

JUDICIARY AND THE THEORY OF SEPARATION OF POWERS IN ACHIEVING SUSTAINABLE DEMOCRACY IN NIGERIA (THE FOURTH REPUBLIC)

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ABSTRACT: *Nigeria is a nation with a chequered history of democratic rule. The pressures mounted on the Nigerian political system since independence created instability in Nigerian polity. Hence the Judiciary could not carryout its roles effectively, the First, Second and Third Republics collapsed thus, paved way for the inevitability of military incursions in Nigerian politics, which truncated the Nigerian nascent democracy. Studies have shown that, in a democratic state, separation of powers is indispensable and the independence of the judiciary is paramount in achieving sustainable democracy. This study therefore investigated the impact of the separation of powers in achieving sustainable democracy in Nigeria State. The study used qualitative and content analysis method in analyzing the information generated for the study. Cases and instances from the content analysis showed that: the independence of the Judiciary helps in achieving sustainable democracy in Nigeria; Independent Judiciary enhances due process in a democratic state. Further analysis showed that incidences and court verdicts on issues relating to how the practice of separation of powers enhances the Judiciary to discharge its constitutionally stipulated roles in achieving sustainable democracy in Nigeria is convincing. This work therefore concluded that separation of powers enhances the efficiency of the Judiciary in Nigeria. The researchers recommend that the consolidation of democracy in Nigeria will depend on the commitment and ability of the Nigeria State to take extra measures to ensure that the theory and practice of Separation of Powers, and the Independence of the Judiciary is firmly established, respected and protected.*

KEYWORDS: Judiciary, Democracy, Sustainable Democracy, Separation of Powers, Nigeria.

INTRODUCTION

Nigeria is a nation with a chequered history of democratic rule. Critical analysis of Nigerian political history showed that Nigeria state did not start with democratic rule. For about 91 years (1851-1960) including the amalgamation of southern and northern protectorates in 1914, Nigerian state was under the authoritative and dictatorial British colonial rule. Nigeria has not been able to achieve sustainable democracy since her independence, because of array of factors that hold her back and prevent consolidation of democracy. Juan J. Linz and Alfred Stepan (1996) succinctly put it thus:

There are a variety of different forms of authoritarianism that fundamentally constrain any democratic transition in characteristic ways and systemically create obstacle to affect democratic consolidation. Different authoritarianism regimes affect the subsequent trajectory of transition efforts towards democratization in systematic ways.

The Nigeria state has been enmeshed in different kinds of authoritarianism right from colonial era till date. Nigeria state is engaged in fierce struggle to break loose from all forms of

undemocratic governance. Since Nigeria's independence in 1960, the state has been struggling greatly to sustain democracy and the Judiciary has been saddled with the role of stabilizing Nigerian democracy. However, the political history of Nigeria shows that whenever, the Judiciary is unable to effectively perform its role in sustaining Nigerian democracy, invariably, Nigeria democracy is truncated, thus, the inevitability of military intervention in Nigeria politics.

At independence in 1960, Nigeria opted for West Minster model of constitution and the court of final appeal was the Privy Council in England. In 1963, Nigeria became a Republic and abolished the West Minster model constitution for the Washington model. Thus, the Supreme Court of Nigeria became the court of last appeal. When the Judiciary could not carry out its constitutional role of interpretation, adjudication and "checks and balances between the other two organs of government (Executive and Legislature) there would be inevitability of truncating democratic process. The pressures mounted on the first republic political system could not be diffused, and the Judiciary could not carryout its roles effectively, that republic collapsed and paved way for the inevitability of military incursion in Nigerian politics, which truncated the 1960s nascent democracy. The military remained in power for about 13 years (1966-1979). In 1979, democracy was restored and a new Constitution was enacted. The Judiciary on its part was active in sustaining the new democracy as the Court was bent on the protection of the fundamental human rights of Nigeria citizens, as witnessed in **Shugaba A. Darman v. Federal Ministry of Internal Affairs & Ors.** The Court in pursuant of Section 160 and 191; declared, that the actions of the defendants were unconstitutional, null and void thus, restored the fundamental rights of the plaintiff, which were constitutionally guaranteed. The Second Republic failed as the Judiciary derailed from its constitutionally stipulated role of stabilizing and sustaining Nigerian democracy during that era. If the Judiciary had effectively played her role, the military Junta would not have had any justification for intervening in Nigerian politics. There were public outcry and condemnation during the Second Republic in the manner in which the Court handled election petitions of the 1983 general election. In his dissent, in **Odumegwu Ojukwu V. Edwin Onwudiwe**; Aniogolu, J.S.C. unequivocally wrote in minority judgment thus:

This case was in my view, one in which by fraud in the election, the rightful winner was made the looser and the looser was declared the winner. The respondent Dr. Edwin Onwudiwe clearly did not win. This Court should say so emphatically and I say so unmistakably.

It is obvious that whenever the Judiciary failed to play its stabilizing role in Nigerian democratic state, democracy is bound to be truncated. As Nigerian political system has continuously been heated up and Judiciary was unable to supply the cushioning effect required to avert the imminent collapse of that democratic dispensation. On December 31, 1983, the military Junta took over power from the civilian government. This military era was characterized by coups and counter coups that brought different military generals at the helm of leadership position of the State at various periods from 1983- 1999(16years).

The ongoing democratic dispensation came into force on the May 29, 1999, with a new constitution known as the 1999 Constitution. The Judiciary occupies a significant position in the administration of justice in Nigerian democratic state. By the provision of Section 6 of the 1999 Constitution of the Federal Republic of Nigeria, the judicial powers in all their amplitude are vested in the Courts. In modern democracy, the characteristics of democracy are free and fair election, judicial independence, free press, majority rule and protection of minority rights.

The functions of political parties are necessary for effective democratic governance. The principle of the rule of law is the fulcrum of sustainable democracy. Democracy is the best form of government; the superiority of democracy to other forms of government predicates on the theory of separation of powers and the corresponding checks and balances exercised amongst the three organs of government. To consolidate and sustain democracy in Nigeria state, the Judiciary must fearlessly and boldly rise to its statutory and constitutional roles, thus, the imperative and paramount importance of the theory and practice of separation of powers in Nigerian political system. Montesquieu's dislike for despotism gave him the impetus to search for a way in which the evil effect of absolutism in France might perhaps be remedied. In his quest to determine the cause of political problem of his days and proffer solution, made him to ascribe liberty in England to the separation of powers amongst the three organs of government - the Legislature, the Executive, and the Judiciary and the balancing of these powers against each other, in his famous eleventh book of *The Spirit of Laws*". His influence in making the theory of separation of powers the nexus of liberal constitution is largely manifested in the American Bills of Rights and French Constitution.

The idea of the theory of separation of powers was one of the most ancient in political theory. Montesquieu only modified the idea and made the theory of separation of powers a system of legal checks and balances between the parts of a constitution, (Sabine and Thorson, 1973). The roles of the Judiciary is imperative and indispensable in sustaining Nigerian democracy, thus, it is of paramount importance to determine the extent to which the independence of the judiciary is guaranteed in the 1999 Nigerian Constitution; since it takes independent judiciary to uphold the rule of law and the principle of constitutionalism. An independent, efficient, effective and well funded Judiciary is the fulcrum of the rule of law. The Judiciary is the bastion of democracy and the last hope of the common man, therefore, should be adequately equipped so as to be responsive to the challenges of sustaining Nigerian democracy. This work is an attempt to appraise the roles of the Judiciary in sustaining democracy, the theory and practice of separation of powers, thus, identify inhibiting factors and proffer possible remedies.

Theoretical Framework of Analysis

The theoretical framework of analysis adopted in this study, is the theory of Separation of Powers. In any democratic system, separation of powers is a mandatory requirement for good government. This explains why painstaking constitutional safeguards were provided to ensure that the Executive, Legislative and Judicial organs of government exist with independent authority and function (Fisher, 1993; Polsby, 2000 and Thurber, 1991). According to Mbah (2007:187):

The reason for proposing the doctrine of separation of powers is to fragment government power in such a way to defend liberty and keep tyranny at bay. This is because of human and the assumption that if unrestrained by external checks, any given individual or groups of individuals in power will go beyond the limit of their authority, in order to establish a political system where no individual or group could dominate others....

One central idea is to create a situation in which absolute power which corrupts absolutely is avoided, thereby, eliminating the emergence of a dictatorship. The theory of separation of powers can be traced to political theory of the classical Greeks (Mbah, 2007). The theory of separation of powers dates back to ancient Greece when Aristotle favoured mixed government composed of monarchy, aristocracy and democracy since he saw that none was ideal. John

Locke, an English political philosopher (1632-1704), idealized the theory of separation of powers in his *Second Treatise of Civil Government* 1690. This was after he had noted that there was temptation to corruption which existed where the same persons who have powers of making laws also have the power to execute them. Locke's views were part of a growing English radical tradition and this prepared the ground for separation of powers in England. Paradoxically by a faulty analysis of the English concept of separation of powers, Baron de Montesquieu, the French political and legal philosopher who admired the English concept of separation of powers, gave the impetus and moving spirit to the theory of separation of powers as a real antidote to abuse of powers. Thus, western political thought rests on the theory of separation of powers and limited government, as reflected on the works of John Stuart Mills, Rousseau and Jeremy Bentham. Democracy cannot be sustained without the theory of separation of powers being properly put in place, since civil disobedience and revolution would ensue, because of concentration of powers either in the hands of one person or body of persons. Thus, for the people to enjoy good government which enhances sustainability of democracy, division of powers is imperative and indispensable.

The theory of separation of powers was associated with Baron De Montesquieu (1689 -1755). This theory has been deemed to be the cornerstone principle of democracy. In 1748, Montesquieu published the *"Spirit of the Laws"* (*Espirit des Lois*) wherein, he reformulated an ancient idea in political theory. In Book XI of the *"Spirit of the Laws"*, Baron De Montesquieu ascribed liberty in England to separation of Executive, Legislative and Judicial powers, and to the balancing of these powers against each other. In medieval European political system, the idea of division of powers came to be a counter force against the divine sovereign powers claimed by Monarchs. More so, in England, the long struggle between the Crown and both Parliaments and Courts of common law, which climaxed in the Glorious Revolution of 1688, gave credence to the imperativeness of the theory of separation of powers and checks and balances in achieving sustainable democracy. Montesquieu conceptualizes a system of government in which each traditional organ of government, maintains clear and distinguished functions as stipulated by the Constitution with checks and balances from one another, so as to balance these powers against each other, (Nwokoye, 2000). Mukhi (2007:504) succinctly summarizes the importance and indispensability of the theory of separation of powers in achieving sustainable democracy, thus:

The political liberty of the subject is a tranquility of mind arising from the opinions; each person has of his safety. In order to have his liberty, because apprehensions may arise, lest the same Monarch or Senate enact tyrannical laws, execute them in a tyrannical manner, there should be a separation of powers.

Thus this theory entails that human freedom and liberty will be ensured when the powers of the three organs of government separated and made distinct from each other. This way, division of powers amongst the organs of government becomes inevitable for the smooth running of government.

Overview of the Nigerian Judiciary

Judiciary is the third arm of government, whose primary role is to interpret laws enacted by the Legislature and applies such existing law to individual cases, in order to settle disputes between two private citizens or between private citizen(s) and the government. Judiciary is "the court and all those who work in the vine yard of justice", Obikeze and Obi (2004:23). Bryce (1921, 421) aptly posits that "there is no better test of the excellence of a governance than the

efficiency of its Judicial system". Appadorai (1974:567) summarily states the role of Judiciary thus: "for nothing more nearly touches the citizen than his knowledge that he can rely on the certain, prompt and impartial administration of justice. The Judge, therefore, fulfills an onerous function in the community". The role of Judiciary in a democracy is interpreting the law, upholding the principle of the Rule of Law and also, serves as a strong organ for 'checks and balances' amongst other organs of government.

For effective administration of justice in a democracy, the Judiciary has a definite and decisive role to play. It has constitutional right to settle legal disputes and administer justice impartially. All courts irrespective of type and jurisdiction are presided over by Judges. In many cases, the Judge decides the truth or falsity of claim(s) presented by disputants. The Judiciary also has the power to review the actions of both Executive and the Legislature. Indeed, the Judiciary is the impartial arbiter and the last hope of the common man, the fulcrum and bastion of sustainable democracy. The Judiciary requires the ambit of the theory and practice of separation of powers to optimally discharge its onerous constitutionally stipulated duties. The ongoing democratic experiment would have collapsed and the military takes over the government as in the past, if the Judiciary had left the spate of impeachment of governors to continue unabated. The role of Judiciary in sustaining democracy in Nigeria is clearly manifested in the bold pronouncements of the courts, which portrays the Judiciary as a true defender of democracy. The judgment of an Anambra State high court which nullified Governor Peter Obi's impeachment enhanced consolidation of Nigerian democracy. In the judgment, Nri-Ezeadi, J. held that the legislators acted in flagrant abuse of section 188(1) - (9) of the 1999 Constitution, which prescribes the mode of impeachment. The verdict was in line with the landmark judgment of the Court of Appeal in *Adeleke V. Oyo State House of Assembly* (2006) 16NWLR (pt. 1006) 608. Also, in *Vanguard Newspaper*, Thursday, April 19th, 2007, P. 17, "the Supreme Court's verdict on Monday, April 16, which effectively returned to the ballot all candidates that INEC had disqualified" is a clear manifestation of the role of Judiciary in stabilizing Nigerian political system and sustaining Nigerian democracy.

The Judiciary occupies a very important, significant and strategic position in Nigerian state. A good independent, upright and incorruptible Judiciary precipitates happiness and orderliness of the state. Judiciary is the bastion of the people's hope, as it offers a formidable panacea to the sufferings and predicament of the masses. It is the desire of the general public that justice must be done at all times and be seen to have been done. A bad or corrupt Judiciary on the other hand is the bane of the Nigerian society and democracy. Thus, the learned Niki Tobi JSC in *Eriobuna V. Obiorah* (1999) 8 NWLR (pt.616) 622 at 630 succinctly posited that:

A Judge by the nature of his position and professional calling is expected to be straight forward, upright, diligent, consistent and open in whatever he does in Court and in other places of human endeavor that he happens to find himself. This is because his character as a Judge is public property. He is the cynosure of the entire adjudication in the court, and like Caesar's wife of ancient Rome, he is expected to live above board and above suspicion, if the judicial process should not experience any reverse or suffer detriment. A Judge should know that by nature of his judicial functions, he is persistently and consistently on trial for any improper conduct immediately before, during and immediately after the trial of a case.

It is of paramount importance to understand that the Judiciary represents an indispensable institution in any democratic state and in Nigeria in particular. The Judiciary is the antithesis

of oppression, repression and anarchy. Everybody - both the mighty and lowly look up to the Judiciary to obtain justice in any given disputation. Hank Eso (2003) clearly brought the imperative and indispensability of the Judiciary for redress and justice by any aggrieved party - both the mighty and lowly when he writes:

It is ironical that General Buhari would now seek political and legal salve, from a Nigerian Court, recognizing the powers of the Court and its right to grant redress in a democratic dispensation. Doing so, also, confirmed the status of any Court in Nigeria as a constituted authority and arbiter in matters of law. Finally, by going to Court, Buhari unapologetically admitted that the Judiciary as the third arm of government had the pivotal role to play in matter of national security, history and general wellbeing.

Judges hold justice in trust for God who is the ultimate and final arbiter. The sacredness, imperativeness and indispensability of the duties and roles of the Judiciary in achieving sustainable democracy in Nigeria demand proper and adequate fortification of the Judiciary through adherence to the theory and practice of separation of powers, for "If we do not maintain Justice, Justice will maintain us" says Lord Francis Bacon, former Law Chancellor, England.

Justice is the very hall mark and bulwark of the existence of any nation and without it, there will be the inevitability of chaos, brigandage, anarchy, commotion, imbroglio and eventual collapse of political system. Consequently, the Executive can be accused of corruption, ineptitude, nepotism, and the Legislature constantly faces with charges of tardiness, arrogance, laziness, degeneracy. But the Judiciary cannot afford to put itself in any position of being blamed or accused of any of the short comings or failings associated with the Executive and Legislature above. Since the Judiciary is the only institution that will at the end of day, apportion blames to either of the organs of government for any of their ills in the conduct of the State affairs.

The Role of the Judiciary in Nigerian Democracy

Colonialism and Military rule have impacted negatively on the Nigerian political system, which have produced oligarchic state political actors, who are bent on having control of state power. This development has made Nigerian electoral process since the first Republic up to the present, marred with problems, that whenever it's out of control, truncates Nigerian democracy. This scenario has brought to fore the imperative need for the fearless and bold Independent Judiciary to administer justice, making the Rule of Law and Constitutionalism the bedrock of our justice system. The ruling of a Chief Judge of the Federal High Court, Justice Rosline Ukeje, on May 26, 2003, in vanguard newspaper, Tuesday, 27th May, 2003 addressed the salient constitutional role of the Judiciary in interpreting the law and adjudicating matters between the various organs of government.

The passage of the Corrupt Practices and Other Related Offences Act 2003 on 7th of May by the Senate and on the 8th of May by the House of Representatives, was premature, and flying in the face of a subsisting restraining order of a competent Court, that passage is unconstitutional and void... the ICPC Act 2003, passed on the 7th and 8th of May 2003 by the defendants respectively without observance of the relevant due process of law is unconstitutional and void. It is therefore not the law that this Court or indeed any other Court of superior,

competent jurisdiction cannot interfere with the National Assembly when it makes laws (S. 4(8) of the 1999 Constitution).

The more consolidating democracy gets the closer relationship between democracy and a fair and Independent Judiciary becomes imperative; none can exist without the other. The role of Independent Judiciary is an essential element in achieving sustainable democracy in any democratic State. In establishing the imperativeness and indispensability of a fair and Independent Judiciary in a democracy, Sidney Brooks United States Bankruptcy Judge succinctly posited in a presentation he made at a Fulbright Scholars Conference, April, 2007, saying "If it were left for me to decide whether we have a democracy without fair and Independent Courts or fair and Independent Courts without a democracy, I would not hesitate to choose the later". This implies that democracy without an Independent Judiciary would fail and turn into tyranny, whereas, tyranny would inevitably collapse in the presence of a fair and Independent Judiciary. Failed tyranny would probably give way to democracy. The theory and practice of separation of powers is the premise upon which independent judiciary predicates, that over time will necessitate the inevitable collapse of dictatorial leadership and tyranny, thus, enthrones the rule of law for good governance and sustainable democracy. The Judiciary is a veritable defender of democracy, thus, imperative to sustainable democratic state. The role of Judiciary ought to be highly cherished and given top priority in any democracy.

The role of a fair and Independent Judiciary was vividly explained by Kriegler. J, in the South African case of *S v Mamabolo* (ETV and others intervening), thus:

In our constitutional order the Judiciary is an independent pillar of the State, constitutionally mandated to exercise the judicial authority of the State fearlessly and impartially. Under the doctrine of the separation of powers it stands on equal footing with the Executive and Legislative. Pillars of the State; but in terms of political, financial or military power it cannot hope to compete. It is in these terms by far the weakest of the three pillars, yet its manifest independence and authority are essential. Having no constituency, no purse or no sword, the Judiciary must rely on moral authority. Without such authority it cannot perform its vital function as the interpreter of the constitution, the arbiter of disputes between organs of the State and, ultimately, as the watch dog over the Constitution and its Bill of Rights - even against the State.

In tandem with the ongoing line of thoughts on the importance of the role of Judiciary in achieving sustainable democracy, Mzikamanda, R. R., the High Court Judge of Malawi in a paper presented at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), Johannesburg, South Africa wrote that: "The Judiciary being one of the three branches of government has been upholding the Rule of Law as its central role in a democracy. The Judiciary has a sensitive and crucial role to play in controlling the exercise of power and upholding the Bill of Rights." The Judiciary provides mechanisms for a fair and peaceful resolution of conflicts in accordance with stipulations of the constitution and balanced procedures. It contributes to legal certainty by clarifying norms and the relationship between them through interpretation and by contributing to the evolution and refinement of legal rules. The imperative role of the Judiciary is found in its traditional role, which is the basic purpose of the existence of the Judiciary. The traditional role is seen when the Judiciary decides disputes between citizens and other residents in the State and between the citizen and the State or any of its agencies. Nnaemeka-Agu, (1994) laid credence to the indispensable role of the Judiciary in achieving sustainable democracy in Nigeria, thus:

What happens in traditional judicial role is that the Judiciary determines the claim on the basis of the law and facts, it examines and states the law before applying that law to the facts, it interprets relevant Statutes including rules of procedure and states on the application of the Statute. The Court carefully examines the relevant law as embodied in decided cases, overruling or modifying them while taking into account the dynamics of our ever changing Society. It is part of the responsibility of the Judiciary to see to it that living men and women are not ruled by dead law.

The Judiciary plays a pivotal role of sustaining democracy as noticed in the ongoing review of pertinent literature. The Judiciary recognizes and safe guards the theory of separation of powers through the supervisory jurisdiction of higher courts over lower courts. The process of democratization has markedly transformed the role of the Courts from the traditional role to its present pivotal role to uphold the Rule of Law and strengthen democratic governance in Nigeria State. The role of a fair and independent Judiciary is an essential component of Nigerian constitutional democracy. The Judiciary has the constitutional responsibility to review all constitutional decisions, for it is the protector and guardian of the fundamental law of the Land. The theory and practice of separation of powers is the most veritable context in which the Judiciary can perform its constitutional responsibility of stabilizing the political system, thus, achieving sustainable democracy in Nigeria.

Separation of Powers and Nigeria State

The 1999 Constitution of the Federal Republic of Nigeria made the theory of separation of powers a fundamental principle of state governance. The 1999 Constitution in different sections vested the powers of government in separate organs of government as follows: Section 4 deals with the Legislative powers; Section 5 deals with the Executive powers, while Section 6 is concerned with Judicial powers. This kind of separation of powers is known as the horizontal separation of powers. The importance of the theory of separation of powers to enhancing the role of Judiciary in achieving sustainable democracy in Nigeria was succinctly stated by Ikenga Oraegbunam (2005):

There is no gainsaying the fact that a government of separated powers is less likely to be tyrannical and more likely to follow the rule of law. A separation of powers can also make a political system more democratic. The division of powers also prevents one branch of government from dominating the others or dictating the laws to the public.

The theory of separation of powers seeks to separate the powers and functions of the state with no single organ of the state exercising complete authority as each is regarded as independent of the other. No organ of government is more government than the others. The three organs must complement one another in the service of the State. The theory of separation of powers is to enable the three organs of the government to act as checks and balances on one another for the sustenance of democracy. Nnaemeka-Agu, (1994), Honorable Justice of Supreme Court of Nigeria wrote on the theory of separation of powers thus:

Paradoxically by a faulty analysis of English concept of Separation of powers, Baron de Montesquieu, the French political and legal philosopher who admired the English concept of separation of powers, gave the impetus and moving spirit to the principle of separation of powers as a real antidote to abuse of power. The

name Montesquieu is now finally attached to the principle of separation of powers. Montesquieu saw not only separation of powers between the three branches of English Government, but within them, such as the decision-sharing power of judges with juries, the separation of the Monarch and Parliament within the legislative process.

Montesquieu himself in his book, "The Spirit of Laws" as translated by Nugent (1949), opined that English Liberty was preserved by its institutional arrangements, thus:

Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it, and to carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should check on another. There would be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers.

Graham Spindler (1988) was of the view that is in tandem with other authorities on the separation of powers, in order to deliver political good called the Rule of Law which make for sustainable democracy. Locke's and Montesquieu's ideas found a practical expression in American Revolution. The framers of the American Constitution in the 1780s were motivated by the desire to make impossible the abuses of power they saw as emerging from the English King George III. They thus, adopted and expanded the theory of separation of powers to the point that, not only were the three branches of Government separated but also checked and balanced one another. The modern day concept of separation of powers is a refinement of what was adopted in the 16th century American government. The theory and practice of separation of powers is universally aspired to, so as to attain and sustain true democracy.

The Concept of the Independence of the Judiciary

Independence of the Judiciary as a concept has become an international norm with different degrees of adherence. The concept of the Independence of the Judiciary is widely misunderstood, and in some cases, lip service is paid to the concept. Violation of the Independence of the Judiciary must not only be seen as a breach of Nigerian's Constitution but also, as offending ordinary human values. A failure to understand the concept of the Independence of the Judiciary signifies a failure to understand the duties and responsibilities of the Judiciary in Nigeria State. Proper understanding of the concept, the Independence of the Judiciary brings to fore the indispensability of the role of the Judiciary which is *sine qua non* for achieving sustainable democracy in Nigerian democratic state. There is no unified meaning assigned to the concept of the independence of the judiciary. It tends to be viewed from different perspectives such as judicial, constitutional, political or economic perspectives. The absence of common meaning could be the reason why the concept is misunderstood and undermined. The independence of the judiciary comprises that the Judiciary as an organ of government and individual judges exercise their judicial functions without undue interference in the decision making from the Executive, the Legislative, colleagues, the public or from any quarter whatsoever. Judges must be given freedom to decide matters before them fairly and impartially, being regulated only by the available facts and the law. Independence of the Judiciary guarantees justice to the citizen and upholds the rule of law, human rights and democratic systems. In the absence of Independence of the Judiciary, the principle of the rule of law will not be upheld, thus, necessitating the inevitability of the collapse of Nigerian democratic system as witnessed in the first and second republics.

To enhance the Judiciary so as to play its stabilizing role in achieving sustainable democracy in Nigeria state, there is imperative need for the Judiciary to be independent both at institutional level and individual level. At institutional level, the Judiciary as an organ of government is independent from controls and influences of the other organs of government while at the individual level, it means that in deciding any matter brought before the judge, the judicial officer must do so impartially and without any influence or pressure from any quarter whatsoever. Judges should be neutral arbiters in matters that came before them. The Independence of the Judiciary is a concept which upholds that all litigants and all accused, no matter what their political beliefs/affiliations or social status, should receive fair and equal treatment by a judiciary operating within the confine of the common law. The Independence of the Judiciary does not imply unpredictability or recklessness on the part of the Judiciary. Neither does it mean judicial rudeness or arrogance, whether in the name of judicial activism. It must be understood that the role of an Independent Judiciary is to protect human rights and upholds the rule of law in a transparent and accountable manner.

Historical Development of the Independence of the Judiciary

The Independence of the Judiciary has a long history. The concept was associated with growing trends of radicalism rather than the development of democratic governance in the ancient period. The new role the Judiciary has acquired under modern constitutional democracy has made the concept of the Independence of the Judiciary to have risen to unprecedented prominence. In the common law tradition, the concept of the Independence of the Judiciary is credited to the British system of justice which is regarded as the cradle of the Independence of the Judiciary.

The concept first developed as a fortress against the seemingly unlimited powers of the king who used them capriciously. The English Courts were one time the kings courts, serving at the good pleasure of the Crown and subject to dismissal without cause. Things began to change as the idea of individual rights and the rule of law ensued, culminating into the Magna Charta, 1215. This development showed a manifest need for courts independent of the King, in order to enforce those individual rights. The fight for the Independence of the Judiciary continued in the centuries that followed as many rejected the concept. Justice R.R Mzikamanda (2007), wrote that in 1616, James I demanded that the Monarch be consulted in cases that affected the Crown or any of its prerogatives. Chief Justice Coke refused to do so, and subsequently was dismissed from his office. In 1688, Parliament unexpectedly and in the Glorious Revolution asserted sovereign power and recognized the importance of the principle of the Independence of the Judiciary in a public way, although by what was considered to be an oversight, the basic ground rules for the Independence of the Judiciary were omitted from the Bill of Rights (1689). William III respected the Independence of the Judiciary and the rules were enacted in much the same form in the Act of Settlement (1701). The Act of Settlement (1701), in one of its briefest clauses finally gave statutory recognition to the principle of the Independence of the Judiciary. That was not the end of the battle for the Independence of the Judiciary, for parliament continued to attempt to exert political pressure on the Bench, with the king and his ministers seeing nothing wrong in pressurizing judges on pending cases.

It is clear that over time, Judges had serious difficulties securing the Independence of the Judiciary. Despite the fact, that the Act of Settlement (1701) provided that Judges would continue in their job on good behavior (*quamdiu se bene gesserint*) "but upon the address of both houses of Parliament, it may be lawful to remove them", in fact, it has never been necessary to resort to the provision, in that the power of removal has never been used as regards

English Judge. The political ideas of John Locke and Montesquieu who advocated for the theory of separation of powers of government amongst the three organs of government gave greater Impetus towards winning the battle for the Independence of the Judiciary, at least in common law tradition.

Nevertheless, winning the battle required statesmen who, with commitments translated the concept into political practice and the courageous Judges who stood unmovable for the principle of the Independence of the Judiciary at the peril of pain of removal and imprisonment. The concept which has prevailed, is thus, spread to other states which had adopted the common law tradition. The United States of America developed the concept further at the adoption of its Constitution against arguments that the Judiciary consisted of unelected officials and should not be given so much power. What prevailed was the theory of separation of powers and balancing of powers of the three organs of government with checks and balances to which the Independence of the Judiciary is imperative. History has showed that the fight for the Independence of the Judiciary has been long and treacherous with many martyrs on the process. It also proved that while the rise of the theory of separation of powers gave impetus to the principle of the Independence of the Judiciary, it was certainly not the origin of the principle. In the final analysis, an appreciation of the historical development of the concept can contribute significantly to the understanding of the meaning, purpose and importance of the concept of the Independence of the Judiciary.

Purpose and Importance of the Independence of the Judiciary

The Independence of the Judiciary is at the very heart of the judicial function, it is a cornerstone of any worthwhile legal structure and an essential element of any democratic system of governance that respects the Rule of Law. Independence of the Judiciary is not to serve the Judges but the society. It is the right of the people to have an Independent Judiciary. The right to fair and impartial adjudication of a matter before a court of law can only be held where there is Independence of the Judiciary. In Nigeria, as in other states, Independence of the Judiciary is imperative. More and more people are bringing their disputes to court for resolution. They bring these matters to magistrate courts, high courts and appeal courts. As these courts become important to people, the independence and impartiality of the Judiciary becomes imperative, (Widner, 2001). The notion of entrenched human rights demands an Independent Judiciary, which is a requirement of the Rule of Law. An Independent Judiciary must be fair and impartial. Personal interests of the judicial officer must not influence his decisions such that the Judiciary must ensure that it's not only impartial but also, seen as impartial. Compliance to courts decisions is of paramount importance, if the desired sustainable democracy should be achieved. Judgments delivered by an independent and impartial Judiciary deserve to be respected by all and to be obeyed without exception. The Nigerian State must put in place enforcement mechanism to courts decisions, since Judiciary administers justice in the name of the State. It is the statutory role of the Judiciary to adjudicate and delivers judgments, while the statutory role of the Executive is to enforce those court judgments. Thus, the theory and practice of separation of powers in operation, aids the achievement of sustainable democracy in Nigeria.

Nigerian state actors should know that if any of the organs of the government fails in its statutory role, the actors of the ailing organ of government should be removed from the office. The principle of the Independence of the Judiciary ensures that the Judiciary is free from interference from the Executive, the Legislature, the public, the media or civil society. Observers suggested that insulating Judges from interference by government officials is often taken to be the most important aspect of the Independence of the Judiciary in that the Executive

has the potential interest in the outcome of myriad cases and it has so much potential power over Judges, (William Blair, 2005). However, a Judge's individual independence remains critical in decision making. In the absence of the Independence of the Judiciary, whether at institutional or individual Judge level, the fundamental human rights guaranteed to the citizen under the democratic constitution of Nigeria will be an illusory. The fundamental purpose of the Independence of the Judiciary is to ensure that the society gets fair and impartial justice. In a constitutional democracy, the Constitution is supreme law and there can be no power or institution above or equal to the Constitution. The Rule of Law and the Independence of the Judiciary are cornerstones of a working constitutional democracy. Respect for human rights is an integral part of a functioning democracy. Democracy therefore, is not about majority oppressing the minority. Democracy should not be narrowed to majority rule; it would give rise to the tyranny of the majority. Democracy is about majority rule, fully respecting the minority rights. It must also, recognize individual rights as well as fundamental rights. Whereas, the Executive and the Legislative organs of government respond to majority views, the Judiciary responds to both the majority and minority views. Thus, there is imperative need of impartial balancing act. The constituency of the Judiciary is much wider than that of the other two organs of government for it includes both the majority and the minority.

The role of Judiciary expedites economic growth and development, since economic growth predicates on credible commitments to sound economic policies and the role of Judiciary is to make policy commitment credible, thereby, encouraging both local and foreign investment which enhances economic growth and development. NGO Statement, 2000 Consultative Group Meeting in Cambodia: Good Governance. Succinctly puts it:

Adherence to the Rule of Law is a fundamental precondition for the realization of development in all sectors. The absence of the Rule of Law continues to constrain market development, public confidence in the legal system, and the security and general well-being of the people. A competent and independent judiciary, is development. The lack of Judicial Independence and high level of corruption impede peoples' confidence in formal conflict resolution and encourage reliance on informal and sometimes violent means of dispute resolution. Moreover, the absence of the independence of the Judiciary discourages foreign investment.

Dispensation of Justice in Nigeria

The Role of Judges

The Judiciary occupies a preeminent position in the administration of justice in Nigerian society. The 1999 Constitution section 6 vested all the judicial powers in the Courts. The Judges are dispensers of justice. They adjudicate in accordance with the law. Matthew (2003, 26) posited:

It cannot be gain said that the duty of the judge is probably the most crucial. The Judges have the sacred duty to ensure that justice is done to the parties in the cases adjudicated upon by them. But the Judge can possess the necessary judicial qualities of integrity, deep knowledge of the law, honesty and sense of justice itself, before justice could be dispensed. How can a poor Judge dispense justice? How can a corrupt Judge render justice in his court?

Thus, declared Charles Evans Hughes in his 1925 Presidential Address to the American Bar Association:

A poor Judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize merchant, who does not carry good stock, but you have to recourse if you have held before a Judge whose, mental or moral goods are inferior. An honest, high minded, able and fearless Judge is the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law, as he makes clear the benefits and the shortcoming of the standards of individual and community right among a free people.

Emphasizing the need for Judges to possess the qualities of courage, honesty and integrity before he can adequately dispense justice, Hon Justice Oputa (1982) in a lecture delivered, at Obafemi Awolowo University declared thus:

Honesty and judicial rectitude are thus, the badge of a good Judge. It is a calamity to have a corrupt Judge, for money, its offer and its receipt corrupts and pollutes not only the channels of justice, but the very stream itself. Honesty and judicial rectitude are therefore the very minimal requirements of the judicial office. They snap at and break the brittle bond of confidence, which unite our citizens with the court system. Thus scandalized and morally deformed, bewildered litigants no longer expect from the Courts a just decision. The entire experiment of justice becomes a sham or at best a counterfeit for nothing is as hateful and as odious as venal justice.

With the correct judicial qualities, the Judges would certainly perform their duties between the contending parties in accordance with the rules of the particular court, and the practice and procedure chosen by the parties in accordance with those rules. It is with great astonishment to discover that there have been disturbing cases of abuse and or perversion of judicial process and *a fortiori* by the very Judges who should pursue the course of justice. It must be realized that a knowledgeable but corrupt judge is a great peril to the administration of justice. He is bad, if not worse than an honest but an incompetent Judge. Attitudes of Judges to their work must be positive, and they must shun any form of political affiliation, thus maintaining political neutrality. The positive attitude of a judge worth mentioning is that of Mr. Justice Oyemade, before whom, came a case involving the murder of a government party supporter as reported in The Source Magazine, April 2, 2007. A local lawyer, known for his sympathy with the government party drafted an affidavit and had it sworn by two local men. They swore that they had considered the Judge biased in this case and asked for the removal of the case for trial in another area. Rejecting the affidavit, Mr. Justice Oyemade fined the lawyer 25 Pounds and sent the two men to prison for six month for contempt of court. Thus he said:

I will not allow myself to be intimidated into sending innocent person to jail. Even, if this means losing my job. I am still sure of leading a decent life. The only thing we have in this country is the Judiciary. We have seen politicians changing from one policy to another and one party to another. But the only protection the ordinary people have against these inconsistencies is a fearless and upright Judiciary.

This wonderful admirable judicial attitude of Mr. Justice Oyemade is highly commendable to Nigerian Judges whenever they are faced with political pressure from any quarter. The

Judiciary has overwhelming role to play in the dispensation of justice so as to achieve sustainable democracy in Nigerian society; since the judiciary is the last hope of the common man.

The Role of Government

It is the function of the government to maintain the courts of law to which its citizens can have access for the impartial adjudications as to their legal rights and obligations towards one another and the state. The provision of such a system for the administration of justice by the law courts and the maintenance of confidence in it, is of paramount importance for the peaceful coexistence of the citizens, that, will prevent heating up the political system, thus achieving sustainable democracy with its attended inevitable development of the society which is predicated on the effectiveness and Independence of Judiciary. Guaranteeing access to justice for everybody is fundamental role of the government towards ensuring that justice prevails within its political system. Thus, the maxim: "to no one will we deny or delay right to justice". For the achievement of speedy administration of justice in the Nigerian political system, there is imperative need for the provision of infrastructures and Hi-tech gadgets, for Judges to effectively carry out their judicial functions. Government should stop paying lip-services to the Independence of the Judiciary. It must realize that the full Independence of the Judiciary is the bedrock of the administration of justice and thus, *syne qua non* for enhancement of the role of the Judiciary in achieving sustainable democracy in Nigeria.

The Role of the People

Justice is not a cheap commodity, therefore, people who are seeking justice from the state have great role to play, if justice will be enthroned in the society. The people should not interfere with or corrupt the administration of justice, Judges do not corrupt themselves, it is the litigants that corrupt the Judiciary - the people must realized that they owe the duty to uphold the sacredness of the judicial process and administration of justice. Selection of Judges by litigants is a dangerous trend, which is capable of running down judicial process and administration of justice, if not promptly corrected. There is a paramount need for the people to have impeccable confidence in the institutionalized machinery for the administration of justice. The people must not deliberately and recklessly disparage the institution, thereby, aiding the Judiciary to effectively and efficiently carry out its constitutionally stipulated roles, which will make for the stabilization and sustainability of Nigerian democracy

The Independence of the Judiciary and Sustainable Democracy in Nigeria

The Independence of the Judiciary helps in achieving sustainable democracy in Nigeria. Thus, separation of powers and the independence of the Judiciary is necessary for sustainable democracy in Nigeria. Instances of the role of the Judiciary in stabilizing the polity and maintaining democratic process can be elucidated using the 2004 Governor Jushau Chibi Dariye removal saga. The Suit brought in the name of Plateau State on 24th June, 2004 challenging the constitutionality of the suspension by President Obasanjo of the elected Governor and House of Assemble of the State: *Plateau State of Nigeria & Anor v. Attorney General of the Federation & Anor*, Suit No. SC 11 3/2004. The case purported that the Federal Government under the administration of President Olusegun Obasanjo has interest in removing the Governor of Plateau, Governor Jushau Chibi Dariye. Through the EFCC, the Federal Government accused the Governor of misappropriation of funds to the tune of N1.1 billion drawn in favour of Plateau State to All States Trust Bank. The case involving *The Federal*

Republic of Nigeria v. Chief Joshua Chibi Dariye & 7 Ors Charge No. FHC/KD/144C/04. The Court played a critical role in the saga. On two charges of fraudulently presenting a Central Bank cheque for the sum of N1.1 billion drawn in favour of Plateau State to All State Trust Bank, knowing it to be unlawfully procured and conspiracy to accept the said cheque, the court ruled that the evidence by the EFCC did not establish even *prima facie* case against any of the accused persons to warrant calling on them to enter their defense; the court accordingly discharged them. On the more critical charge that Chief Joshua Chibi Dariye dishonestly misappropriated the said sum of N1.1 billion due to Plateau State by directing the All States Trust Bank to disburse it in specified amount to the Plateau State government and other named organizations or companies, the court held:

With the greatest respect to the prosecuting council, I am unable to see how this disbursement has disposed any dishonest misappropriation. Did Joshua Dariye misappropriate it for himself; if yes, no such evidence was adduced; the prosecution has not shown that all payments made to the various persons or companies were for particular purposes than for what the monies were meant for.

The role of the court in this matter averted the double jeopardy of this or any other kind as against the spirit of democracy as reflected in section 36(9) of the 1999 Nigerian Constitution. More so, the Judiciary as the nexus of sustainable democracy in Nigeria polity is obvious. Thus, the military government under General Sani Abacha in recognition of the enormous and indispensable role of the Judiciary in achieving sustainable democracy, promulgated the Constitutional Court Decree No. 4 of 1998, as amended by the Constitutional Court Amendment Decree No 5 of 1998, creating a constitutional Court, consisting of a president and not less than 20 other Justices and vesting it with the jurisdiction to the exclusion of any other Court relating to constitutional matters. Section 8 thereof vests in the Constitutional Court the jurisdiction to the exclusion of any other Court disputes as well as membership of political parties. Section 10 vests in the Court the appellate jurisdiction arising from appeals from decisions of the Governorship and Legislative House Election tribunals, as well as Local Government Election Tribunals and that the decisions of the Constitutional Court in such matters shall be final. It is rather unfortunate that General Sani Abacha has been given a wholesale condemnation by those who succeeded him, thus throwing away or discarding some of his actions which were good intentioned. The rejection or abandonment of the Constitutional Court idea and jettisoning of the Constitutional Court Decree have resulted in the nightmare faced by the Court of Appeals whose pitiable jurisdiction today covers these election matters and appeals and the consequences of this tardy situation are what we are all witnessing. These include the Court of Appeal even overruling itself in some cases against the age long doctrine of stare decisis (See *Jatau v. Ahmed* (2003) FWLR (Pt 151), 1887 @1896, paras. D-E; *ITPP Ltd v. UBN* (2006) All FWLR (Pt 324) 1789 @ 1802, paras E-G; *DBA v. Taan* (2003) NWLR (Pt 287) 368. @ 378, paras A-B; *John Andy sons Ltd v. NCRI* (1997) 3 NWLR (Pt. 491) 1 @14, para B.; the delay in hearing appeals arising from election petition matters; the near jettisoning or abandonment of the normal appeals - Civil and Criminal that come to the court of Appeal and which equally deserve urgent attention; exposing the Justices of the Court of Appeal to all manners and intrigues of politician who are ready to employ the instrumentality of blackmail against them, Newswatch Magazine, 14 December, 2009.

The ruling of a Chief Judge of the Federal High Court, Justice Rosline Ukeje, on May 26, 2003, addressed the salient constitutional role of the Judiciary in interpreting the law and adjudicating matters between the various organs of government.

The passage of the Corrupt Practices and Other Related Offences Act 2003 on 7th of May by the Senate and on the 8th of May by the House of Representatives, was premature, and flying in the face of a subsisting restraining order of a competent Court, that passage is unconstitutional and void... the ICPC Act 2003, passed on the 7th and 8th of May 2003 by the defendants respectively without observance of the relevant due process of law is unconstitutional and void. It is therefore not the law that this Court or indeed any other Court of superior, competent jurisdiction cannot interfere with the National Assembly when it makes laws (S. 4(8) of the 1999 constitution).

The more consolidating democracy gets the closer relationship between democracy and a fair and Independent Judiciary becomes imperative; none can exist without the other. The role of Independent Judiciary is an essential element in achieving sustainable democracy in any democratic State. In establishing the imperativeness and indispensability of a fair and Independent Judiciary in a democracy, Sidney Brooks a United States Bankruptcy Judge succinctly posited in a presentation he made at a Fulbright Scholars Conference, April, 2007, saying "If it were left for me to decide whether we have a democracy without fair and Independent Courts or fair and Independent Courts without a democracy, I would not hesitate to choose the later". This implies that democracy without an Independent Judiciary would fail and turn into tyranny, whereas, tyranny would inevitably collapse in the presence of a fair and Independent Judiciary. Failed tyranny would probably give way to democracy. The theory and practice of separation of powers is the premise upon which independent judiciary predicates, that over time will necessitate the inevitable collapse of dictatorial leadership and tyranny, thus, enthrones the rule of law for good governance and sustainable democracy. The Judiciary is a veritable defender of democracy, thus, imperative to sustainable democratic state. The role of Judiciary ought to be highly cherished and given top priority in any democracy. The role of a fair and Independent Judiciary was vividly explained by Kriegler. J, in the South African case of *S v Mamabolo* (ETV and others intervening), thus:

In our constitutional order the Judiciary is an independent pillar of the State, constitutionally mandated to exercise the judicial authority of the State fearlessly and impartially. Under the doctrine of the separation of powers it stands on equal footing with the Executive and Legislative. Pillars of the State; but in terms of political, financial or military power it cannot hope to compete. It is in these terms by far the weakest of the three pillars, yet its manifest independence and authority are essential. Having no constituency, no purse or no sword, the Judiciary must rely on moral authority. Without such authority it cannot perform its vital function as the interpreter of the constitution, the arbiter of disputes between organs of the State and, ultimately, as the watch dog over the Constitution and its Bill of Rights - even against the State.

In tandem with the ongoing line of thoughts on the importance of the role of Judiciary in achieving sustainable democracy, Mzikamanda, R. R., the High Court Judge of Malawi in a paper presented on November 14, 2007 at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), Johannesburg, South Africa wrote that: "The Judiciary being one of the three branches of government has been

upholding the Rule of Law as its central role in a democracy. The Judiciary has a sensitive and crucial role to play in controlling the exercise of power and upholding the Bill of Rights" The Judiciary provides mechanisms for a fair and peaceful resolution of conflicts in accordance with stipulations of the constitution and balanced procedures. It contributes to legal certainty by clarifying norms and the relationship between them through interpretation and by contributing to the evolution and refinement of legal rules. The imperative role of the Judiciary is found in its traditional role, which is the basic purpose of the existence of the Judiciary. The traditional role is seen when the Judiciary decides disputes between citizens and other residents in the State and between the citizen and the State or any of its agencies. Nnaemeka-Agu, P. (1994) laid credence to the indispensable role of the Judiciary in achieving sustainable democracy in Nigeria, thus:

What happens in traditional judicial role is that the Judiciary determines the claim on the basis of the law and facts, it examines and states the law before applying that law to the facts, it interprets relevant Statues including rules of procedure and states on the application of the Statute. The Court carefully examines the relevant law as embodied in decided cases, overruling or modifying them while taking into account the dynamics of our ever changing Society. It is part of the responsibility of the Judiciary to see to it that living men and women are not ruled by dead law.

The Judiciary plays a pivotal role of sustaining democracy as noticed in this study. The Judiciary recognizes and safeguards the theory of separation of powers through the supervisory jurisdiction of higher courts over lower courts. The process of democratization has markedly transformed the role of the Courts from the traditional role to its present pivotal role to uphold the Rule of Law and strengthen democratic governance in Nigerian State. The role of a fair and independent Judiciary is an essential component of Nigerian constitutional democracy. The Judiciary has the constitutional responsibility to review all constitutional decisions, for it is the protector and guardian of the fundamental law of the Land. The theory and practice of separation of powers is the most veritable context in which the Judiciary can perform its constitutional responsibility of stabilizing the political system, thus, achieving sustainable democracy in Nigeria.

The role of the Judiciary on maintaining sustainable democracy can be succinctly illustrated using incidences of election and impeachment sagas of Governors Peter Obi and Rotimi Chibuke Amaechi. The imperative of the independence of the judiciary is manifested in the supreme court's judgment over gubernatorial election/pull of April 14 2007. INEC & Ors v. Peter Obi (2007). This judgment of the country's apex court averted imminent anarchy in Anambra State, which would have resulted in declaration of the state of emergency and its attendant consequences on the Anambra State political system and Nigerian political system in general. History would have repeated itself in Anambra State as it was in the case of the Western Region, Action Group Party and the Federal Government led by the Prime Minister, Sir Abubakar Tafawa Balewa in the First Republic, (Obikeze and Obi, 2003), If not for the apex court acting independent of other organs of government control. Also, the practice of separation of powers which enhances the independence of the judiciary was manifested in Omehia & Ors. v. Amaechi, where the Supreme Court install Rotimi Chibuke Amaechi as the Governor of Rivers State as against the PDP/INEC purported Mr. Celestine Omehia as the governor; this saw to the end of his five months reign as the Governor of Rivers State, (The Guardian Newspaper, October 26, 2007).

SUMMARY OF FINDINGS

Minority judgment delivered, by Justice Aniogolu (JSC) in the case of **Odumegwu Ojukwu v. Edwin Onwudiwe** on an election petition of the 1983 general election pointed that the second Republic failed as a result of the derail of the Judiciary from its constitutionally stipulated role of stabilizing and sustaining Nigerian democracy during that era. Opinions purported that if the Judiciary had effectively played her role, the military Junta would not have had any justification for intervening in Nigerian politics. Thus, there were public outcry and condemnation during the Second Republic in the manner in which the Court handled cases. The Fourth Republic was assumed to have been established on the premise that canvasses for adherence to practice of separation of powers and the independence of the Judiciary. The ongoing democratic dispensation came into force on the May 29, 1999, with a new constitution known as the 1999 Constitution. The Judiciary occupies a significant position in the administration of justice in this democratic dispensation. By the provision of Section 6 of the 1999 Constitution of the Federal Republic of Nigeria, the judicial powers in all their amplitude are vested in the Courts. Thus, modern democracy is characteristic of separation of powers, judicial independence, rule of law, constitutionalism, and protection of human rights, among others. The provision for and availability of these features were expected to boost the effectiveness of the Judiciary in achieving sustainable democracy in Nigeria. This study therefore, examined how the practice of separation of powers has engendered sustainable democracy in Nigeria.

The content analysis if this paper has shown that:

- i. Cases and instances from the content analysis suggest independence of the Judiciary helps in achieving sustainable democracy in Nigeria. This was seen in the areas of effective adjudications that have helped to settle disputes in governance.
- ii. The case in hand presupposes that Independent Judiciary enhances due process in a democratic state.
- iii. The review of incidences and court verdicts or issues relating to how the practice of separation of powers has enhanced the Judiciary to discharge its constitutionally stipulated roles in achieving sustainable democracy in Nigeria is convincing. The analysis showed that separation of powers enhanced the efficiency of the Judiciary in Nigeria.

CONCLUSION

The practice of separation of powers is *sine qua non* to independence of the Judiciary, upon which sustainable democracy is predicated. When the Judiciary is independence, it will dispense justice without fear or favour - adjudicating and arbitrating among individuals and institutions, subject only to the law. Instances exist that the Judiciary has been able to check both the Executive lawlessness and the Legislative rascality as witnessed under President Olusegun Obasanjo's administration (1999 - 2007), where the purported removal of Governor Peter Obi of Anambra State and Governor Rashid Ladoja of Oyo State through violation of constitutional provisions was reversed by the Judiciary (Ajaero, 2009). Similarly, the Supreme Court verdict which effectively returned to the ballot all candidates that Independent Electoral Commission had disqualified clearly demonstrated that the role of the Judiciary is imperative and indispensable in Nigerian democratic political system in achieving sustainable democracy.

RECOMMENDATIONS

Based on the issues raised and analyzed in this study, the following recommendations are put forward:

1. The consolidation of democracy in Nigeria: this will depend on the commitment and ability of Nigeria State to take extra measures to ensure that the independence of the judiciary is firmly established, respected and protected. Nigerian State requires strong, stable, and sustainable democracy to deal with the myriad of challenges facing good government. Thus, democracy must be nurtured and protected. The role of independent judiciary is critical in democratic process and governance. Without an independence of the Judiciary, there can be no protection of rights, including minority rights, the rule of law, and therefore, no democracy.
2. The practice of separation of powers must allow the three organs of government to complement each other in the service of the state. In the same vein the system should enable the three organs to act as checks and balances on the excesses of each other. The fact that each organ independently checks the other from exceeding their powers ensures that the rule of law is observed and individual rights are protected. This sustains democracy and ensures democracy dividend.
3. Court orders are meant to be obeyed by the concerned parties (the plaintiff, the defendant and the prosecutor). Disobedience to court orders can subvert judicial powers and incessant disobedience to court orders can undermine democracy. Thus, this study recommends that state actors and the general public should always stand up to defend democracy through public opinion, judicial orders and authentic judicial precedence.
4. More so, civic education will enhance the support for court orders and judicial precedence. That will elicit public support and anyone who tries to undermine the Judiciary will be widely criticized. Where the public is well informed on the purpose and importance of the theory of separation powers, the independence of the judiciary and the respect for the rule of law, there are likely to engender public confidence in the judiciary. Public confidence is the ultimate safeguard of the independence of the judiciary. The judiciary should take on the civic education as the functions of the judiciary and the importance and purpose of the independence of the judiciary.
5. Courts must continue to act boldly to protect the constitution. They are the last line of defense for democracy, human rights and rule of law. It is critical that the last line of defense be very strong.

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