sup>29</sup>ibid

<sup>30</sup>J.A. Akinpelu, "An Introduction to philosophy of Education (1987) London: Macmillian Publishers p 178-179

<sup>31</sup>Ibid. J.A. Majasan, "Yoruba Education: Its principles, practice and relevance to current educational development. Unpublished PhD Thesis University of Ibadan, Nigeria (1967) cited in Onifade Temitayo Abayomi, "Perspective to Values and Character in Traditional Yoruba Societies" [www.academia.edu](http://www.academia.edu) p. 3, accessed March 13, 2019.

<sup>32</sup>Ademowo & Adekunle, "Law in Traditional Yoruba Philosophy: A Critical Appraisal" [www.researchgate.net](http://www.researchgate.net) accessed March 14, 2019.

<sup>33</sup>Ibid. Abimbola W. Iwapele, "The Concept of Good character in Ifa Corpus (Oxford: Oxford University Press) cited by Omoniyi Adewoye in "Proverbs as a Vehicle of Juristic Thoughts" Obafemi Awolowo University Law journal (1987) P.3-4.

‘Ikati o base nioba n ge’ - ‘it is the finger that offends that the king cuts’.<sup>34</sup>

### **The Principles of Independence and Impartiality**

Dignity embodies the “omoluabi” characteristics of Independence and Impartiality, Competence, Efficiency and Comportment in individual judges and the judiciary as a body. These virtues reflect the ideal, which is imperative for the exalted office of a judge.<sup>35</sup> The judiciary must be independent of any external influence and a judge must be impartial in the dispensation of justice.<sup>36</sup> Impartiality denotes fairness and Equity.<sup>37</sup> The symbol of impartiality is commonly seen at the entrance of most of our Court buildings: a blindfolded damsel robed in white with balanced scales on one hand and a sword on the other hand. This symbol emanates from history. The Egyptian God Anubis had a set of scales by which he weighed a deceased heart with a feather of truth.<sup>38</sup> The sword was a symbol of authority and finality in ancient times and the blindfold depicts impartiality. The symbol as a whole is to the effect that justice must be administered without regard to wealth or status in the society.<sup>39</sup> Impartiality also connotes fair hearing.<sup>40</sup> The basic criteria and attributes of fair hearing were laid down by the Nigerian Supreme Court thus:

- g. That the Court or Tribunal shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case.
- h. That the Court or Tribunal shall give equal treatment, opportunity and consideration to all concerned.
- i. That the proceedings must be held in public and all concerned shall have access to and be informed of such a place of public hearing
- j. That having regard to all circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done.”<sup>41</sup>

The principles of independence and impartiality of the judiciary seem to enjoy universal allegiance internationally; the Covenant and the regional human rights instruments recognise the guarantee of an independent and impartial tribunal as a human right to fair trial.<sup>42</sup> Independence and impartiality connotes fairness on the path of a judge. It is important that the judiciary inspires confidence in the public that judicial proceedings are actually carried out in conformity with these principles. It has been emphasised that “justice must not only be done, it must also be seen to be done.”<sup>43</sup> In this way impartiality and independence are both extended to safeguard against situations where there is legitimate doubt that the court acts in an independent and impartial manner.

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<sup>34</sup> Ibid

<sup>35</sup> Yusuf Ali, “The Evolution of Ideal Nigerian Judiciary in the New Millennium” yusufali.net accessed March 19, 2019.

<sup>36</sup> R.I.B. Adebisi, “The Impact of Judicial Education on Judicial Reform in Nigeria” A Paper presented at the Refresher Course for Judges and Kadis on Modern Judicial Practice and Procedure (2017)nji.

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Section 36 of the Constitution of the Federal Republic of Nigeria 1999, Cap C23, Laws of Federation of Nigeria 2004.

<sup>41</sup> *Pam v. Mohammed (2008) 16 NWLR pt 1112 at 85* para B-E. (Tobi JSC delivering the dissenting judgment.)

<sup>42</sup> Art. 14 (1) of the Covenant on Civil and Political Rights (as well as Art. 10 of the Universal Declaration of Human Rights); Arts.7 and 26 of the African Charter on Human Rights and Peoples' Rights; Art.10 of the Inter-American Convention on Human Rights; Art.6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>43</sup> supra note 3

A judge is presumed to be partial if he is hostile towards one party or favours one over the other. However, the mere fact that a party is of the opinion that a judge is biased does not necessarily mean a judge is biased; the reasonable man's test comes to play in this regard.<sup>44</sup> Moreover, it is for the parties to challenge the judges' impartiality on account of the particular conduct or personal attitudes of members on the bench and of the jury.<sup>45</sup> The need to challenge subjective improprieties of judges or jurors was stressed by the UN Human Rights Committee.<sup>46</sup> The Judiciary is referred to as the third tier of Government and its independence is sacrosanct and provided for under the Constitution of the Federal Republic of Nigeria<sup>47</sup>. It is because of the independence of the judiciary that courts are established by law.<sup>48</sup> Judicial independence connotes non-interference from external forces in the affairs of the judiciary and ultimately in the administration of judges. These forces could be the Government, private individuals and some other groups. To this end, the Appointment, Composition and Removal of judges must be done in fairness and equity and devoid of external influence.

### **Appointment of Judges**

The appointment of judges must not be done on an ad hoc basis.<sup>49</sup> In other words, the executive arm of Government must not appoint judges just for the purpose of handling particular cases and it is also precluded from assigning judges to certain benches or jurisdictions so as to influence the outcome of the proceedings. However in Nigeria, judges are appointed to handle election petition tribunal matters on ad hoc basis and the tribunal is disbanded upon given judgment. These judges are not selected afresh but from the existing judges in courts from jurisdictions.

The appointment of judges differs from country to country. Judges are either directly elected by the people,<sup>50</sup> appointed by Parliament<sup>51</sup> or solely by the government, appointed by the government by way of an agreement with Parliament<sup>52</sup> or with a judicial service commission established for the nomination of judges,<sup>53</sup> and eventually in some countries, lower court judges are appointed by means of co-option by the Supreme Court or the Court of Appeals.<sup>54</sup> If there is a judicial service commission, very much will depend on its composition.<sup>55</sup> In Nigeria, judges of superior courts of record<sup>55</sup> are appointed by the President on the recommendation of the National Judicial Council subject to ratification by the senate.<sup>56</sup> This process may be cumbersome but it allows for transparency and independence in the appointment of judges.

However, despite the constitutional procedure for appointing judges in Nigeria, the question of nepotism in the appointment has not been resolved. The initial nominations, in most instances, are based on favouritism or influenced by politicians or other high ranking figures in

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<sup>44</sup>supra note 7

<sup>45</sup>P. Radler, "Independence and Impartiality of Judges" – human Rights Library [hrlibrary.umn.edu/fairtrial.wrft](http://hrlibrary.umn.edu/fairtrial.wrft). accessed March 11, 2019.

<sup>46</sup>ibid

<sup>47</sup>Section 6, Constitution of the Federal Republic of Nigeria 1999, CAP C 23, Laws of Federation of Nigeria 2004

<sup>48</sup>P. Radler op.cit

<sup>49</sup>ibid

<sup>50</sup>Art. 152 of the Constitution of Peru; Art 247(2) constitution of Colombia. In Switzerland the judges of the cantonal are elected by the people of that cantonal.

<sup>51</sup>The judges of the Swiss Federal court are elected by the parliament; Arts 85(no 4); 107(1) of the Constitution of Switzerland.

<sup>52</sup>Art 96 of the Constitution of Mexico

<sup>53</sup>Art 65(5) Constitution of France; Art 84(2) of the Constitution of Uganda; Art 128(1) of the Constitution of Russia; Art 80(1) of the Constitution of Senegal.

<sup>54</sup>Art 80(1) of the Constitution of Japan; Article 97(1) of the Constitution of Mexico; Article 75(3) of the Constitution of Chile. In addition, in a number of Swiss cantons, judges of the lower courts are appointed by judges of the cantons.

<sup>55</sup>Superior courts of record refer to courts, which are listed in the constitution.

<sup>56</sup>Sections 230-296 of the Constitution.

the society. These kinds of nominations culminating into appointments, leave room for manipulation of the judges so appointed.

### **Composition/Qualification of Judges**

The composition/qualification of judges is stipulated by law. The law of each country whether written or unwritten prescribes the composition and qualification of judges for particular courts. In Nigeria, the constitution, which is the grundnorm provides for the composition and qualification of judges of superior court of records.<sup>57</sup> Therefore, all appointments are made based on the provisions of the constitution.

### **Removal/Interference with Judges' decisions**

The dignity of a judge or the judiciary as a whole is preserved if the judge(s) is not afraid to carry out his duties irrespective of the consequences. In Nigeria, the tenure of a judge is secured and can only be terminated in accordance with the law.<sup>58</sup> Some countries, like the United Kingdom and Australia allow the executive to remove judges following a resolution of Parliament. Other countries such as France,<sup>59</sup> and Morocco<sup>60</sup>, provide for Judicial Service Commission, whose decisions are binding on the executive. In some instances, cases of removal of judges are decided by regular courts, as in Germany.<sup>61</sup> In Nigeria, aside, the statutory termination of tenure of judges based on retirement as a result of age, the constitution also provides for instances whereby a judge's tenure could be terminated abruptly as a result of gross misconduct, infirmity and being unable to continue to perform his duties as a judge.<sup>62</sup> The latter case is a trending issue in the Nigerian legal system of today as some judges have recently had their appointment terminated based on gross misconduct. Justice Walter Onnoghen, the immediate past Chief Judge of the nation, is also enmeshed in controversy bothering on gross misconduct, which led to his suspension as a judge<sup>63</sup>. There is an ongoing debate among the legal community and other stakeholders as to the propriety or otherwise of his suspension. While some are of the opinion that the matter should have been referred to the National Judicial Council, which is the body stipulated by law to recommend erring judicial officers for discipline, the other group is of the opinion that since the misconduct strictly bothers on non-disclosure of his assets, he has been rightly arraigned in the Code of Conduct Tribunal as the court empowered by the constitution to handle such matters and any order given by that court is binding.

As a corollary to the above, a judge's right of privacy should not be tampered with except due process has been followed. A judge should not be apprehensive at any time that his private space might be violated by the executive. This could lead to a judge being subservient, always within the control of the whims and caprices of the powers that be.

On October 8, 2016, the Directorate of State Security (DSS) raided the homes of several judges of the Federal High Court and Justices of the Supreme Court in the early hours of the day. DejiAdeyanju reported thus,

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<sup>57</sup>ibid

<sup>58</sup>Section 292(1) of the Constitution

<sup>59</sup>Art. 35(4.1) Constitution of Ireland; Art. 72(I and ii) of the Constitution of Australia

<sup>60</sup>Art 65(6) Constitution of France

<sup>61</sup>Article 98(2) Constitution of Germany

<sup>62</sup>Section 292(1)

<sup>63</sup>Inibehi Effiong, "Illegality of the 'suspension' of Justice Onnoghen-20 points to note [www.saharareporters.com](http://www.saharareporters.com) accessed March 14, 2019; The Nation, "Why I ordered Ordered Onnoghen's Suspension by CCT Chairman" [www.thenationonline.net](http://www.thenationonline.net) accessed March 15 2019; "The Cable, "Falana tackles 12 lawyers in Buhari cabinet over Onnoghen's Suspension" [www.thecable.ng](http://www.thecable.ng)

In one swoop, (the DSS) raided the homes of Justices Walter Onnoghen and Sylvanus Ngwuta of the Supreme Court as well as the homes of Justices Adebisi Ademola, Muazu Pindiga and Nnamdi Dimgba of the Federal High Court. DSS agents spent time breaking down the gate of Justice Dimgba's house with a sledge hammer before beating his brother to pulp when they could not find him. At this time Justices Ademola and Pindiga have been arrested and detained.<sup>64</sup>

We are not saying that judges are above the law, but due process and constitutional provisions must be followed in investigations and prosecutions.

Undue interference by the Executive with the Judiciary portends danger to by judges in carrying out their judicial duties and ultimately in the delivery of judgments. When justice is not done in the delivery of judgments by judges the "*Omoluabi*" concept is eroded.

A recent depiction of the above executive interference in judgments of court is the bail application granted to Mazi Nnamdi Kanu, the leader of Indigenous People of Biafra, by Justice Binta Nyako, who said to British Broadcasting Corporation that she regretted granting bail to the IPOB leader.

The Nigerian judge who handled the IPOB leader's case, while granting interview to BBC hausa, expressed her regret because she refused the manipulation or interference from the executive and its demand to jail the IPOB leader. The judge is the wife of a prominent Northern politician and former Governor of Adamawa State, who had different cases of alleged corruption pending at the Federal High Court, Abuja, together with his son, Abdul-Aziz Nyako.

The prosecutor, Economic and Financial Crimes Commission, accused the two Nyakos of stealing, abuse of office and money laundering.<sup>65</sup>

The regrets of Justice Binta Nyako was that her husband and son have been re arraigned in court because she did not yield to executive pressure to jail Nnamdi Kanu.

It was Justice Binta's belief that if she had jailed Nnamdi Kanu, the case of her husband and son would have been swept under the carpet or in legal parlance, the prosecution would have been halted. Either ways, fair judgment would not have been served. A judge must do her job free from all interference and without fear or favour. Also, anyone alleged of wrong doing should face trial to clear his or her name, even if such individuals happened to be the husband and son of a serving judge. A society aspiring to develop its legal institution will rise above such shenanigans in order to build a strong institution.

### **Competence/Efficiency**

A judge must have a sound knowledge and mastery of the law. He must be able to cope with the modern day law profession and must not be living in the past. He must be ready to adapt to technological innovations and be computer literate. A judge who does not have a mastery of the law is not only a misfit to the law profession but to the society at large.<sup>66</sup> Justinian the Roman jurist sums it up thus: The ignorance of the judge is the calamity of the innocent, for a judge who is not up to date in his law can ruin a party by giving him a wrong judgment, which unless he has the means to appeal the case to the highest court in the land, may perpetuate injustice."<sup>67</sup>

<sup>64</sup> Invasion of Judges Homes: Buhari has no respect for rule of Law available at <http://www.vanguardngr.com/2016> assessed on 6/7/2019 at 10.07 am

<sup>65</sup> <http://www.premiumtimesng.com> accessed on Wednesday, August 26, 2020

<sup>66</sup> Yusuf Ali op.cit p. 8

<sup>67</sup>ibid

### Comportment

A judge should be humane and exhibit decorum. An “*Omoluabi*” judge must exhibit the following attributes as stipulated by Socrates, the ancient Greek philosopher: ‘Courteousness, Wisdom, Sobriety and Impartiality’.<sup>68</sup> A judge must be decorous in the court room. He must be courteous to lawyers and indeed, everyone. Humility should not be seen as a sign of weakness and arrogance. On the other hand, it’s not a sign of power.<sup>69</sup> A judge could be firm and uncompromising in upholding the standard and tenets of the rule of law<sup>70</sup> and also be humble and courteous.

### Conclusion and Recommendations

We have made efforts in this paper to analyse the qualities, competence and efficiency of judges in line with the Yoruba coinage of *Omoluabi* and its connotations. A judge ought to conduct himself in such respectable manner as to accord him a reciprocal respect from authorities and the society at large. Anything short of this would expose our judges to ridicule and opprobrium.

A judge that exhibits the *omoluabi* characteristics, which we have discussed above, would turn out judgments that are fair and in consonance with facts and law. His judgment will be without fear or favour, no matter whose ox is gored. He will be able to walk tall and not bow to intimidations and manipulation of the other arms of government. These qualities will be clear to the society at large.

The contrary is the case with a corrupt judge. He is amenable to manipulation and intimidation. His judgments are sold to the highest bidder. These negative characteristics do not help to develop a veritable and sustainable legal institution in a society. If cases were well decided devoid of any executive or personal inhibitions of the judge, such judgments may not have to go on appeals. This will definitely lead to early enforcement of judgments, thereby enabling the winning party to reap the benefits of the judgment. One of the reasons appeal courts are overwhelmed is because of tainted judgments which, almost always, would be upturned on appeal.

It is hereby recommended that

- Constitutional provisions must be strictly adhered to in terms of appointment and removal of judges
- Salaries and emoluments of judges be paid as at when due and not subject of politics as it is happening in most states of the federation, where judges are owed many months in arrears.
- Appointments should be based on meritocracy not nepotism as it currently seem.
- Thorough investigations of the background of potential judges be done to avoid appointment of corrupt and morally bankrupt judges
- Corruption must be tackled headlong in the judiciary as well as other strata of the society, if we must produce *omoluabi* judges.

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<sup>68</sup>ibid

<sup>69</sup>Yusuf Alli op.cit. p.10

<sup>70</sup> An example is the Supreme Court in *Lakanmi v A.G. West and Attorney General of Lagos State v. Ojukwu*. These were cases decided when Nigeria was in the military rule and the leaders were feared by everyone because of their high-handedness.