
Role of The Judiciary in Promoting Access to Justice in Nigeria

Josephine Nkeonye Egemonu*

Nigerian Law School, Yenagoa, Nigeria.

Egemonu J.N. (2022) Role of The Judiciary in Promoting Access to Justice in Nigeria, *Global Journal of Politics and Law Research*, Vol.10, No.5, pp.1-16

ABSTRACT: *The role of the Judiciary in promoting access to justice cannot be over-emphasised, neither can its contribution towards attainment of justice be quantified. An independent, strong, respectable and responsible judiciary is indispensable for the administration of justice in any society. It is in this light that the Judiciary, as an arm of government, is the most important of all the three arms of government in Nigeria. The availability of the judicial system and the quality of justice it dispenses depend largely on the coordinated efforts of the judicial officers and the staff of the courts, their professional competence and compliance with ethical standards of conduct and discipline at work. An effective justice system is one that is accessible in all its parts. Without this, the system risks losing its relevance and the respect of the people it serves. Accessibility therefore is more than ease of access to the courts and legal representation, it involves an appreciation and understanding of the needs of those who require the assistance of the legal system. It is the duty of the judiciary to adequately protect all individuals that come before it to seek justice. In consideration of the importance of the judiciary, it is expected that it should play leadership role in the provision of access to justice. Unfortunately, access to justice in Nigeria is faced with so many challenges. These challenges and more shall form the focus of this research.*

KEYWORDS: Judiciary, Access, Justice, Nigeria

INTRODUCTION

The Federal Republic of Nigeria operates a constitutional democracy which is composed of three recognised and distinct arms or branches of government namely, the legislature, executive and the judiciary, whose powers are vested by the 1999 Constitution of the Federal Republic of Nigeria (as amended)¹, in the National Assembly, the President and the Courts respectively.² It is the duty of the legislature to make laws, which are to be interpreted by the judiciary and executed by the executive arm of government.. It can be concluded that the judiciary protects the Constitution of the Federal Republic of Nigeria, as well as, the fundamental rights of the citizens.

Like any other institution, the judiciary is faced with many challenges such as poor conditions under which judicial officers in some States work, indifference of public officers³ to court rulings

¹ Hereinafter referred to as "the Constitution" or "CFRN".

² The 1999 Constitution of the Federal Republic of Nigeria (CFRN as amended), sections 4, 5 and 6 respectively.

³ Particularly political office holders.

and judgments, delay in prosecution of cases etc. These problems and more have contributed in no small measure in hampering access to justice in Nigeria. Whilst x-raying these and more of the challenges, solution shall be proffered in this research.

Like any other institution, the judiciary is faced with many challenges such as poor conditions under which judicial officers in some States work, indifference of public officers⁴ to court rulings and judgments, delay in prosecution of cases etc. These problems and more have contributed in no small measure in hampering access to justice in Nigeria. Whilst x-raying these and more of the challenges, solution shall be proffered in this research.

Before proceeding further, it would be necessary to clarify some of the key words used in this article.

Judiciary, Access and Justice.

Judiciary:

This is the branch of government responsible for interpreting and administering justice.⁵ The Nigerian judiciary is made up of the various courts in the country that are empowered by the constitution to exercise both original and appellate jurisdiction in respect of all matters between persons, or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.⁶ These courts have the power to see to it that there is no infraction of the exercise of legislative power as laid down in the Constitution.⁷ In consideration of the vital role that the Judiciary plays, it should be a leader in the provision of access to justice, hence it is referred to as 'the last hope of the common man'. This presupposes that the judiciary should guarantee equal access to justice to all that come before it and ensure that judgments are delivered in accordance with the provisions of law. This means that a citizen, regardless of his position in society, who is not satisfied with the actions of the executive, the legislature or other citizens, corporations and institutions, is at liberty to seek redress from the courts.

***Ms. Josephine Nkeonye Egemonu LLB (University of Lagos); BL; LLM (University of Lagos); ACI Arb (Nigeria) Senior Lecturer, Nigerian Law School, Yenagoa Campus. She can be reached at 2418023508783; 23418038186497; email: ellaegemonu@gmail.com**

⁴ Particularly political office holders.

⁵ Black's Law Dictionary, Ninth edition by Bryan A. Garner Editor-in-Chief.

⁶ See CFRN section 6 supra.

⁷ Fatai Williams CJN (as he then was) in A.G. Bendel State v A.G.F and 22 Ors. (1983) 3 NCLR 1 at 40.

Access:

This is an opportunity or ability to enter, approach, pass to and from or communicate with. An example is access to the courts.⁸

Justice:

In the strict legal sense, justice is the end product of the effective application of the law of the land made by the competent law making authority. In the mosaic era, for example, justice meant no more than paying back an offender in his own coin, for the doctrinal teaching was ‘an eye for an eye, a tooth for a tooth’. In a broader and more acceptable sense, justice is fairness, fairness in adjudication, fairness in the process of adjudication and in the ultimate decision reached by the decision-making body or authority. It is that kind of justice that accords not only with the rule of law, but also ensures equality of treatment to all and sundry.⁹

Justice is the fair and proper administration of laws.¹⁰ In order to ensure due administration of justice, various courts are established under the Constitution of the Federal Republic of Nigeria (as amended)¹¹ to exercise both original and appellate jurisdictions.¹²

Due administration of justice is not limited to the hearing or trial of cases¹³ in the courts, it includes all the pre-trial steps taken in a criminal matter, from the moment a complaint is made to the police by a complainant that a crime has been committed or is about to be committed up to the conclusion of investigation by the police. A learned jurist¹⁴ captured and stressed the meaning of justice in *Godwin Josiah v The State*¹⁵ to the effect that “justice is not a one-way traffic. It is not justice for the Appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic-justice for the Appellant, accused of a heinous crime of murder, justice for the victim, the murdered man, the deceased, ‘whose blood is crying to heaven for vengeance’ and finally, justice for the society at large, the society whose social norms and values have been desecrated and broken by the criminal act complained of.”

In civil matters, justice also relates to justice to the claimant, the defendant and of course the court, which has the sole responsibility to hear all the parties involved in a matter before it. Justice encompasses the role of the courts to do substantial justice and not technical justice. Justice should therefore be accessed by all citizens irrespective of status or position in life.

⁸ Black’s Law Dictionary.

⁹ Akanbi, M.M (1996) ‘The Many Obstacles to Justice According to Law’ In the Judiciary and the challenges of justice: selected papers and speeches of Honourable Justice Mustapha Akanbi, President, Court of Appeal, Nigeria Lagos: Patroni Books p.33.

¹⁰ Black’s Law Dictionary *ibid*.

¹¹ *Ibid*.

¹² See CFRN Section 6.

¹³ Whether civil or criminal.

¹⁴ Late Chukwudifu Oputa (Justice of the Supreme Court of Nigeria).

¹⁵ (1985) 1NWLR (Pt. 11) 125 at 141.

Concept of Access to Justice

Access to justice means different things to different people. In its narrowest sense, it represents only the formal ability to litigate or defend. It encompasses the right to “have your day in court”¹⁶ A slightly broader definition of access to justice encompasses the need to advocate for people who cannot afford lawyers, but also focuses on the inadequacies and limitations of the legal aid system. This approach builds on the legal aid model by calling for reforms of the justice system by simplifying procedural and formal requirements and implementing mechanisms for group and third-party claims.¹⁷

Access to justice is a much broader concept than access to the courts and litigation. It encompasses recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and solving their problems.¹⁸ The importance of access to justice cannot be overstated. Access to justice is fundamental to the establishment and maintenance of the rule of law, because it enables people to have their voices heard and to exercise their legal rights, whether those rights are derived from constitution, statutes, the common law or international instruments. Access to justice is an indispensable factor in promoting empowerment and securing access to equal human dignity.¹⁹ Access to justice will therefore comprehend and include access to the machinery of the law as well as access to social justice and right to the benefits of development and economic progress. Viewed from this perspective, access to justice is the most important right, without which it is not possible to enjoy any other right.²⁰

The concept of access to justice adopted in this research is a comprehensive concept, which includes the constitutional provisions and other processes of obtaining a solution to civil or criminal justice problems. It starts with the existence of rights enshrined in our laws and with awareness and understanding of such rights; it also intends to look at the obstacles militating against access to justice, suggesting ways to overcome same.

Access to Justice and the 1999 Constitution of the Federal Republic of Nigeria (As Amended)

From 1999 when Nigeria returned to democratic system of government, the judiciary has played a very important role in adjudicating and dispensing justice. Though some people may not be

¹⁶ Mauro Cappelletti and Bryant Garth, eds, *Access to Justice Volume 1: A World Survey, Book* (Aphenaandenrijn: Sijthoff and Noordhoff, 1978) [Cappelletti and Garth] at 6-7).

¹⁷ Roderick A Macdonald, “Access to Justice in Canada Today” in Julia Bass, WA Bogart and Frederick H Zemans, eds, *Access to Justice for a new Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005).

¹⁸ Access to justice is a fine concept. What does it mean in view of cuts to legal aid?

¹⁹ Jon Robins <https://www.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts>

¹⁹ J Begiraj and L McNamara, International Access to Justice: Barriers and Solutions (Bingham Centre for the Rule of Law Report 02/2014), International Bar Association, October 2014.

²⁰ Honourable Justice Oputa C. A: ‘The Judiciary And Legal Development’ In *Our Temple of Justice: Justice Oputa Foundation, Justice Watch*, 2014. First published by Friends Law Publishers Limited, Owerri 1992.

satisfied with the long period of time it takes to conclude a case and sometimes the outcome, the undeniable fact is that the judiciary has continued to play a very crucial role in protecting the constitution and by extension, the society.

There is no gainsaying the fact that in a constitutional democracy, the fundamental and basic law is the Constitution. It is the supreme law of the land, the *fons et origo*, superior in every respect in scope, content and effectiveness to any other law of the land and any law which is inconsistent with its provisions is no law. To the extent that such law is inconsistent with a constitutional provision, it is null and void and of no legal effect.²¹ It is trite to say that the Nigerian Constitution guarantees and protects individual and collective rights. It is an embodiment of the people's rights and obligations. The Constitution is the veritable grund norm, the potent legal force for the sustenance of the legal order, the rule of law and the proper administration of justice. It is indeed the source of all powers and authority exercisable by governmental bodies and institutions which owe their very existence to it. As much as possible, its regulatory provisions cover every conceivable scheme and situation which make for, or are likely to assure, a stable and enduring polity.²²

It is no longer a secret that a vast majority of the Nigerian populace, particularly the rural dwellers, are illiterates, poor and cannot afford the cost of litigation, yet those who face criminal trials are expected to know, not just their rights but also the language and procedure of criminal proceedings. These rights, which are enshrined in the 1999 Constitution, if ignored, will completely ridicule the whole essence and meaning of access to justice. Therefore one can safely conclude that the Constitution contains the legal framework for access to justice in Nigeria.

Though the term 'Access to Justice' is not expressly contained in the Constitution or other statutes²³, other terms or concepts²⁴ capture the same idea. Some of the constitutional safeguards as contained in chapter IV of the 1999 CFRN, which ensure the process of accessing justice by a defendant shall be considered in the course of this work.

Fair hearing and access to justice

One cannot talk about justice without reference to fair hearing. This is because fair hearing is the bedrock of any judicial system. The common law recognises a duty to accord a person procedural fairness or natural justice when a decision is made that affects the person's rights, interests or legitimate expectations. It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is made which will deprive a person of some rights or interests or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it.²⁵ The

²¹ Section 1; Op cit 25.

²² Op cit. 25

²³ Extant laws on litigation.

²⁴ Such as the various constitutional safeguards as contained in chapter iv of the 1999 CFRN.

²⁵ **Kioa v West (1985)** 159 CLR 550, 587 (**Mason J**); Westlaw **AU**, The **Laws** of Australia (at 1 March 2014) 2 Administrative Law, '2.5 Judicial Review.

principle of natural justice has been developed and followed by courts in Nigeria to protect and safeguard the rights of individuals²⁶ especially those facing criminal trials, against the arbitrariness of administrative authorities.

Natural justice is an elementary and fundamental principle of the administration of justice in Nigeria²⁷ and if the principles are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice.²⁸

In criminal proceedings, the 1999 CFRN²⁹ has some provisions to ensure and safeguard the fair trial of an accused person. Section 36(1) thereof provides that:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

This section entrenches the common law concept of natural justice with its twin pillars, namely: *audi alteram partem* meaning that a man should not be condemned unheard or hear the other side and *nemo judex in causa sua* meaning that a man shall not be a Judge in his own cause. This section confers on every citizen who has any grievance, the right of access to the courts and leaves the doors of the courts open to any person with a desire to ventilate his grievances and compels the court that will determine the rights of such person to accord the person a fair hearing.³⁰ By this section, a person's civil and criminal rights and obligation can only be lawfully determined if he is given a fair hearing.

The twin pillars of natural justice are one of the determinants of a fair trial in our adversarial system of justice. Both are indispensable principles and uncompromising inputs to a fair trial. A denial of fair hearing is therefore a denial of an opportunity to access justice. The right of citizens to access the court or tribunal is constitutionally guaranteed and where there is a breach of this fundamental right, the trial is liable to be declared a nullity.

One of the constitutionally guaranteed rights to a access to justice can be found in section 36(6) (a) to the effect that a defendant must be informed during arraignment of the nature of the offence allegedly committed by him. Arraignment under Nigerian laws entails the process of placing a defendant before the court and in the dock unfettered unless the court shall see cause otherwise to order. The charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court,

²⁶ O.R.L v NCC (2007) 18 WRN 87 C.A.

²⁷ State v Onagoruwa (1992) 1 S.C. 161.

²⁸ O.R.L. v N.C.C. supra

²⁹ Op. Cit.

³⁰ Bill Constructions Co. Ltd v Imani & Sons Ltd/Shell Trustees Ltd (a Joint Venture) (2007) 7 WRN 152 SC.

and the defendant shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.³¹

A strict compliance with this mandatory statutory requirement relating to the procedure in a criminal trial is a pre-requisite of a valid trial and where a trial court proceeds to try the defendant without strictly complying with the above provisions of the law and section 36(6)(a) of the 1999 Constitution, the trial and conviction would be declared a nullity by an appeal court.³² It therefore follows that failure to inform a defendant of the crime allegedly committed by him will amount to a denial of fair hearing and by extension, a denial of access to justice.

Again, whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.³³ Though the Constitution did not define what “fair hearing in public” means, one can safely conclude that this means that for a hearing to be fair, it must be conducted in such a place that would allow access by the parties and the general public.³⁴ This is subject to some statutory restrictions such as the proviso to section 36(4) of the 1999 CFRN, which is to the effect that a court or tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, welfare of persons who have not attained the age of 18 years, protection of the lives of the parties or to such extent as it may be considered necessary by reason of special circumstances in which publicity would be contrary to the interest of justice.³⁵

Where a court makes an order that trial should be held in private, the law requires that the grounds upon which such decision is reached must be recorded.³⁶ These provisions are put in place to ensure the fair trial of the defendant.

The Constitution also provides that the trial of the defendant must be concluded within a reasonable time by a competent court or tribunal. Again, the Constitution did not define what ‘a reasonable time’ is or should be. However, the expression has been left for judicial interpretation by the court. In *Ariori & Ors v Elemo & Ors*³⁷, Obaseki JSC (as he then was) defined reasonable time as follows; Reasonable time must mean the period of time in which the search for justice, does not wear out the parties and their witnesses and which is required to ensure

³¹ Criminal Procedure Law (CPL), section 215. See also Criminal Procedure Code Law (CPCL), section 187; Administration of Criminal Justice Law (ACJL), section 211(1); Administration of Criminal Justice Act (ACJA), section 271; *Effiom v The State* (1995) All NLR 1; *Josiah v The State* (1985) 1 SC 406.

³² *Yahaya v The State* (2002) FWLR (Pt. 93) 204.

³³ Section 36 (4) *ibid*

³⁴ CPL, section 203; CPCL, s. 225; ACJL, S. 200 and ACJA S. 259(1).

³⁵ See also provisos to CPL, S. 203; CPCL, S. 225; ACJL, S. 201; ACJA, S. 259(2) & (3); CYPL, Lagos, S. 6(5).

³⁶ CPL, S. 205 & ACJL, S. 203(2).

³⁷ (1983) 1 SCNLR.

that justice is not only done but appears to a reasonable person to be done.

‘Reasonable time’ therefore depends on the nature and circumstances of each case. Some cases last for a period ranging from one to ten years or even more than that before final judgment is delivered. A length of time should not be rigidly fixed as being too long for determining whether there was a fair hearing within a reasonable time as prescribed under the constitution. All the circumstances of each case must be considered before a just decision can be reached in each matter. The number of witnesses that testified and the number of exhibits tendered may be considered. Were the accused persons numerous that a possibility exists that what the witnesses said on each accused is lost in the recollection of the trial judge? All these should be weighed against the length time it took to conclude the trial.

In *Ozuluonye v The State*³⁸ the case lasted for four years. There were more than ten accused persons. The trial judge went on transfer to another judicial division and was transferred back to find the case remained where he left it, he then concluded it. But in the process, he mixed up the evidence. He obviously lost track of the facts. On appeal against conviction, it was held that the trial was not held within a reasonable time. Contrast with *Gozie Okeke v The State*³⁹ where trial lasted for six years, yet the Judge was able to recollect all that transpired at the trial. An appeal against conviction on the ground that trial was not concluded within a reasonable time was dismissed.

In the determination of what a reasonable time is in the determination of a criminal case, having regard to the nature and circumstances of each case, it was held in *Gozie Okeke v The State*⁴⁰ that the following factors are a guide in determining whether an accused person was denied his constitutional right to a speedy trial:

- (a). length of the delay,
- (b). reasons for the delay as given by the prosecution,
- (c). accused person’s assertion of his right to speedy trial and
- (d). prejudice caused by the delay to the accused or to which he may be exposed.

The court held in that case that though the trial lasted for six years, no prejudice was done to the appellant, having regard to the circumstances of the case. There was therefore no breach of his constitutional right to fair trial.

In *Effiom v The State*⁴¹, trial lasted for five years and the delay was held not to amount to a denial of fair hearing. The delay was not caused by the court but was as a result of the failure to take the accused person promptly to court to face his trial. In that case, the Supreme Court of Nigeria prescribed the essential elements of fair hearing as follows:

- 1). Easy access to court
- 2). Right to be heard

³⁸ (1983) 4 NCLR 204.

³⁹ (2003) 15 NWLR (pt. 842) 25 SC.

⁴⁰ Supra n.43

⁴¹ (1995) All NLR 1

- 3). Impartiality of adjudicating process
- 4). Principles of Nemo judex in causa sua
- 5). Whether there is inordinate delay in delivery of judgment.

It therefore follows that where the above-listed essential ingredients are absent, the defendant will be deemed to have been denied access to judicial justice.

Other constitutional provisions that guarantee the fair trial of an accused person and by extension his right to an unhindered access to justice, which the court has very fundamental roles to play, that would be considered in this work include the provision on the defendant's right to adequate time and facilities to prepare for his defence. This is encapsulated in Section 36 (6) (b) of the 1999 CFRN to the effect that "every person charged with a criminal offence shall be entitled to be given adequate time and facilities for the preparation of his defence".

For this reason, a defendant may seek for time, upon arraignment or at any stage of the proceedings, to engage the services of a counsel, if he does not have one or to call or recall a witness. Generally, adjournment is at the discretion of the court, upon the application of the prosecution or the defendant who must give cogent and compelling reasons for applying for it. The discretion should be exercised judicially and judiciously. Though it is in the defendant's interest that cases are disposed off with minimum delay, this should not be done at the expense of giving the defendant adequate opportunity of defending himself.

When a case is adjourned to a date and parties are informed, it is the duty of the defendant, if he is on bail, and of his counsel, if he is represented, to attend court on the adjourned date. If they fail to appear and no adequate explanation is given to excuse their absence a bench warrant may be issued to bring the defendant to court. If he appears and gives no adequate explanation for his absence the court may decide to go on with the case or adjourn depending on the circumstances. In any case, the court should endeavour to see that the accused person is given a fair chance to defend himself and with the aid of counsel when he is represented by one⁴².

However, it is compulsory to grant adjournment if sought by the defendant in capital offences such as murder, treason, armed robbery, treachery etc.⁴³

Another constitutional provision that is in favour of a defendant in criminal trials is the provision on presumption of innocence. S. 36(5) CFRN 1999 provides that :

every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty, provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

The right to be presumed innocent until proven guilty is a fundamental common law principle. Any law that shifts the burden of proof to the defendant or applies a presumption of fact or law operating against a defendant may likely breach this provision. This right places the burden of

⁴² Gokpa v IGP (1961) 1 All NLR 243

⁴³ Udo v The State (1988) 3 NWLR (Pt. 82) 316; Josiah v The State (1985) 1 SC 406.

proving the guilt of the defendant on the prosecution. The standard of proof required in criminal trials in Nigeria is proof beyond reasonable doubt, and it is the duty of the prosecution to so prove.⁴⁴ A similar provision can be found in Article 11 of The Universal Declaration of Human Rights and Article 7 of the African Charter. The Universal Declaration of Human Rights (Universal Declaration) is an international document that states the basic rights and fundamental freedoms to which all human beings are entitled. It was adopted by the General Assembly of the United Nations on December 10, 1948 as Resolution 217 (iii). This declaration has 30 Articles, which set forth the basic fundamental freedoms, which all persons everywhere are entitled to without any distinction as to race, sex, language, political or religious affiliation, birth or any other persuasion.

Nigeria is a member of the United Nations and has ratified many United Nations Human Rights Conventions.⁴⁵ Thus, it has made binding international commitments to adhere to the standards laid down in these universal human rights documents.

The Declaration by its provisions sets out the minimum standard to be observed by countries of the world in relation to observance of human rights. The minimum standard is based on the fact that man is an end in himself, because he is the subtraction for the realization of the supreme value which is the moral value, Man thrives best in a free environment where there is no restriction on his activities, it is in a free state and frame of mind that man attains his best.⁴⁶

It should be noted that the whole essence of fair hearing is that parties must be given an equal opportunity to present their cases in the best way that they can without any form of hindrance or impediment. Where a party, particularly a defendant in a criminal charge, is denied such opportunity, he can allege denial of lack of fair hearing.

Access to justice and Legal Aid

One important aspect of access to justice is access to counsel. Any person who is arrested or detained⁴⁷ has a right to a legal practitioner of his choice. In criminal trials, a defendant shall be entitled to conduct his case in person or by a legal practitioner of his choice, except in a trial for a capital offence or an offence punishable with life imprisonment.⁴⁸ In capital offences, the court has the duty to inform the defendant of his right to counsel.⁴⁹ It is of general knowledge that most defendants in Nigeria are poor and lack the financial ability to engage the services of a legal

⁴⁴ S. 135(1) & (2) Evidence Act 2011; *Ibe v State* (1997) 1 NWLR (Pt. 484) 632.

⁴⁵ Such as International Convention on civil and political rights- 1993, International Convention on Economic, social and cultural rights – 1993; Convention on the elimination of all forms of discrimination against women – 1995; Convention against torture and other cruel, inhuman and degrading treatment or punishment – 2001 etc.

⁴⁶ Nigeria: Universal Declaration on human rights and us, by Wale Ogunade Esq. Daily Independence Lagos: available online.

⁴⁷ CFRN, section 35(2). This is otherwise known as pre-trial detention. See also ACJA, section 6(2) (c); The ACJL makes provision for the office of the Public Defender - ACJL, section 3(3).

⁴⁸ CFRN, section 36 (6) (c); ACJA, section 267 (1). See also *Uzodinma v Commissioner of Police* (1982) 1 NCR 27.

⁴⁹ CPL, section 352; CPCL, section 186, ACJL, section 265 and ACJA, section 267 (4). See also *Josiah v State* (1985) 1 SC 406; *Udo v State*.

practitioner. Therefore, where a defendant does not have the financial capacity to engage the services of a lawyer, the court could assign one to him by way of legal aid.⁵⁰

Accessing justice in Nigeria can be very challenging. Though the poor may have access to both criminal and civil legal aid, government is focusing more on criminal legal aid. This indeed leaves a big burden on the indigent civil litigant. Unlike in criminal matters, there is no constitutional right to counsel in civil cases. Where a litigant in a civil suit cannot afford legal representation, the court is not under a duty to assign one to him.

In criminal matters, indigent suspects who are detained and/or interrogated by the police or other law enforcement agents⁵¹ are entitled to free legal representation by the Legal Aid Council⁵² or Office of the Public Defender.⁵³ Free legal service is also available to the poor and needy who cannot afford the services of a lawyer for the conduct of legal proceedings in any court or tribunal. The essence of legal aid therefore is to ensure access to justice to the poor and vulnerable suspect/defendant.

The concept of legal aid can be found in section 46(4) (b) (i) of the 1999 Constitution of the Federal Republic of Nigeria, which provides that:

The National Assembly shall make provisions for the rendering of financial assistance to any indigent citizen of Nigeria where his right under chapter IV has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim.

In pursuance of the above-stated provision, the Legal Aid Act, 2004⁵⁴, was enacted. This Act was repealed by the Legal Aid Act, 2011, which is the current legislation on legal aid in Nigeria. The fact that the constitution provides for legal aid scheme and free legal service to aid access to justice means that legal aid should be considered as a constitutional obligation of the state to indigent citizens and not as some kind of charity to the weak and vulnerable members of the society. It is therefore the duty of the court and by extension, the state, to ensure that the legal system promotes justice on the basis of equal opportunity for all. Legal aid must therefore be made available to those who are unable to access justice due to economic and other disabilities.

Legal aid involves a wide range of services including but not limited to legal advice, assistance and representation for persons arrested or detained. It also extends to preparing and filing of court processes, payment of all assessed fees and other charges payable or incurred in connection with legal proceedings, providing advocacy in legal proceedings, applying for and obtaining certified

⁵⁰ ACJA section 349(1) (b)

⁵¹ Such as the Economic and Financial Crime Commission (EFCC); Independent Corrupt Practices Commission (ICPC); National Drug Law Enforcement Agency (NDLEA) etc.

⁵² ACJA, section 6(2)(c)

⁵³ ACJL, section 3(3).

⁵⁴ CAP L9, Laws of the Federation of Nigeria (LFN), 2004.

true copies of judgments and orders of courts and tribunals and of course, prosecution of appeals where necessary⁵⁵. Thus, legal aid strives to ensure that the constitutional provision is fulfilled to the letter and in so doing, equal justice is made available to the weak and the vulnerable.

Factors militating against Access to Justice

There is no gainsaying the fact that there are many obstacles militating against access to justice in Nigeria. Whilst some are procedural in nature, others are embedded in our cultural beliefs and economic ability of the party. The list is endless but some of them are discussed hereunder.

a. Ignorance on the part of the citizens

It is no longer news that most Nigerians do not know that laws exist for their protection particularly their fundamental rights which are contained in the 1999 Constitution of the Federal Republic of Nigeria⁵⁶. Worse still, they are ignorant of the access to justice structure and Agencies that are available for their protection. The reason for this can be attributed to either ignorance or mass illiteracy or both.

When we talk about ignorance as a factor that hinders access to justice, it is here contended that it is like a disease which is not a respecter of persons as it cuts across both the illiterate and literate members of the society. Both the rich and the poor are also victims. An average Nigerian is busy pursuing his 'daily bread' and is therefore not interested in accessing justice. From interactions and professional experience as a legal practitioner, it has been found that even in the process of trying to irk out a living, the citizens' rights are violently violated on a regular basis by those that are highly placed than them, yet the victims care less, either because they are not aware of the existence of these rights, afraid to take advantage of such rights or they are not bothered about their rights at all.

b. Illiteracy

It is not in doubt that Nigeria has a high level of illiteracy as at date, which is most prevalent in the rural areas. Unfortunately, the socio-economic and political structure of the country have made it impossible for most Nigerians to have access to education, despite the various developmental plans and programs by successive governments that emphasize the importance of education. Some of these programs are abandoned as soon as the government that initiated them leave office.

This problem has been worsened by poor funding of government (federal and state) owned schools, from primary to university level. These public schools are attended mainly by children of the poor and low income earners in the country. Children of the rich attend private schools or are sent outside the country to study. This has made education almost an exclusive preserve of the rich. The ultimate result is that without education, one is not capable of knowing his fundamental rights, even when such are being trampled upon. The implication is that illiteracy is a big challenge to access to justice in Nigeria.

⁵⁵ See generally the Legal Aid Act, 2011, section 8.

⁵⁶ Chapter IV, *ibid*.

c. Poverty

Poverty is another factor that is impeding access to justice in Nigeria. It is common knowledge that the vast majority of Nigerians are poor. The present situation of things in Nigeria particularly, the impact of covid-19 pandemic, insecurity, corruption, etc has impacted heavily on the poor. There is no doubt that poverty has a marked effect on access to justice.

Despite the fact that the position of the law in Nigeria is that a defendant shall be entitled to conduct his case in person or by a legal practitioner of his choice⁵⁷ except in a trial for a capital offence or an offence punishable with life imprisonment,⁵⁸ majority of the people are unable to take advantage of these constitutional and statutory provisions either due to lack of awareness or financial constraints. Lack of legal representation can be said to be one of the reasons why some suspects/defendants spend long period of time in police and prison custody. There is therefore no doubt that the right to legal representation in a criminal case plays a very important role in ensuring that the defendant accesses justice. Unfortunately, the economically poor find it extremely difficult to engage the services of counsel when faced with litigation, even where they are lucky to have access to free legal services in terms of legal aid or pro bono services, they may not be able to afford other expenses such cost of transportation to and from court each time the case comes up. As a result, this group of people is not able to enforce their rights and consequently, there is a failure to access justice.

d. Delays in the administration of justice

Delay has been described as the act of postponing, hindering, or causing something to occur more slowly than normal: the state of being delayed.⁵⁹ There are many factors that are responsible for delay in the administration of justice in our courts.

Delays in the prosecution of cases⁶⁰ in Nigeria pose a real problem to access to justice. Sometimes cases last for about ten years and above⁶¹. From experience, the causes of delay range from series of applications for adjournment by counsel, transfer of judges from one division of the court to another, poor management of cases, lengthy trial technicalities⁶² and others, some of which are treated hereunder.

Causes of delay in the administration of justice include but not limited to the following:

1. Case Management

Every judicial officer's objective should be to ensure that every case that comes before the court, whether civil or criminal is concluded timeously, justly and in line with laid down rules and procedure. To achieve this laudable objective, the court⁶³ is expected to manage the assigned cases

⁵⁷ 1999 CFRN, Section 36 (6)(c).

⁵⁸ ACJA, Section 267(1).

⁵⁹ <https://www.merriam-webster.com/dictionary/delay> available online.

⁶⁰ Civil and criminal.

⁶¹ Particularly land matters

⁶² Burden of proof, trial within trial, submission of no case to answer etc.

⁶³ Reference to court here means both the trial and appellate courts and those presiding over those courts.

well, in order to avoid congestion, this is even so, when cases are assigned to the court in quick succession. Poor management of cases impacts negatively on the administration of justice. Little wonder that in May 2018, the then Chief Judge of Lagos State, Nigeria, Honourable Justice Opeyemi Oke, made a shocking revelation to the effect that there were over three thousand (3,000) backlog of cases in different courts across the state⁶⁴ which she described as an alarming figure. She then stated that significant efforts would be made under her watch to reverse the trend in order to restore public confidence in the Lagos State Judiciary and make administration of justice quicker and more efficient.

The proffered solution was the launch of the Lagos Backlog Elimination Programme (BEP) which was designed to decongest the courts by re-evaluating old cases and finding ways of resolving them through Alternative Dispute Resolution (ADR) or accelerated hearing. The BEP initiative was conceived as part of Honourable Justice Oke's desire to substantially tackle inordinate delay of court cases and court congestion. The Chief Judge noted that "delay has led to public ridicule of the judiciary which is supposed to be the hope of the common man. This delay, coupled with the continuous filing of new cases has led to congestion in courts with a ridiculous number of backlogs of cases, the result of which the courts are now in a state of emergency"⁶⁵.

2. Production of the defendant from custody

The position of the law is that every person who is charged with a criminal offence must attend his trial from the day he is arraigned to the day judgment is delivered, unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable.⁶⁶ Therefore, a trial conducted in the absence of the defendant is void. This is why the Supreme Court of Nigeria held in *Dingi Mohammed v The State*⁶⁷ inter alia, that trial in absentia is a procedure that is unknown to Nigerian procedural law. It is obviously a negation of fair trial. A trial of the accused person in his absence is a sham⁶⁸. It is therefore a fundamental principle of fair hearing that a person standing trial for a criminal offence has to be present in court throughout the period of his trial and a violation of it renders the trial a nullity.⁶⁹

⁶⁴ It is believed that the story is the same across the other states in Nigeria.

⁶⁵ <https://punuka.com/where-are-we-in-curbing-delays-in-administration-of-justice-in-nigeria>

⁶⁶ CPL section 210; CPCL, section 153; ACJL, section 208 and ACJA, section 266.

⁶⁷ (2018) 5NWLR (Pt. 1613) 540, see also *Adeoye v The State* (1999) 4 SC (Pt 11) 64.

⁶⁸ *Chef of Air Staff v Iyen* (2005) 6 NWLR (Pt. 922) 496; *Ochu v F.R.N.* (2011) All FWLR (Pt. 563) 2008 referred to

⁶⁹ The only known exceptions can be found in CPL, section 100(1). See also CPCL, section 15492) and these are: where the accused misconducts himself at the trial or is of unsound mind and so incapable of making his defence or where his violent nature necessitates the keeping him out of court in the interest of public safety for peaceful conduct of the trial. Other exceptions are when a person is charged with an offence for which the penalty does not exceed one hundred Naira fine or six months imprisonment or both. The court may, on the application of the defendant and if the court sees reason to do so, dispense with the personal attendance of the accused person in such matter. The accused in such instance must however be represented by a counsel or pleads guilty in writing.

It should be noted that when a case is adjourned to a date and parties are informed, it is the duty of the defendant, if he is on bail, to attend court on the adjourned date. If he fails to appear and no adequate explanation is given to excuse his absence, a bench warrant may be issued to bring the defendant to court. If he appears and gives no adequate explanation for his absence the court may decide to go on with the case or adjourn depending on the circumstances. If the court is satisfied that the accused is deliberately and without any justification trying to delay the proceedings he may decide to go on with the case especially when there are witnesses from distant places⁷⁰.

But where the defendant is in custody, the court can make an order that he should be produced on the next adjourned date by the authority. Most times trials are stalled due to the failure of the authorities to produce the defendant in court at other times the case is adjourned before the arrival of the defendant in court. The reason given by the authorities, most times, is that there are no vehicles to convey the defendant(s) to court. Since laws do not admit of trial in absentia, the case suffers a setback. This obviously poses as a barrier to access to justice.

3. **Adjournments**

By virtue of the provisions of section 36 (6) (b) of the 1999 Constitution, a defendant has a right to adequate time and facilities to prepare for his defence. Consequently, he may seek for adjournment upon arraignment or at any stage of the proceedings. He may apply for adjournment to enable him engage the services of a counsel where he does not have one⁷¹ or to enable the parties to call or recall witnesses, this right is often abused by some counsel who make frivolous applications for adjournment. Though the grant or refusal of adjournment is at the discretion of the court, in order to avoid being accused of not giving the defendant fair hearing, often grant these applications.⁷²

e. high cost of investigation and Litigation

This is another sour area of the administration of criminal justice in Nigeria. It takes an undue length of time for investigation to be concluded. Apart from that, a complainant is made to pay for virtually everything involved in the process of investigation.⁷³ By the time investigation is concluded and the defendant is taken to court, he is faced with the cost of engaging the services of a counsel to defend him. Where he cannot afford one and he does not fall into the class of those that can benefit from legal aid, what happens to him?

⁷⁰ Gokpa v COP (1961) All NLR 424. See also Shemfe v COP (1962) All NLR 87

⁷¹ In capital offences, the court must assign a counsel to the defendant, see Josiah v The State supra; Udo v The State supra; ACJL, section 265; ACJA and section 267(4)

⁷² Some of which are frivolous.

⁷³ Ranging from stationery to transportation for the police officers. Where the investigating police officer has to travel out of jurisdiction, the complainant not only pays for his transportation but also accommodation, feeding etc.

CONCLUSION

The 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly provides for the safety and protection of the rights of citizens in general terms. However, the same constitution places priority on the rights of criminal offenders over and above the rights of others, including the victim of the offence. The truth is that there are many impediments against access to justice in Nigeria, some of which have been discussed above.

The judiciary as the third arm of government in Nigeria is saddled with the responsibility of dispensing justice. In view of this responsibility, it is regarded as the last hope for the common man. Though there is no empirical data, it is common knowledge that this all important role assigned to the judiciary has suffered a lot of setbacks due to delays. This has made many people to lose confidence in using the courts as the general believe is that 'justice delayed is justice denied'. The judiciary must be pro-active in enhancing access to justice by taking measures to protect access to justice and prevent any legal occurrence, which is likely restrict or take away a party's right to access to justice.

Finally, I conclude by adopting what Lord Neuberger⁷⁴ noted that access to justice has a number of components:

"First, a competent and impartial judiciary; secondly, accessible courts; thirdly, properly administered courts; fourthly, a competent and honest legal profession; fifthly, an effective procedure for getting a case before the court; sixthly, an effective legal process; seventhly, effective execution; eighthly, affordable justice. Cutting the cost of legal aid deprives the very people who most need the protection of the courts of the ability to get legal advice and representation⁷⁵..."

⁷⁴ Former President of the Supreme Court of the United Kingdom.

⁷⁵ THE ROLE OF THE JUDICIARY IN SAFEGUARDING AND ENSURING ACCESS TO CRIMINAL JUSTICE: THE CASE OF ZAMBIA : Anderson Ngulube being a paper presented at a Judicial Colloquium entitled: Working towards just, peaceful and inclusive societies: Promoting rule of law and equal access to justice, held at Twangale Park Hotel, Lusaka, on 21 and 22 April 2016.