

REFLECTIONS ON THE RULE OF LAW IN CONTEMPORARY NIGERIA

*O.K Edu**

Abstract

This paper examines the concept of the rule of law and its operation in Nigeria. It observes that the rule of law has not been religiously adhered to in Nigeria, and the executive arm of government is the principal culprit. The paper urges citizens at all levels, big or small, high or low to live in accordance with the tenets of the rule of law. The paper recommends that machinery should be put in place to make the judicial arm of government truly independent so as enable judicial officers dispense justice no matter the status of the litigant.

Introduction

The rule of law implies supremacy of the law. It connotes ordered government in accordance with the extant laws of the land rather than arbitrary decisions of the government. It means that all persons, institutions, entities and authorities must be subject to the law of the land and that nobody is above the law. The rule of law has several theories. There are some who believe that if a bill passes through due process and is promulgated as law, its actual content does not matter. Others, however, hold the view that the

* Ph.D (DELSU) BL. Notary Public for Nigeria, Professor of Law and Dean, Faculty of Law, Delta State University Abraka (Oleh Campus), Delta State. Email: kingseduperfection@yahoo.com

rule of law must incorporate ideals of justice and fairness.¹ One thing is common to both views, that is, every person including the government must be subject to the law of the land. This article endorses the view that the rule of law must incorporate the ideals of justice and fairness. The rule of law is binding on all persons and authorities. The observance of the rule of law in any society or country brings peace, development and security of lives and property. This paper reflects on the rule of law in contemporary Nigeria and proffers recommendations for its due observance in Nigeria as a tool for proper governance.

Concept and Development of the Rule of Law

Plato, a classical philosopher, in his last dialogues *The Law*² espoused the idea that the government should be subject to law and that laws must be promulgated for the common good. Aristotle, in his work, *The Politics*³ (circa 350 B.C.) expatiated on the work of Plato by asserting that the rule of law is preferable to that of any individual. He argued that all governmental functions and powers in any society must be distributed and that governments should be subject to laws they promulgate in order to avert arbitrary rule and abuse of power. The revolt by the barons in England against the tyrannical rule of king John in 1215 led to the Magna Carta which was signed by king John in June 1215. The Magna Carta is a

¹ Ronald Dworkin, "Political Judges and the Rule of Law" in *Proceeding of the British Academy 1978*; Anthony Valeke *The Rule of Law: Its Origins and Meanings (A Short Guide for Practitioners)* (March, 1 2012), available at SSRN, <<http://ssrn.com/abstract=2042336>> accessed 2 February 2020.

² Plato 'The Laws' <<http://www.researchgate.net/publication/255726723>>. accessed 2 September 2019.

³ Aristotle on the Rule of Law and the Rule of Men, *International Studies Review*, vol 7, issue 3,508-512. <<https://academic.oup.com/15r/articleabstract/7/3/508/1847683?redirectedfrom=fulltext>>. accessed 5 May 2020.

document which spelt out in *extensor* the tangible remedies for the barons' grievances against the king.⁴ Even though King John repudiated the document soon after it was signed, Magna Carta has had great influence on the development of the rule of law not only in England, but also in other countries as successive monarchs built on the provisions of Magna Carta of 1215. Many provisions of Magna Carta have become the source, inspiration and development of legal concepts and principles for the advancement of mankind⁵. Chapter 39 of Magna Carta provides that "No freeman shall be taken or imprisoned or diseased or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land". Magna Carta thus espoused that no body, including the king should be above the law and the government. John Locke,⁶ commonly referred to as the father of Liberalism, propounded a "social contract" whereby members of a society voluntarily agree to be governed in exchange for the government protecting their lives and property. John Locke declared that "Freedom of men under government is to have a standing rule to live by, common to everyone of the society and made by the legislative powers created in it, and not to be subject to the inconsistent, unknown, arbitrary will of another man". John Locke did not discuss the place of the judiciary in government⁷. Montesquieu⁸, a French jurist, took the

⁴ Daniel Barstow Magraw, Andrea Martinz and Roy E Brownell, *Magna Carta and the Rule of Law* (Published by American Bar Association 2014) xi-xvii.

⁵ *Ibid.*

⁶ Magna Carta was a vital inspiration to the framing of the American Constitution and has been invoked by the American Supreme Court in many cases. See *Duncan v Louisiana*, 391 U.S. 145, 151(1982), *Trop v Dulles*, 356 U.S. 86 100 (1958), *Griffin v Illinois*, 351 U.S. 12,16-17 (1956); *Hosanna-Tabor Evangelical Lutheran Church and School v EEOG*, 132 S.Ct. 694 (2012) and *Borough of Duryea v Guarnieri* 131 S. Cr 2488 (2011)

⁷ John Locke, *Two Treaties of Government* (England: Awasham, 1690).

rule of law to a higher pedestal when he propounded that in any state there are three kinds of powers, the legislative, the executive and judicial power and that these should be held by separate persons. He posited that “power should be a check to power.”

The greatest exponent of the principle of the Rule of Law in the nineteenth century is Dicey⁹. He lucidly explains the Rule of Law as consisting of three interrelated elements. Firstly, he asserts that the Rule of Law demands the absolute supremacy of the ordinary laws of the land as opposed to arbitrary laws. He further states that it is the ordinary courts of the land as opposed to administrative tribunals that are the proper venue for determining breaches of the law. This in essence, means that nobody shall be punished for a non-existent law. Secondly, every person is subject to the laws of the land irrespective of his status, rank or profession. And thirdly, in Great Britain where there is no exhaustive written constitution, fundamental rights which are enshrined in the constitutions of other countries, emanate from judicial recognition of individual rights.

⁸ Anthony Valcke (n1).

⁹ Montesquieu, *L' Esprit des lois*, <http://dictionnaire-montesquieu.ens-lyon.fr>, He states that “when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.... lest the same monarch or senate should enact tyrannical laws, to execute in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression... There would be an end of everything, where the same man or body, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

Hayek¹⁰ adopts and expounds on the position taken by Dicey by saying that the generality, the equality, and the certainty of the law as well as administrative discretion in coercive action must always be subject to review by independent courts.

It must be emphasized that legal safeguards to provide a system of checks and balances notwithstanding, the constitutional framework of a state must operate within its cultural and societal milieu. This is the reason why the United Kingdom is seen as a bastion of the rule of law even though the executive and the legislative arms of government are intertwined¹¹. It is believed that ideals of justice and fairness are deeply embedded in British cultural traditions and hence both the ruled and the rulers operate within the confines of the law. This means that the rule of law can thrive in the absence of specific legal mechanisms contained in a written constitution and that for the rule of law to function effectively in a society there must be a cultural tradition of respect for the law.¹²

Hans Kelson, an Austrian legal theorist, postulates that the rule of law demands a hierarchy of legal norms within a given legal system with an authorizing norm that has not been authorized by any legal norm as the grundnorm, the basic norm. All other laws must cohere and not be inconsistent with the provisions of the grundnorm. In the context of Nigeria, the Constitution of the

¹⁰ F.A. Hayek “The Political Ideal of the Rule of Law” (Cairo: fiftieth Anniversary Bank of Egypt) p 5, referred to by Bruno Leoni, *Freedom and the Law* expanded 3rd edition. Forward by Arthur Kemp (Indianapolis: Liberty Fund 1991) Chapter 3: “Freedom and the Rule of Law”.

¹¹ Anthony Valcke (n.1).

¹² *Ibid.*

Federal Republic of Nigeria (as amended) may be regarded as the grundnorm¹³.

Competing theories have been propounded as regards the concept of the rule of law. There are two principal conceptions. A formalistic theory or “thin rule of law “or” “rule by law” and a substantive or “thick” conception of the rule of law. The thin rule of law does not make a judgment about the justness or fairness of the law as promulgated in so far as specific procedural requirements which engender predictability are complied with and followed. The substantive or thick conception goes beyond this and incorporates the ideals of justness, fairness and fundamental human rights¹⁴.

The rule of law is an essential element of democracy as it seeks to establish the operation of law and order rather than discretion or arbitrariness and to prevent governmental and individual excesses by postulating that all and sundry in a polity should abide by the extant rules, regulations and laws therein.

The Rule of Law in Nigeria

It is interesting and reassuring that the Constitutions of Nigeria from 1960 to 1999 have enshrined in them the concept of the Rule of Law. The three arms of government, the Executive, Legislature and Judiciary have always been features of Nigerian Constitutions.

¹³ Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁴ Anthony Valcke (n.1), B. A. Haruna and Amana Mohammed Yusuf “A Conceptual Analysis of the Rule of Law in Nigeria,” *Bayero Journal of International Law and Jurisprudence* (BJILJ) < [https://www.researchgate.net/ publication/32101720](https://www.researchgate.net/publication/32101720)> accessed 24 September 2019.

The provisions of fundamental rights have also been embedded in the constitutions. Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) contains explicit provisions on fundamental rights. The judiciary both in times of peace and emergency situations have strived to uphold the principles of the Rule of Law. In *Re Mohammed Olayori*¹⁵, Taylor C.J. of Lagos State in the course of upholding the Rule of Law elucidated thus:

I am as I know, every member of the Bench and every right thinking and honest member of our society, against prevailing conditions of corruption and embezzlement of public funds existing in the country today, but if we are to live by the rule of law, if we are to have our actions guided and restrained in certain ways for the benefit of the society in general, individual members in particular, then whatever status, whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos.

In *Military Governor, Lagos State v Ojukwu*¹⁶ the respondent brought an *ex-parte* application before High Court of Lagos State seeking interim injunction restraining the Military Governor of Lagos State, the Commissioner of Police, Lagos State and the Attorney- General, Lagos State from ejecting him and members of his family from No. 29 Queen's Drive, Ikoyi, Lagos. The learned trial judge granted an interim order but refused to grant the

¹⁵ (1969) 1 NMLR 231.

¹⁶ (2001) F.W.L.R. (Pt 50) 1779. See also *Agbaje v Commissioner of Police Council of the University of Ibadan v Adamolekun* (1967) 1 All NLR 223; *Balewa v Doherty* (1961) 1 ANLR 604; *Aoko v Fagbemi* (1961) 1 ANLR 400, *Godwin Ikpasa v Bendel State* (1981) 9SC p 7.

injunction when the matter moved to one on notice. The respondent appealed to the Court of Appeal and applied, *inter alia* that he be reinstated to his property. The Government of Lagos State resorted to self-help by using armed men to evict the respondent notwithstanding the pendency of the matter at the Court of Appeal. The Court of Appeal ordered that the respondent be reinstated into the property, following the forcible ejection by the Lagos State Government. The Lagos State Government refused to comply with the order and instead appealed to the Supreme Court. The Supreme Court held that to use force and to seek the Court's equity is an attempt to infuse timidity into the court and therefore dismissed the appeal by the Lagos State Government. The Supreme Court berated the Lagos State Government for flouting the orders of the Court of Court Appeal.

Both under military and civilian regimes the judiciary in Nigeria has risen to the occasion to espouse and preserve the Rule of Law in Nigeria. In *Chief Victor Onabanjo v Special Military Tribunal, Lagos Zone*¹⁷, the jurisdiction of the Tribunal in trying the plaintiff was challenged in the High Court. Just about the time the case was to be heard before Hon Mrs. Justice Omotosho the Federal Military Government promulgated the FMG (Supremacy and Enforcement of Powers) Decree No. 3 of 1984 which purportedly ousted the Jurisdiction of the court in challenging the jurisdiction of the Military Tribunal. This, notwithstanding, the learned judge went on to decide whether or not she had jurisdiction and she commented in the course of her ruling “ it is very doubtful whether the draftsman, however ingenious, can effectively and completely oust the jurisdiction of the court”.

¹⁷ Unreported Suit N/106/84.

The above decisions and many others were given by judges who displayed unusual judicial courage. This is because under military regimes in Nigeria, the Rule of Law was trampled upon by the military. Decrees replaced conventional laws and most of these decrees were draconian and violated constitutional provisions.¹⁸

Under the present dispensation the operation of the Rule of Law has suffered several setbacks. The government, especially the Federal Government chooses which orders of court to obey and which not to obey. Elzakzaky, a renowned muslim clerk is still in detention despite court orders to the effect that he should be released on bail. Sambo Dasuki, a retired Nigerian Army colonel and former National Security Adviser to former President of Nigeria, Goodluck Ebele Jonathan as well as Mr. Omoyele Sowore, Presidential Candidate and founder of an online news agency, *Sahara Reporters* were released on December 24, 2019. However, before their release the DSS in a brazen act of disrespect to the judiciary invaded the Federal High Court in Abuja to effect the re-arrest of Sowore. The release of the two men came after a sustained campaign for their release despite various court orders directing the Federal Government and its agencies to release them. In 2018, President Buhari enthused that he would uphold “The security” of the nation above the rule of law. The fight against corruption is not holistic but selective. In the fight against Boko Haram insurgency in the northern part of Nigeria both Boko Haram and the Nigerian

¹⁸ Some of these decrees are Decree No. 9 of 1984 which dissolved all existing political parties. Decree No. 45, the Forfeiture of Assets (Validation), Decree No. 45 of 1963 which confiscated and forfeited assets of named individuals and institutions, State Security (Detention of Persons) Decree No.2 of 1984 and Decreeo.13 of 1984 which barred any civil proceedings in any court for or an account of or in respect of any matter or thing done or purported to be done under or pursuant to any Decree or Edict.

Army have been engaged in extra-judicial killings contrary to the principles of the rule of law.

Civilian regimes in Nigeria have failed to put into practice the principles of the Rule of Law. There were crackdowns on the press during the regime of Chief Olusegun Obasanjo and extrajudicial killings. The extrajudicial killings in Gbaramatu, Delta State, Odi, Bayelsa State and Zaki Biam, Benue State cannot be forgotten by the people. The Executive habitually takes arbitrary decisions in Nigeria without following laid down rules. Former president, Olusegun Obasanjo unilaterally imposed a state of emergency in Plateau State on May 18, 2004, following a series of civil disturbances in Yelwa-Shendam Local Government Council of the State. Due process was not followed as laid down in section 305 of the Constitution. The same Government unilaterally stopped the allocation from the Federation Account to Lagos State and directed that “no allocation from the Federation Account should henceforth be released to the Local Government Area Councils until they revert to the constituent Local Government Areas specified in Part I of the First Schedule to the Constitution.”¹⁹ The Supreme Court rightly declared the action of the Federal government as unlawful and unconstitutional.²⁰

Former president, Goodluck Jonathan endorsed the removal of Justice Isa Ayo Salami, former President of the Court of Appeal, in controversial circumstances. President Mohammed Buhari also unilaterally suspended Justice Walter Onnoghen CJN without

¹⁹ *Attorney-General of Lagos State v Attorney-General of the Federation* (2005) All FWLR (Pt 244) 805.

²⁰ *Ibid.*

following due process.²¹ In the wee hours on 7th October 2016, operatives of the DSS invaded the homes of Justices Walter Onnoghen (former Chief Justice of Nigeria), Sylvester Ngwuta, (Justice of the Supreme Court) and Justices Adeniyi Ademola and Nnamdi Dimgba of the Federal High Court in a commando style and thoroughly searched their homes for alleged evidence of corruption. The operation was simultaneously carried out in Abuja, Port-Harcourt and Gombe. But the operation failed in Port-Harcourt as the governor, personally came out to ensure that no judge was molested, harassed or arrested. This was done at the peril of the Governor's life as the DSS Operatives were alleged to have threatened to shoot him.

Onslaught on the Bar and Bench in Nigeria

The invasion of the residences of the judges in October 2016 is not an isolated event. In July 2019, the residence of Justice Yunusa Musa, a high court judge in Kogi State was invaded. Justice Musa's residence was reportedly invaded and ransacked by the Police without a search warrant. Operatives of the Department of State Security Service (DSS) invaded the premises of the Federal High Court in Abuja and entered the court room to re-arrest Mr. Omoyele Sowore on December 6, 2019. Apart from assault on the judges and the desecration of the court, lawyers who defend former or current high-profile public officers including judges are pressured, threatened and intimidated to withdraw their

²¹ *Justice Raliat Elelu-Habeeb & anor. v Attorney of the Federation & 2. ors* (2012) NWLR (Pt 692) 1011;(2012) All FWLR (Pt 629) 1011; *Nganjiwa v FRN* (2017) LPELR 43391. The Constitution does not provide for the suspension of the CJN based on an order of a court or tribunal. See also section 231 (1) and (2), section 292(1) and paragraphs 20 and 21 of the Third Schedule to the Constitution.

representation. The UN Special Rapporteur on the independence of Judges and lawyers, Diego Garcia-Sayaun deprecated the suspension of the former Chief Justice of Nigeria, Walter Onnoghen, and asserted that “any decision to suspend or remove a judge from office should be fair and should be taken by an independent authority such as a Judicial Council or a court” and noted that lawyers who were defending the former CJN were “subject to serious threats, pressures and interferences”²².

Under Nigerian law, a Judicial officer can only be removed from office on the recommendation of the National Judicial Council²³. Paragraphs 21 (b) and (d) clearly provide that it is the National Judicial Council (NJC) that has the power to exercise disciplinary control and to recommend to the appropriate authority the removal from office of Judicial officials. The appropriate authority by virtue of section 29 (1) is the President of the country or the Governor of a state in the case of state judicial officers and the grounds on which such removal is based are infirmity of mind or of body, misconduct or contravention of the Code of Conduct. With respect to the Chief Justice of Nigeria, the President of the Court of Appeal, the Chief Judge of the Federal High Court, Chief Judge of the Federal High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the President, Customary Court of Appeal of the Federal Capital Territory, Abuja and the President of the National Industrial Court of Nigeria the removal cannot be effected unless

²² Judicial Independence under threat in Nigeria, warns UN rights expert/Africa Renewal <https://www.un.org/africarenewal/news/judicial_independence-under-threat-Nigeria-warns-un-rights-expert> accessed 20 October 2019.

²³ The National Judicial Council (NJC) is established pursuant to section 153 (I) of the Nigerian Constitution, 1999 and conferred independence by section 158 (1) of the Constitution.

by the President acting on an address supported by two-thirds majority of the Nigerian Senate²⁴. Similarly, the Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State cannot be removed by a governor unless by the Governor acting on an address supported by two- third majority of the House of Assembly of the State²⁵. The above constitutional provision was lucidly interpreted by the court Nigeria in the case of *Nganjiwa v FRN*²⁶ where the Court of Appeal held that if any Judicial officer commits a professional misconduct within the scope of his duty and is investigated, arrested and subsequently prosecuted by security agents without a formal complaint/report to the NJC It will be usurpation of the constitutionally guaranteed power of the NJC. In *Erelu-Habeed v National Judicial Council*²⁷ the Supreme Court of Nigeria held that the House of Assembly of Kano State had no constitutional power to exercise any form of disciplinary control over the Chief Judge of the state without prior recommendation of the National Judicial Council and essential component of the rule of law as enunciated by Joseph Raz²⁸ is that the independence of the Judiciary is guaranteed to enable the courts perform their sacred duty without fear or intimidation. The onslaught against some judicial officers is likely to affect the psyche of others judges with the result that they would be afraid of reprisals, intimidation, arrests and possibly stagnation on the bench. The legal profession which had hitherto

²⁴ Section 292 (1) (a) (i) of the Constitution of the Federal Republic of Nigeria 1999.

²⁵ Section 292 (1) (a) (i) of the Constitution.

²⁶ (2017) LPELR 43391.

²⁷ (2012) 13 NWLR (Pt 1318) 423.

²⁸ Joseph Raz, "The Rule of Law and its Virtue" in Joseph Raz (ed) *The Authority of Law* (Clarendon Press 1979) pp 210-299.

played a great role in upholding the rule of law in Nigeria is gradually being weakened and decimated by the executive arm of government in Nigeria and this has caused a serious setback on the rule of law in Nigeria with regard to enforcement of relevant laws against the government and its officials. Presently in Nigeria, it is the people that are afraid of the government, the government is not afraid of the people. There is at present great insecurity in the country. There are killings from banditry, assassination, terrorism, insurgency, armed robbery, cultism *ex cetera*. Travelling by road is now very unsafe. There is also an upsurge of clashes between herdsmen and communities across Nigeria. The farms are no longer safe as herdsmen have taken over several farms and insist on payment of fees before the owners are allowed to farm. The government seems to be overwhelmed by the social vices plaguing the nation. Nigeria is gradually slipping into anomie. There is urgent need to arrest this ugly situation.

Report on the Rule of Law by World Justice Project

The World Justice Project (WJP), an internationally recognized authority on the Rule of Law index, in its Survey of 126 countries used the following factors in measuring the adherence of countries to the Rule of Law: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice and Criminal Justice. Constraints on Government Powers measures the extent to which, in practice, those who governed are bound by governmental and non-governmental checks or bodies such as independent judiciary, a free press, the ability of legislature to apply oversight *et cetera*. Open Government measures the extent to which government shares information and empowers the citizens with tools to hold government accountable as well as participate in

governance. The passage of the Freedom of Information Act in Nigeria notwithstanding, people still find it difficult to access information as public servants are unwilling to disclose information. This may not be unconnected with fear of reprisals from political office holders who may be embarrassed by the release of such information to the public.

Fundamental Human Right measures the extent to which fundamental human rights are treated and respected. The human right situation in Nigeria has worsened under the current regime. Order and security relate to the ability of the government to guarantee safety of lives and property and properly maintain peace. This is very worrisome and has assumed a dangerous dimension in Nigeria.

Regulatory Enforcement relates to the extent to which rules are enforced. Government institutions are weak in Nigeria. This is as a result of corruption and incompetent people heading these institutions appointed on the basis of party affiliations, ethnicity, tribalism and other sublime considerations instead of merit. It would be recalled that late Prof Dora Akunyili was able to reposition the National Agency for Food and Drug Administration and Control (NAFDAC) because she was forceful and efforts to enforce the relevant laws and regulations amidst daunting challenges. Civil and Criminal Justice measure *inter alia* whether the civil and criminal justice system is free of bribery and improper influence, is independent from government and political influence, whether perpetrators of crimes are effectively prosecuted and punished and whether the Police and Judges are impartial. The machinery of civil and criminal justice is slow in Nigeria except election matters and other matters that the government has interest.

The slow pace of the system is largely due to the alarming number of cases before the courts arising from the complex and multifarious social problems plaguing the nation and the unwillingness of the government to engage commensurate number of judges to handle the cases. Cases are delayed in courts because judicial officers work under uncomfortable atmosphere which sap them of their strength and affect their health owing largely to lack of financial freedom. Little wonder therefore that cases are delayed in courts because of long adjournments. Justice delayed, it is said, is justice denied. The police are overwhelmed by the high level of crime in Nigeria and there are, currently, serious agitations by various regions for the creation of security outfits that will assist the Nigerian police. Already the governments of South-West Nigeria have created Amokekun, a security outfit to complement the police in the region to stem the high level of kidnapping by alleged Fulani herdsmen and to check other nefarious activities which have gravely affected the social and economic lives of the people of the region. Other regions in Nigeria are considering following suit.

The WJP in its survey of 113 countries between 2017 and 2018 on the level of compliance with the rule of law, Norway and Finland topped the list. Nigeria was ranked 97th. Ghana was on top of the list among African Countries followed by South Africa and Botswana. In the survey conducted between 2018 and 2019, of 126 countries, Nigeria slid down the ladder to 106th position. Denmark topped the list followed by Norway and Finland in 2019. Namibia topped the list in Sub Saharan Africa followed by Mauritius and Botswana. Nigeria that prides itself as the giant of Africa should show a good example on the rule of law for other countries in Africa to emulate.

Lessons from Ghana

There is also judicial corruption in Ghana. This led Mr. Anas Aremeyau, a journalist, to undertake a painstaking two years investigative journalism to gather concrete evidence against judicial officers with itching palms²⁹. The evidence obtained after a thorough investigative journalism was given to the Ghanaian Judicial Council, the apex body in Ghana charged with the discipline of erring judicial officers which is the equivalent of the NJC in Nigeria. The Ghanaian Judicial Council promptly swung into action and upon trial found the judges liable and meted out appropriate sanctions against the erring judicial officers. It must be noted that the residences of the judges were not invaded, neither were they arrested, molested or their domestic servants and relations beaten by the Ghanaian police or the Ghanaian secret service as was the case in Nigeria.

Recommendations

Arising from the discussion in this paper the following recommendations are proffered;

1. The Judiciary should be made truly independent as envisaged by the Constitution. Financial freedom is an essential component for the judicial arm of government to enable it effectively and efficiently discharge its responsibilities. Anything short of this will tie the judiciary to the apron strings of the executive and this will not augur well for the rule of law in Nigeria. Without judicial financial autonomy the judiciary cannot check the excesses of the executive and legislative branches. This unfortunately is the

²⁹ Anas Aremeyaw 'Ghana Suspends High Court Judges After Anas Aremeyaw Film' <<https://www.google.com/amp/s/www.bbc.com/news/amp/world-africa-34452768>>, accessed 3 February 2020.

situation in Nigeria. Budgetary allocations to the judiciary should be channeled to the heads of courts at the federal and state levels. The judiciary should be allowed to operate its own budget the way the executive and legislature operate their own budgets. The present situation where the executive operates the budget of the judiciary negates the rule of law in Nigeria. Purchase of vehicles for judges and other judicial officers by the executive arm of government is a usurpation of the rights of the judiciary. The present situation where heads of court at federal and state levels go cap in hand to meet the president or governors seeking for approval of funds to run the courts under their respective jurisdictions is against the letter and spirit of the rule of law. The actualization of a full fiscal autonomy for the judiciary at the federal and state levels is a desideratum. The National Assembly and the State Houses of Assembly should do the needful to ensure judicial financial autonomy in Nigeria. On May 22, 2020 President Muhammadu Buhari signed into law, Executive Order No. 10 of 2020 to grant financial autonomy to the legislature and the judiciary at the state level. By this order the states in Nigeria are to include the allocations of both the legislature and Judiciary in their Appropriation Laws. Specifically Order 1 (a) of the Order provides that allocation of appropriated funds to the state legislature and state judiciary in the State appropriation laws in the annual budget of the State, shall be a charge upon the Consolidation Revenue Fund of the State, as a first line charge. The governors are enjoined to implement the Order to the letter in order to promote and advance the rule of law in Nigeria.

2. Strong institutions have to be built by the government at all levels as endemic corruption has permeated every institution in Nigeria. Appointments to all public offices should be based on merit and not on favoritism, nepotism, tribalism, sectionalism, cultism, godfatherism, political affiliation or other base considerations and sentiments. Public officers should learn to imbibe the tenets of the rule of law and should not pander to the wishes of their superiors who may want to use them to subvert the rule of law and due process. Public officers should learn to live within their means even though the pay packet for public officers is generally low in Nigeria except for political office holders who have jumbo pay and allowances.
3. The president, the governors, military chiefs, political leaders and government functionaries should not just pay lip service to the rule of law. They should obey the laws of the land, respect the decisions of the courts and enforce them. They should emulate Ghana, their next door neighbour and other civilized nations and accord respect to judicial officers and not intimidate threaten, molest, harass and arrest judicial officers. Even though judicial officers have no special immunity, their office should be respected whenever any criminal misconduct is alleged against them. If the government continues to treat orders of court with levity and contempt and assault judicial officers, citizens will lose confidence in the judiciary and this will result in chaos and anarchy. The purpose of government would have been defeated.
4. More funds should be allocated to the judiciary. The executive and the legislature and even their appointees' drive sport utility vehicles (SUVS). The purchase of SUVS by the

executive arm of government for judicial officers should not be regarded as a favour for judicial officers as they are entitled, by virtue of their office, to use of official vehicles. Indeed, the judicial officers deserve all the benefits enjoyed by the executive and the legislature in Nigeria since they work even harder. More persons should be appointed to the Bench to reduce the workload of judicial officers especially the judges to speed up the pace of both civil and criminal cases. Appointment of judicial officers should strictly be based on merit like other public officers and not on primordial sentiments. Prospective judges should be investigated and screened by the Nigerian Director of State Security Service (DSS) and other state secret services before appointment.

5. The NJC should emulate the Ghanaian Judicial Council and that of other countries where cases of misconduct, incompetency and other offences alleged against judicial officers are treated with dispatch and act without delay. The NJC, as the body responsible to investigate and discipline erring judicial officers should ensure that its own members are above board. They should also ensure that judicial officers who are found liable of financial corruption are relieved of their job instead of giving them the soft landing of retirement with full benefits. In addition, monies and property illegally acquired should be given to the State upon trial and conviction. The trend of merely retiring judicial officers who use their exalted office to amass wealth cannot serve as a deterrent to other judicial officers with itching palms. The judiciary should put its house in order so as not

- to give the Executive excuse to invade the judiciary and denigrate the institution.³⁰³⁰
6. Government should avoid, as much as it can, negotiating with bandits as this encourages other nefarious groups to spring up and wreak havoc on the Nigerian populace and foreigners alike. Bandits and other criminal elements should be brought to book. This means that the government should adequately equip the army, the police and other security agencies to enable them discharge their responsibilities optimally.
 7. It is quite clear that police officers and men posted to communities outside their own are handicapped because the terrain is not known to them. There is also the problem of communication especially in the villages where the locals cannot understand or speak English or pidgin English. The federal government should there fully implement its programme with regard to community policing in order to checkmate the growing rate of crime and other social vices in Nigeria.
 8. Lawyers should champion more the rights of the common man than those of high- profile public officers.

Conclusion

The rule of law has been examined and it has been noted that Nigeria has not lived up to the principles of the rule of law. The government and government functionaries choose which judgment of court to obey and judges are sometimes intimidated when they

³⁰ Femi Olorunyemi “Fighting Judicial Corruption in Recent Nigerian History: Trends, Emerging Legal Matters, Challenges and Prospect” *The Nigerian Law Journal* Vol 20, No1, 2017, 426-454.

deliver judgments that the Executive arm of government perceive to be against its interest or national security. The zeal and spirit of well-meaning judicial officers is thereby dampened as the oath to dispense justice without fear or favour, ill-will or affection is seriously put to trial. The purpose of government and the law is for society to live in peace so that lives and property would be secured, and a safe environment established for development to thrive. Citizens at all levels big or small, high or low should endeavour to live in accordance with the tenets of the rule of law and respect the decisions of the court.