

- xi. Overbearing political consideration in the appointment process especially at the states level should be addressed frontally.
- xii. Over time, core practitioners and academics have given a good account of themselves as judicial officers. There is the need to look in that direction again especially for the appellate Courts.
- xiii. More members of the NBA should be appointed into the NJC.
- xiv. Nominees of the NBA must be more critical and assertive in discharging their duties as members of NJC.
- xv. Members of the bar should also be involved in disciplinary matter against judges, after all judges equally sits on the Legal Practitioners Disciplinary Committee (LPDC).

CONCLUSION

The roundtable round off with the conclusion that the current process of judicial appointment needs to be revisited both in terms of legal framework and operation. This is essential in order to ensure that future judicial officers across our Courts are people with competence, pedigree and conscience to midwife a better and just society for us all.

ADEBAYO ADELODUN & CO., QUARTERLY ROUNDTABLE

**TOPIC:
EXAMINING THE PROCESS OF
APPOINTMENT OF JUDICIAL
OFFICERS AS A MEANS OF
ACHIEVING EFFECTIVE AND
EFFICIENT ADMINISTRATION OF
JUSTICE IN NIGERIA**

**HELD ON SATURDAY
14TH DAY OF SEPTEMBER, 2024**

Edited by:
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RESOURCE PERSONS

(1) HON. JUSTICE S. D. KAWU
(RTD), OFR

(2) ALH. K. K. ELEJA, SAN,

- v. The legislative framework governing judicial appointment should be reviewed and strengthened regularly where necessary.
- vi. The positions of Chairman Federal Judicial Service Commission (FJSC) and National Judicial Council (NJC) should no longer be combined in the CJN as both have key roles in judicial appointment, to allow for independence of the two arms.
- vii. The process for appointing judges should be streamlined and made more efficient, ensuring that vacancies are filled promptly without compromising quality.
- viii. Powers of Chief Justice of Nigeria to appoint majority of the members of the NJC can lead to abuse of power because such appointed members may be beholden to their appointor, the CJN, thereby have their independence compromised.
- ix. Lobbying to secure judicial appointment by legal practitioners and non-lawyers should be stiffly discouraged.
- x. Appointment of judicial officers should be retooled in order to discourage appointments to Superior Court of record as a matter of promotion rather than competence and suitability.

In the course of the highly stimulating sessions wide range recommendations were made. Participants and other attendees equally made insightful comments while others asked thought provoking questions. At the end of it all, the roundtable came up with the following suggestions and recommendations among others that:

- i. Judicial appointment process should prioritize merit and proven integrity over political consideration or filial interest. In other words objective criteria such as experience, competence and impartiality should guide the selection process of judicial officers.
- ii. The National Judicial Council (NJC) should be effectively insulated to prevent any form of interference.
- iii. The process of judicial appointment should be made more transparent, with ascertainable criteria and guided public participation. Such as publication of names and basic information of a would be judicial officer and public opinion on him taken into consideration in arriving at a final decision on his sustainability for appointment as a judicial officer.
- iv. Strict ethical and integrity assessments should be incorporated into the appointment process to ensure that only candidate with a proven record of honesty and good ethical conduct are appointed into the bench.

TABLE OF CONTENTS

TITLE PAGE AND NAME AND ADDRESS OF PUBLISHERS	I
NAMES OF RESOURCE PERSONS	II
TABLE OF CONTENTS	III
PREFACE	IV-VI

EXAMINING THE PROCESS OF APPOINTMENT OF JUDICIAL OFFICERS AS A MEANS OF ACHIEVING EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE IN NIGERIA	1-39
BY: HON. JUSTICE S. D. KAWU (RTD), OFR	

EXAMINING THE PROCESS OF APPOINTMENT OF JUDICIAL OFFICERS AS A MEANS OF ACHIEVING EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE IN NIGERIA	40-61
BY: ALH. K. K. ELEJA, SAN,	

HIGHLIGHTS FROM THE ADEBAYO ADELODUN & CO., 2ND ROUNDTABLE	62-66
HELD ON 14TH DAY OF SEPTEMBER, 2024	

EDITORIAL NOTE/PREFACE

Administration of justice is a cornerstone of any society that aspires to uphold law, order, and equality among its citizens. In heterogeneous nations like Nigeria, where pluralism defines both the society and its challenges, the judiciary plays a central role in safeguarding rights, resolving disputes and fostering social cohesion. As the third arm of government, the judiciary embodies constitutional values and acts as a vital institution that should inspire public confidence, fairness and ethical governance. In this respect, the judiciary's effectiveness is inseparable from the processes through which its officers—those entrusted with the power to interpret and enforce the law—are selected and appointed.

This publication, **“Examining the Process of Appointment of Judicial Officers as a Means of Achieving Effective and Efficient Administration of Justice in Nigeria”**, is a continuation of the ongoing discourse on judicial appointment process in Nigeria. It investigates how judicial selection shapes the justice system's ability to function efficiently and equitably. The publication emerged from the quarterly roundtable convened by our law firm where leading legal minds and practitioners came together to interrogate this crucial issue. At the heart of the discussions were the insightful presentations of retired Justice S. D. Kawu, the immediate past Chief Justice of Kwara State and Alhaji K. K. Eleja, SAN the Principal Partner of K. K. Eleja & Co., Law Office. Their separate papers on judicial appointments addressed an audience comprising seasoned lawyers, magistrates and legal scholars, each bringing valuable perspectives to a shared dialogue.

In the context of Nigeria's legal landscape, judicial appointments hold significant public interest and attract widespread scrutiny, given the many challenges the judiciary

key institutions like the National Judicial Council (NJC), the executive and the legislature;

2. An assessment of the process of appointment as it relates to total and holistic independence of a judicial officer when he is eventually appointed;
3. Identification of the mechanisms that promote transparency and accountability in judicial appointments;
4. Exploration of a robust and merit-based process of judicial appointment, its overall efficiency and effectiveness of administration of justice which promotes public trust in the judiciary;
5. Identifying the challenges in the current process of judicial appointment and necessary reform that would enhance the quality of justice delivery in Nigeria.
6. Underscoring the importance of appointing judges with high integrity as a precondition to sustaining the credibility of the judicial system and public confidence in its decision;

SUGGESTIONS AND RECOMMENDATIONS

The immediate past Chief Judge of Kwara State, **Hon. Justice S. D. Kawu (Rtd)** and **Alh. K. K. Eleja (SAN)**, the principal partners K. K. Eleja & Co., delivered comprehensively on their mandate as resource persons.

HIGHLIGHTS FROM THE SECOND EDITION OF ADEBAYO ADELODUN & CO., QUARTERLY ROUNDTABLE HELD ON SATURDAY 14TH DAY OF SEPTEMBER, 2024.

INTRODUCTION

The topic for the second edition of Adebayo Adelodun & Co; Quarterly Roundtable is **“Examining the Process of Judicial Appointment as a means of Achieving Effective and Efficient Administration of Justice in Nigeria.”** The event took place on 14th day of September, 2024 at the head office of the firm.

The process of appointment of judicial official is crucial to the administration and dispensation of justice. A credible system will naturally throw up impeccable judicial officers while a manipulable and discredited system will throw up incompetent, corruptible and inefficient judicial officers. Such judicial officers are ultimately liabilities rather than asset to any judiciary and the society at large. Occasions where lawyers and litigants have encountered inefficient, corrupt and incompetent judicial officers have remained a dent and stain on the image of the judiciary raising a question as to what can be done to safe the system.

Some of the projected and accomplished outcome of the second edition of the roundtable include:

1. An analyses of the procedure and criteria for the appointing of judges in Nigeria, including the role of

has had to navigate. From financial constraints and systemic inefficiencies to accusations of corruption and undue political influence, the judiciary's resilience is often tested. The process of appointing and promoting judges, magistrates and other judicial officers is critical, as it determines who will ultimately uphold the law, interpret statutes and make decisions that shape lives and liberties. Judicial appointments, therefore, play a pivotal role in not only ensuring that justice is done but also affirming that justice is seen to be done—a necessary foundation for public trust in the legal system.

This publication delves into the structures, statutes, and institutional protocols that govern judicial appointments in Nigeria. It investigates the frameworks that define this process, examining issues that directly impact the quality and competence of judicial officers, such as merit-based selection, transparency, political interference and ethical integrity. Each of these factors is essential to maintaining a judiciary capable of upholding the rule of law in a complex society. The integrity, competence and independence of judicial officers depend on these standards, which, taken together, shape the judiciary's ability to function impartially and administer justice fairly.

In addition to a deep analysis the roundtable offers a great opportunity to explore judicial appointment practices which can inform Nigeria's judicial reforms. By aligning judicial appointments with global standards of integrity, transparency, and independence, Nigeria's judiciary can better maintain its impartiality and credibility in the eyes of its citizens.

The suggestions and recommendations in this work are informed by insights from prominent legal scholars, judicial officers, policymakers and practitioners, shedding light on the unique challenges and potential reforms facing Nigeria's

judiciary. The contributors emphasize the delicate balance needed to preserve judicial independence while ensuring accountability, highlighting the importance of maintaining a judiciary that is both impartial and responsive to the needs of the public it serves.

The overarching aim of this publication is to contribute meaningfully to the ongoing dialogue surrounding judicial reforms in Nigeria. By closely examining the appointment process and its impact on judicial efficacy, this publication proposes practical recommendations to improve transparency and restore public confidence in the judiciary. It is our hope that these insights will support a judicial system that empowers judges to perform their duties without fear or favor, providing accessible and impartial justice system for all. This work is intended as a resource for legal scholars, policymakers, judiciary members, civil society organizations and anyone dedicated to strengthening Nigeria's judiciary as a bastion of integrity and protector of the people's rights.

As we present this publication, we extend our profound gratitude to all participants, especially Justice S. D. Kawu (Rtd) and Alhaji K. K. Eleja, SAN whose thought-provoking papers laid the foundation for this work. We also thank the legal professionals, researchers and participants whose contributions enriched this exploration. Their dedication and scholarship reflect a shared vision of a judiciary that embodies the highest standards of justice and fortifies Nigeria's democratic principles. It is our hope that this publication will encourage meaningful reflection, spark vigorous debate and inspire purposeful action toward creating a judiciary that is both effective and a true custodian of justice in Nigeria.

Adebayo Adelodun, SAN FCI Arb
October 2024

11. Nominees of the NBA must be more critical in discharging their functions as members of the NJC.
12. The 1999 Constitution must be amended to allow NBA nominees on the NJC to be involved in the other functions of the NJC in addition to appointment of Judicial officers as it is currently.
13. No person should serve in dual capacities in the process leading to the appointment of Judicial officers.
14. Serious emphasis should be laid on the integrity of candidates and adverse reports from agencies of government should be accorded high premium.

7.0 CONCLUSION

- 7.1 There is no doubt that the appointment of Judicial Officers in Nigeria, like anywhere else in the world, is of paramount importance as it has far reaching consequences. The constitutional and regulatory mechanisms for the appointment of Judicial Officers need to be reviewed to tackle the challenges identified. It is the recommendation of this work that the constitution should be amended as a matter of necessity in the identified areas and manners.

3. More slots or positions should be given to the NBA in term of membership of the NJC.
4. The appointing process for judges should be more transparent in that applicants should be subjected to both oral and written examinations which should be fairly and justly moderated.
5. The names and identities of would-be judges should be given more prominence with objections/comments from members of the profession and public provided for.
6. Lopsided appointment by way of blood or filial relationship should be avoided.
7. Appointment to the Appellate courts should not be mainly based on seniority but on suitability and competence.
8. Appointment from the bar directly to the appellate courts should be enabled in deserving cases.
9. Promotion to higher bench should be based on the verified scrutiny of decisions by appellate court and not on the basis of seniority or the sheer volume of cases concluded.
10. Periodic assessment should not just result to warning etc. but should lead to retirement/exit from the bench in deserving cases.

EXAMINING THE PROCESS OF APPOINTMENT OF JUDICIAL OFFICERS AS A MEANS OF ACHIEVING EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE IN NIGERIA

BEING A PAPER DELIVERED BY:

HON. JUSTICE S. D. KAWU (RTD), OFR

INTRODUCTION

I want to first thank the law firm of Adebayo Adelodun & Co. for not only inviting me to this roundtable but also for the very brilliant idea of a roundtable, with the choice of topic for discussion, which is to examine the process for the appointment of judicial officers as a means of achieving an effective and efficient justice administration in Nigeria.

There is no doubt that the calibre of people appointed to sit in judgment over their fellow men and women and their activities in and out of Court have a profound effect not only on the image which members of the public have of the Judiciary but also on the efficiency and effectiveness of justice administration and sustenance of rule of law in democratic governance.

Speaking on the relationship between the image which members of the public have of the Judiciary and the conduct of Judges at the opening ceremony of induction course for newly appointed judicial officers in September, 1991, the then acting Chief Justice of Nigeria, Honourable

Justice M. L. Uwais GCON, Chief Justice of Nigeria (Rtd) said:

"The image of the Judiciary is determined by what we all as Judicial Officers do in the performance of our duties and as individuals in the dispensation of justice. The ordinary citizen builds up his image of the Judiciary by what we all do or are going to do in our different courts.

To be authentic in his role, the Judicial Officer must be an absolutely honest man, a man of exceptional integrity in financial, political and social matters. A Judge who is susceptible to bribery in any form, or who favours his relatives, friends or political sponsors either in the conduct of litigation or in the decision he finally arrives at, is unworthy of his post and, for that matter, is unworthy of membership of the legal profession. If a doctor or an engineer or a businessman is caught in dishonesty, the disclosure will not put medicine or engineering or business into general disrepute. But Judges are different and more representative. Revelations of Judicial corruption create suspicion and loss of confidence in legal processes and endanger public respect for law.

5.0 EFFECT OF APPOINTMENT OF UNSUITABLE PERSONS TO JUDICIAL OFFICES

Appointment of unsuitable persons to judicial offices among others breeds the following:

- i. Avoidable delay in administration of justice.
- ii. Untenable and indefensible decisions.
- iii. Avoidable appeals and the attendant cost and clog on the courts' dockets.
- iv. Apparent misconduct and inability to hold the scale.
- v. Loss of confidence by members of the public.
- vi. Lowered esteem of the decisions of the courts by the international community.

6.0 SUGGESTIONS & WAY FORWARD

1. The CJN's position as the chairman of the NJC and the FJSC under paragraphs 20 and 12 of the 3rd Schedule to the constitution does not augur well for transparency, accountability & objectivity. The CJN should be stripped of the Chairmanship of the NJC or the FJSC.
2. The composition of the NJC where about 75% of the membership are appointed by or at the instance the CJN should be reviewed. In the event that the CJN is the Chairman of the NJC, his power of appointment should be limited to retired justices.

2. The challenge of appointing incompetent persons in the face of numerous qualified persons.
3. Appointment of corrupt or potentially corrupt persons in the face of people who are upright and of high integrity.
4. Appointment as a promotional affair: this happens when Magistrates or staff of the Judiciary are unduly prioritized over more suitable candidates from 'outside'. This also manifests in appointment to appellate courts based on seniority to the detriment of merit.
5. Overbearing political consideration in the appointment process especially regarding States Courts: most state Chief Judges are not given the freedom to exercise independent and objective judgement in appointment of judicial officers in the states.
6. Lack of transparency regarding persons been considered for appointment: the identity of potential appointees is most times shrouded in secrecy thereby denying opportunities of objective comments on suitability.
7. Failure to consider suitable Practitioners/Academics especially for appellate courts: the current practice of appointing justices to appellate court from within the rank of serving judges is not too healthy for the system.

The image of justice in our Courts very largely depends on the intellectual, moral and personal qualities of the men and women who are called to preside over the Courts. The magnitude of the responsibility of doing justice according to law calls for a great deal of confidence to be reposed in the Judiciary. The independence of the Judiciary which we constantly advocate cannot mean independence of the particular Judge to follow his own line in isolation. It does not mean freedom for Judges to sit in Court when they please and rise to go home when they please. The eyes of the public are on us and we have to behave properly.

The profile of a Judicial Officer and his comportment in and out of Court go a long way in the assurance which the members of the public must have that our system for the administration of justice guarantees that Justice is in fact done. All Judicial Officers, have individual and collective duty to give that guarantee, not only by the way we are seen to dispense justice in our courts but also in the way in which we live our lives.

In the strains and demands upon us in our role as Judges we ought to keep our heads amidst a fast declining standard of advocacy and an astonishing fall in morality. Whether we fail in probity or in energy or in patience or in fidelity, our failure is at once seen and it damages our capacity to do justice. It reflects not only on the Court over which we sit. It reflects on the entire judicial institution which we represent.

It, therefore becomes essential for any Judicial Officer, newly appointed, to acquaint himself with the heavy responsibility that his new office reposes upon him. Some of the dos and don'ts of the office cannot be easily acquired on the job without the tutorship of old and experienced Judicial Officers."

A faulty process of appointment which throws up men and women who are deficient in learning and character, as Judges of fellow humans will erode public confidence in the ability of the Judiciary to dispense justice fairly and ultimately foist on the society an inefficient and ineffective Justice administration with all the attendant grave consequences for the polity.

both (serving and retired), prominent legal practitioners, politically exposed persons, the traditional institution or highly placed government officials. At the end, the pivotal determinant of who is recommended for judicial appointment is based on "connection and who you know" as it is fondly referred to as opposed to considering merit.

- E) **Inadequate provisions in the rule regarding secondary eligibility requirements for appointment to the High Court/Federal High Court:** Legitimate expectation of stakeholders is that the provisions of Rule 4 paragraph 4 (i)(b) regarding "active successful practice at the bar " would set out details of what is required to be supplied by a lawyer in practice at the bar; and what is required of a Chief Registrar/Chief Magistrate under (c) and the requirement that is needed to show "credible evidence of teaching law and legal research" in a reputable university under (d) . It would appear that this is subjective on the face of the rules.

4.0 COMMON COMPLAINT ARISING OUT OF JUDICIAL APPOINTMENT IN NIGERIA

1. **Nepotism/skewed Appointment:** appointment of persons who are related to "big wigs" in the profession, the political class and the elite in the society'. While relationship to accomplished members of the legal profession should not be a bar, it had the tendency of affecting transparency and objectivity.

members to be compromised and become mere rubberstamp in the hand of the CJN cannot be ruled out. The outcome of the recent Justice Sector Stakeholders Engagement lends credence to this postulation.

C) Duplication of membership in the recommendation bodies:

Another problem with the process of appointment of Judicial Officers is that some members of the recommendation bodies do serve in more than one of such statutory bodies. In the composition of the National Judicial Council and the Federal Judicial Service Commission, there are certain Federal Judicial Officers that are serving in both bodies. The Judicial Officers are the Chief Justice of Nigeria, the President of the Court of Appeal, the Chief Judge of the Federal High Court and the President of the National Industrial Court. The retention of the Judicial Officers to serve on the two bodies has a tremendous potential to clog transparency, accountability and fairness in the process of appointment of Judicial Officers in Nigeria.

D) Lobbying to secure judicial appointment:

Lobbying for judicial appointment by legal practitioners and non-lawyers is one area that has given genuine room for concern among stakeholders in Nigeria. This issue has been a recurring decimal. The general impression now is that one cannot be appointed as a judicial officer unless he is highly connected to highly influential members of the bench

In order to do justice to the topic of our discussion today, I shall endeavour to find answers to the following questions:

1. Who is a Judicial Officer?
2. What work does a Judicial Officer do?
3. What is the process for the appointment of Judicial Officers?
4. Is the process designed to ensure an effective and efficient justice administration or is it one of garbage in, garbage out?

1. Who is a Judicial Officer?

Section 318 (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended (hereinafter referred to as the Constitution) defines a "Judicial Officer" with reference to the holder of *"the office of Chief Justice of Nigeria or a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the office of the Chief Judge or a Judge of the Federal High Court, the office of the Chief Judge or Judge of the High Court of the Federal Capital Territory, Abuja, the office of the Chief Judge of a State and Judge of the High Court of a State, a Grand Kadi or Kadi of the Sharia Court of Appeal of Federal Capital Territory, Abuja, a President or Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja, a Grand Kadi or Kadi of the Sharia Court of Appeal of a State, or President or a Judge of the Customary Court of Appeal of a State, and a*

reference to a "Judicial Officer" is a reference to the holder of any such office".

It is evident from the foregoing that Magistrates, Area Court and Customary Court Judges and all Judges of inferior Courts by whatsoever name, who are not holders of any of the Judicial Offices listed in Section 318 of the Constitution do not qualify as Judicial Officers.

The Code Of Conduct For Judicial Officers of the Federal Republic of Nigeria on the other hand, after adopting the definition of a "Judicial Officer" in Section 318 of the Constitution expanded the definition to include "*the holder of a similar office in any inferior court whatsoever,*" thus including Magistrates, Area Court and Customary Court Judges in the definition of Judicial Officers.

For the purpose of our discussion today, and because of its supremacy over all Laws, Rules and Regulations, I shall restrict myself to the definition of a "Judicial Officer" in Section 318 of the Constitution of the Federal Republic of Nigeria.

More than the constitutional definition contained in Section 318 of the Constitution however, a Judicial Officer, a Judge or Justice is an ordinary human being who cries and laughs as the occasion demands, experiences high and low moods, susceptible to the pangs of hunger and thirst, good health and ill-health and all the known frailties of man, yet he is appointed to play God by performing the divine duty of judging fellow humans. The question may then be posed - why appoint a man susceptible to human frailties to judge

producing the desired change in the appointment process in the Judiciary which has been witnessing a freefall in momentum and public credibility. The easily identified factor leading to this undesired scenario is the leadership of both aforementioned bodies by the CJN. The seeming incongruity in the Chief Justice of Nigeria being the Chairman of both statutory bodies cannot be over emphasized, as it would appear that the CJN would be recommending candidates for approval to himself, being chairman of both bodies. One can safely say that the powers of the CJN as Chairman of NJC and FJSC is most undesirable and likely to breed totalitarianism and breed jaundiced appointments.

- B) **Powers of the Chief Justice of Nigeria to appoint majority of the members of the National Judicial Council:** The power given to the Chief Justice of Nigeria to select and appoint 19 out of 23 members of the National Judicial Council is a threat to the Independence and impartiality of the NJC. Constitutional donation of such power to one individual is not ideal. The Chief Justice of Nigeria, being human, might likely abuse the power. It is possible for the Chief Justice of Nigeria to appoint individuals he is more at ease with in the council. The appointed council members may likely dance to the tune of the Chief Justice of Nigeria even for the sake of a renewal of their terms in the NJC or as a mark of repaying one good turn. The tendency for the

3.0 FACTORS INHIBITING QUALITATIVE APPOINTMENT OF JUDICIAL OFFICERS IN NIGERIA

- 3.1 A notable fundamental issue which has been recognized as a bane to the smooth running of the administration of justice system in the country has been the manner in which judicial appointment is made. This has greatly eroded public confidence in the justice sector and has become a source of great concern to the legal profession in the country. Some of the statutory bodies saddled with the responsibility of making judicial appointment are themselves the cause of the fundamental hindrance. This is because the manner of judicial appointment is bound to impact on smooth, effective administration of justice. When the process is transparent, fair and acceptable it is bound to improve the quality of administration of justice and restore public confidence. On the converse, where the process of appointment is fraught with irregularities, inadequacies or bias, the output from such system would in the end be undesirable.
- 3.2 Some of the issues leaving stakeholders and the public desirous of a reform in the process are discussed hereunder:
- A) **The composition of the FJSC and NJC in which the CJN is the Chairman:** The NJC and the FJSC have over the years proved to be incapable of

fellow men? The answer is, in my view, NECESSITY, best encapsulated in the Yoruba saying that although God will eventually catch the thief, the owner of the stolen clothes will catch cold.

2. What work does a Judicial Officer do?

A Judicial Officer exercises judicial powers in accordance with Section 6 (6) of the Constitution which extends (i) to all inherent powers and sanctions of a court of law; (ii) to 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 questions as to the civil rights and obligations of that person.

See also Section 285 of the Constitution which establishes Election Tribunals for the Federation and the States and empowers Judicial Officers as members to hear and determine whether –

- (a) any person has been validly elected as a member of the National Assembly;
- (b) the term of office of any person under the Constitution has ceased;
- (c) the seat of a member of the senate or a member of the House of Representative has become vacant; and
- (d) a question or petition brought before the election tribunal has been properly or improperly brought.

In the course of carrying out his duty to adjudicate and interpret laws, a Judicial Officer undertakes, among others, the review of Government actions; enforcement and protection of Human Rights and the maintenance of the Rule of Law.

He also administers the Penal Laws of the land which involve the punishment of deviant behaviours.

By virtue of the enormous powers conferred on him by the Constitution and various extant laws, a Judicial Officer while exercising criminal jurisdiction can determine whether a citizen should live or die, walk in freedom or be confined in prison for life. In matrimonial causes, he is empowered to pry into the affairs of the couple and make far reaching decisions on whether the marriage should stand or fall apart. In land matters, a Judicial Officer can decide that people who have lived on a parcel of land for decades are not entitled and so must vacate, with all the attendant consequences.

When it comes to election matters, the tribunal, composed of Judicial Officers, can nullify the election of a candidate on several grounds notwithstanding that he is the choice of majority of the people.

Because Judges exercise these enormous and far reaching judicial powers of the State to intervene and interfere in almost all aspects of human life, it is imperative to have in place a strict and thorough process for their appointment which brings me to the next question:

Nigeria, Hon. Justice Aloma Mariam Mukhtar (GCON).

- 2.21 The Judicial Service Commissions and Committee, in advising the council when it comes to the appointment of the Judicial Officers, are mandatorily expected to comply with the guidelines by virtues of Rule 1 thereof. The guidelines have also provided steps to be followed by the National Judicial Council in recommending successful candidates to be appointed to Judicial Offices.
- 2.22 By Rule 2 of the Revised NJC Guidelines and Procedural Rules for Appointment of Judicial Officers of Superior Courts of Record in Nigeria 2014, the Chairman of a State Judicial Service Commission is expected to notify the Governor of it intention to appoint specified numbers of Judicial officers while Heads of Federal Courts and Chairman of the Judicial Committee of the FCT are expected to notify the CJN of their intention to appoint specified numbers of Judicial officers and all the notices are also expected to be sent to the Secretary of the NJC who should bring it to the attention of the NJC to give its nod before the process could continue.
- 2.23 Other elaborate provisions are also contained in the Guidelines. Importantly, Rule 4 sets out the requirement for appointment from the bar, from within the lower bench and from the academics.

the Grand Khadi of the Sharia Court of Appeal of the Federal Capital, Territory, Abuja; and the President of the Customary Court of Appeal of the Federal Capital Territory, Abuja, are ex-officio members. The rest of the committee members are a legal practitioner who has been qualified to practice as a legal practitioner in Nigeria for a period of not less than twelve years; and one other person, not a legal practitioner but who, in the opinion of the President, is of unquestionable integrity.

2.18 NJC GUIDELINES ON APPOINTMENT OF JUDICIAL OFFICERS

2.19 The National Judicial Council is responsible for the Appointment, Promotion and Discipline of Judicial Officers. It is created under the Provision of Section 153(1) of the Constitution. Section 158(1) of the Constitution provides for the independence of the NJC to the effect that it shall not be subject to the direction or control of any other authority or person.

2.20 In appointing judicial officers the NJC has a prescribed guideline for making such appointment and it is only individuals who have met the prescribed prerequisite that qualifies for selection and appointment. It was in 2004 that the written guidelines came into force. The guidelines were reviewed in 2014 by the National Judicial Council under the leadership of the former Chief Justice of

3. What is the process for the appointment of Judicial Officers?

I will like to state as a prelude that no person shall be considered for appointment into any judicial office under Section 6(5) of the Constitution in Nigeria unless he or she possesses the minimum post call to the Bar qualification as follows:

1. For appointment to the Supreme Court of Nigeria, a candidate must be qualified to practice as a legal practitioner in Nigeria and must have been so qualified for a period of not less than fifteen (15) years (Section 231 of the Constitution).
2. For appointment to the Court of Appeal, a candidate must be qualified to practice as a legal practitioner in Nigeria and must have been so qualified for a period of not less than twelve (12) years (Section 238 of the Constitution).
3. For appointment to the Federal High Court, Federal Capital Territory High Court and States High Court, a candidate must be qualified to practice as a legal practitioner in Nigeria and must have been so qualified for a period of not less than ten (10) years (Section 250 (3), 256 (3) and 271 (3) of the Constitution respectively).
4. For appointment to the Federal Capital Territory (FCT) and States Sharia Court of Appeal, a candidate shall not be qualified unless: (a) he is a legal

practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognised qualification in Islamic Law from an institution acceptable to the National Judicial Council; or (b) he has attended and has obtained a recognised qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than twelve years; and (i) he either has considerable experience in the practice of Islamic Law, or (ii) he is a distinguished scholar of Islamic Law (Section 261 (3) and 276 (3) of the Constitution).

5. A person shall not be qualified to hold office as a Judge of the Customary Court of Appeal of the Federal Capital Territory (FCT) and the States unless: (a) he is a legal practitioner in Nigeria and he has been so qualified for a period of not less than ten years and in the opinion of the National Judicial Council he has considerable knowledge and experience in the practice of customary law; or (b) in the opinion of the National Judicial Council he has considerable knowledge of and experience in the practice of customary law (Section 266 (3) and 281 (3) of the Constitution).

composition of the State Judicial Service Commission; the lawyers must have qualified to practice as legal practitioners in Nigeria for at least a period of 10 years. Also in the structure, there are two non-legal practitioners, who in the opinion of the State Governor have unquestionable integrity.

JUDICIAL SERVICE COMMITTEE OF THE FEDERAL CAPITAL TERRITORY, ABUJA

- 2.16 The Judicial Service Committee for the Federal Capital Territory, Abuja, was established by section 304(1) of the Constitution (as amended). One of the functions of the Judicial Service Committee of the Federal Capital Territory, Abuja, is to advise the National Judicial Council on the appropriate persons for nomination to be appointed to the offices of: the Chief Judge of the Federal Capital Territory, Abuja; a Judge of the High Court of the Federal Capital Territory, Abuja; the Grand Khadi of the Federal Capital Territory, Abuja; the President of the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Khadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja; and a Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja.

COMPOSITION

- 2.17 Members of the committee consist of the Chief Judge of the Federal Capital Territory, Abuja, as the Chairman. The Attorney-General of the Federation;

- iii. Attorney General of the Federation
- iv. Chief Judge of the Federal High Court
- v. President of the National Industrial Court
- vi. Two Legal Practitioners of not less than 15 years standing at the bar out of four recommended by the NBA.
- vii. Two other non-lawyers who are of unquestionable integrity in the opinion of the President.

2.13 STATE JUDICIAL SERVICE COMMISSION

- 2.14 The commission was created by section 197(1) (c) of the 1999 Constitution (amended). There are 36 states in Nigeria; each of the states has a commission.

COMPOSITION

- 2.15 The composition of the commission includes the Chief Judge of the State, who shall be the Chairman. After the Chairman there may be seven members of the commission depending on whether a state has both the Sharia Court of Appeal and the Customary Court of Appeal. Among the members of the commission are ex-officio members. The officials are the Attorney-General of the State; the Grand Khadi of the Sharia Court of Appeal of the State; if any, and the President of the Customary Court of Appeal, if any. There are two legal practitioners in the

(A) APPOINTMENT OF A HIGH COURT JUDGE, KADI SHARIA COURT OF APPEAL AND JUDGE OF CUSTOMARY COURT OF APPEAL

Since the process for the appointment of High Court Judges, Customary Court Judges and Kadis of the Sharia Court of Appeal is essentially the same, I shall focus mainly on the process for appointing High Court Judges in my presentation. In the same vein, I shall examine the process for the appointment of Chief Judges as representative of the appointment of President of Customary Court of Appeal and Grand Kadi of the Sharia Court of Appeal.

It is important to note that the appointment of Judicial Officers of all superior courts of record is governed essentially by the Constitution and the 2014 Revised National Judicial Council (NJC) Guidelines & Procedural Rules For The Appointment of Judicial Officers of All Superior Courts of Record in Nigeria (hereinafter referred to as the 2014 Revised NJC Rules).

It is only after a candidate has secured the foregoing constitutional qualifications that he can be considered for appointment as Judicial officer through the process detailed in the 2014 Revised NJC Rules which begins with a BUDGET DEFENCE at the National Judicial Council. This defence is conducted by the Chief Registrar of the High Court in company with the Accountant and other management staff members before the Secretary and some senior management members of National Judicial Council.

It must be noted that the number of Judicial Officers that can be appointed by the State is determined by the budget

of the National Judicial Council which pays the salaries and allowances of all Judicial Officers of Superior Courts of record and a decision taken after the budget defence is conveyed to the Chief Judge/Head of Court in writing.

After receiving the National Judicial Council letter on the number of Judges that can be appointed in the year, the State Chief Judge, who is the Chairman of the State Judicial Service Commission gives notice to the Governor of the State concerned, stating the number of Judicial Officers approved and intended to be appointed; Rule Two (1) of the 2014 Revised NJC Rules.

For appointment of Judicial Officers to a Federal Court and the FCT High Court, see Rule Two 2 (a) and (b) of the 2014 Revised NJC Rules respectively.

A copy of the notice sent to the Governor or, as the case may be, to the Chief Justice of Nigeria shall be forwarded to the Secretary of the National Judicial Council who will then advise the Chief Justice and Chairman of the Council, on the number of Judicial Officers that can be appointed in the Council's budget for the year (Rule Two (3) and (4), 2014 Revised NJC Rules).

After considering the advice of the Secretary, the Chief Justice of Nigeria shall notify the State Chief Judge or head of Federal Court concerned in writing that the exercise may or may not be proceeded with and the decision of the Chief Justice of Nigeria in this regard shall be final unless the Chief Judge or Head of the Court satisfies the Chief Justice of Nigeria that the decision should be reviewed (Rule Two (5)).

other body is at the State Level. The Federal Judicial Service Commission (FJSC), and the Judicial Service Committee (JSC) of the Federal Capital Territory operate as an advisory body to the National Judicial Council when it comes to the appointment of the Federal and Federal Capital Territory Judicial Officers respectively.

- 2.9 Within the spheres of the appointment of the State Judicial Officers, is the responsibility of the State Judicial Service Commission to advise the National Judicial Council of suitable persons qualified to occupy the exalted office.

2.10 **FEDERAL JUDICIAL SERVICE COMMISSION**

- 2.11 The Federal Judicial Service Commission (FJSC) is a body established by the Constitution as a Federal Executive body, like the National Judicial Council. The Federal Judicial Service Commission is the sole body responsible for advising the National Judicial Council in nominating credible persons to be appointed to the Federal Judicial Offices.

COMPOSITION

- 2.12 Paragraph 12 of the Third Schedule to the 1999 Constitution sets out the composition of the FJSC to include:
- i. CJN as Chairman
 - ii. President of the Court of Appeal

COMPOSITION

2.6 Paragraph 20 of the 3rd Schedule to the 1999 constitution states the composition of the NJC as:

- i) The CJN as Chairman
- ii) The next most senior JSC (as the Deputy Chairman)
- iii) President of the Court of Appeal.
- iv) Five retired Justices to be selected by the Chief Justices of Nigeria from the Supreme Court and Court of Appeal.
- v) Chief Judge of the Federal High Court
- vi) President of the National Industrial Court
- vii) One Grand Khadi to be appointment by the Chief Justice of Nigeria
- viii) One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria
- ix) Five (5) Members of the NBA to be recommended by the NBA President
- x) Two non-lawyers who are of unquestionable integrity.

2.7 OTHER ADVISORY BODIES

2.8 Below the NJC are three coordinate advisory bodies; two of the bodies are at the Federal level and the

A copy of the notice served on the Governor and his response thereto shall be served on each member of the State Judicial Service Commission/Committee (Rule Two (6)).

After receiving the approval of the Chief Justice of Nigeria to proceed with the process of appointment, the relevant Judicial Service Commission/Committee shall do the followings:

- (i) Call for expression of interest by suitable candidates in (a) a public notice placed on the website of the Judicial Service Commission/Committee concerned (b) notice Boards of the Courts and (c) notice Boards of branches of Nigerian Bar Association (NBA) in the State.
- (ii) Write letter to every other Head of Superior Courts of Record in Nigeria and to every Judicial Officer of the Court to which appointment is to be made, asking them to nominate suitable candidates for the proposed judicial appointment.
- (iii) In the case of appointment to a Federal Court, write letter to the President of Nigerian Bar Association (NBA), or in the case of appointment to a State Court, write letter to the Chairman of every branch of Nigerian Bar Association (NBA) in the State, asking for nomination of suitable candidates for the proposed appointment and asking the President or Chairman as the case may be to bring to the notice

of suitable candidates the call for expression of interest (Rule Three (1)(a) 2014 Revised Rules).

Where the appointment of Judicial Officers is to be made to the Court of Appeal and Supreme Court of Nigeria, the President of the Court of Appeal or the Chief Justice of Nigeria as the case may be, will write to Heads of Courts, serving Justices of Court of Appeal/Supreme Court of Nigeria and President of the Nigerian Bar Association (NBA) asking for nomination of suitable Judicial Officers/Legal practitioners for appointment as Justices of Court of Appeal or of Supreme Court of Nigeria as the case may be (Rule Three (1)(b) of the 2014 Revised Rules).

While calling for expression of interest and request for nomination, the Judicial Service Commission / Committee shall specify the closing date for the receipt of applications and/or nominations and immediately after the closing date, the Chairman shall make a provisional shortlist on the merits, consisting of not less than twice the number of Judicial Officers intended to be appointed at the particular time. He shall thereafter circulate the provisional shortlist together with a request for comments on the suitability or otherwise of any of the shortlisted candidates under Rule Three (3) & (4) of the Rules as follows:

- (a) among all serving and retired Judicial Officers of the Court to which an appointment, other than that of the Head of a Court, is to be made.
- (b) among all serving and retired Heads of the relevant State or Federal Court,

2.2 **THE INSTITUTION RESPONSIBLE FOR THE APPOINTMENT OF JUDICIAL OFFICERS**

- 2.3 The Institutions responsible for the appointment of judicial officers are determined based on the persons empowered by the Constitution to appoint such Judicial Officers. As identified under Chapter VII, Part I and Part II of the Constitution, Federal Judicial Officers are Judges of the Superior Court of Records, within the powers of the President of Nigeria to appoint. The Judicial Officers appointments' vested in the State Governors are called the State Judicial Officers.

2.4 **RECOMMENDATION AND ADVISORY BODIES FOR THE APPOINTMENT OF JUDICIAL OFFICERS**

The National Judicial Council (NJC)

- 2.5 No person can become a Judicial Officer in Nigeria without being appointed on the recommendation of the Federal and State advisory bodies as the case may be to the NJC. It is the responsibility of the recommendation body to recommend candidates to the President or the State Governors depending on the judicial office. In other words, the National Judicial Council, (NJC) is the highest body to make recommendations of suitable persons to the President or Governor as the case may be for appointment for Judicial Offices.

experience in Islamic Law or he must be a distinguished scholar of Islamic law or held a qualification in Islamic law from an institution approved by the National Judicial Council and which qualification must have been held for a period of not less than 12 years.

Section 266(3) also provides that for persons to be considered for appointment as President or Judge of the Customary Court of Appeal of FCT, such person must additionally in the opinion of the National Judicial Council possess considerable knowledge in the practice of Customary law.

Section 254 (b) (1) of the Constitution vests the powers to appoint the president of the National Industrial Court on the President of the Country on the recommendation of the NJC and subject to confirmation of the appointment by the senate while the Judges of the NIC are appointed by the President on the recommendation of the NJC. 10 years post qualification as a lawyer is required in addition to knowledge and experience in law and practice of industrial relations and employment in Nigeria.

Similar provisions as those provided for by the constitution in respect of the appointment of Judges of the FHC, FCT High Court, Shariah Court of Appeal of the FCT and Customary Court of Appeal of the FCT are also provided for in Chapter VII, Part II in respect of appointment of Judges of the High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State with the Governor of the state being vested with the power to make the appointment.

- (c) among the Nigerian Bar Association branches in the State concerned and the President of Nigerian Bar Association (NBA) in the case of an appointment to a Federal Court.
- (d) among every member of the Judicial Service Commission / Committee concerned.

The members shall then deliberate on the provisional shortlist and approve same with or without modification after which the list becomes final (Rule Three (5) 2014 Revised NJC Rules).

The Chairman of the Judicial Service Commission/Committee acting under Rule Four (1) of the NJC Rules shall forward or direct the Secretary of the Commission/Committee to forward to every shortlisted candidate NJC form 'A' to be completed and returned to the Chairman with all the necessary attachments specified therein.

Acting under Rule Four (2) of the Rules, the Chairman of the Commission/Committee shall then place before the members for their consideration, a memorandum on each of the shortlisted candidates with the followings:

- (1) The completed NJC form A with all the relevant attachments.
- (2) Comments of persons nominating the candidates.
- (3) Any petition or protest against a shortlisted candidate and the response of the candidate.

- (4) Detailed medical certificate of fitness issued by a Government Hospital or medical institution; and
- (5) Report of the Department of State Services on the suitability or otherwise of the candidate for appointment.

After the final approval by members of the Commission/Committee of the candidates for appointment, the Chairman shall thereafter advise or recommend same to the National Judicial Council (NJC) by a memorandum addressed to the Chief Justice and Chairman National Judicial Council or Secretary of Council with the statement that the National Judicial Council Guidelines and Procedural Rules have been strictly and fully complied with. The memorandum shall be accompanied by:

1. Minutes of meeting of the Judicial Service Commission/Committee where the nomination of candidates was considered and approved, duly adopted and signed by the Chairman and Secretary.
2. All the documents placed before the Commission/Committee for consideration and approval.
3. Proof of legislation for the establishment of the particular Court.
4. Proof of capital vote in the approved budget for the Court concerned.

- **QUALIFICATION AND APPOINTMENT AS CHIEF JUDGE AND AS A JUDGE OF THE FEDERAL HIGH COURT, FCT HIGH COURT, SHARIAH COURT OF APPEAL OF THE FCT AND CUSTOMARY COURT OF APPEAL OF THE FCT**

Qualification and appointment as a Judge of the FHC, FCT High Court, Sharia Court of Appeal of the FCT and Customary Court of Appeal of the FCT is regulated by Section 250, Section 256, Section 261 and 266 of the 1999 Constitution respectively.

Section 250(1) & (2), Section 256(1) & (2), Section 260(1) & (2) and Section 266(1) & (2) respectively provide for the procedure of appointment as the Chief Judges and Judges of the Federal High Court, High Court of the FCT respectively to the effect that such appointment shall be made by the President on recommendation by the National Judicial Council (NJC), and subject to confirmation by the senate in respect of the Chief Judge of the Federal High Court.

Section 250(3), Section 256(3), Section 261(3) and Section 266(3) provides for the qualification for appointment as Judge of the FHC, FCT High Court, Sharia Court of Appeal of the FCT and Customary Court of Appeal of the FCT respectively to the effect that only legal practitioners who have been so qualified to practice in Nigeria for a period of not less than 10 years shall be considered for appointment to those Courts.

Section 261(3) additionally provides that person to be considered for appointments as a Khadi of the Sharia Court of Appeal of the FCT must have considerable

who have been so qualified to practice in Nigeria for a period of not less than 15 years shall be considered for appointment to the Supreme Court bench.

- **QUALIFICATION AND APPOINTMENT AS PRESIDENT AND JUSTICE OF COURT OF APPEAL**

Qualification and appointment as a Justice of the Court of Appeal is prescribed under Section 238 of the 1999 Constitution (as amended).

Section 238(1) and (2) provides for the procedure of appointment as President or as Justice of Court of Appeal to the effect that such appointment shall be made by the President on recommendation by the National Judicial Council (NJC) subject to confirmation by the Senate.

Section 238(3) provides for the qualification for such appointment to the effect that only legal practitioners who have been so qualified to practice in Nigeria for a period of not less than 12 years shall be considered for appointment to the Court of Appeal.

5. Proof of availability of suitable Court hall, Judge's residence, car and library among others.
6. A chart showing at a glance the essential particulars of the candidates shortlisted. See Rule 5 (4) of the Rules.

Upon receiving the memorandum from the Judicial Service Commission/Committee, the National Judicial Council shall: (a) dispatch a team consisting of staff of National Judicial Council to visit the State where appointment is to be made for a verification of availability of courtrooms, vehicles and residence. (b) arrange for an interview of the shortlisted candidates to determine their suitability or otherwise by a special panel usually headed by the Justice of the Supreme Court next in line to the Chief Justice of Nigeria who is also a member of Council and other Council members. The Chief Judge/Head of Court shall be in attendance during the interview of the candidates shortlisted for appointment and an unsuccessful candidate at the interview shall not be recommended for appointment by Council. After considering the reports of its verification team and interview panel, the National Judicial Council at plenary may proceed to approve the shortlisted candidates and recommend some or all for appointment to the Governor of the State or the President of the Federal Republic of Nigeria as the case may be or reject the entire proposal for appointment as not being justified by need (see Rule Five (5) of 2014 Revised NJC Rules).

(B) APPOINTMENT OF A CHIEF JUDGE

The appointment to the heads of the High Court, Sharia Court of Appeal and Customary Court of Appeal in both acting and substantive capacities involve essentially the same process. This being the case, I shall focus only on the appointment of the Chief Judge of the State.

(1) IN ACTING CAPACITY

The 1999 Constitution of the Federal Republic of Nigeria as amended makes provision for the appointment of the Chief Judge of a State in an acting capacity in Section 271 (4) and (5) as follows:

"(4) If the office of Chief Judge of a State is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of the office, or until the person holding the office has assumed those functions, the Governor of the State shall appoint the most senior Judge of the High Court to perform those functions.

(5) Except on the recommendation of the National Judicial Council, an appointment pursuant to subsection (4) of this Section shall cease to have effect after expiration of three months from the date of such appointment and the Governor shall not

2.0 THE LAW AND RELEVANT INSTITUTION/ BODIES RESPONSIBLE FOR JUDICIAL APPOINTMENT

2.1 THE LAW GUIDING JUDICIAL APPOINTMENT:

The Groundnorm (Constitution) is the major law on judicial appointment for judicial officers. It specifies the most fundamental requirements for qualification as a judicial officer. Judicial appointment into Federal Courts is regulated under Chapter VII, Part I of the Constitution while appointment as a Judicial Officer into the various State Courts is provided for under Chapter VII, Part II.

- **QUALIFICATION AND APPOINTMENT AS CHIEF JUSTICE OF NIGERIA OR AS JUSTICE OF SUPREME COURT**

As the Apex Court of the Land, Qualification and appointment as a Justice of the Court is prescribed under Section 231 of the 1999 Constitution (as amended).

Section 231(1) and (2) provides for the procedure of appointment of the CJN and Justice of the Supreme Court to the effect that such appointment shall be made by the President on recommendation by the National Judicial Council (NJC) subject to confirmation by the Senate.

Section 231(3) provides for the qualification for such appointment to the effect that only legal practitioners

law and his decision is binding and must be obeyed by both individuals and the state. For the purpose of this paper, reference to judicial officers shall mean judges/justices of superior courts of record in Nigeria as provided for in the Constitution and include: the Chief Justice of Nigeria, Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, the Chief Judge and Judges of the States High Courts and of the High Court of the Federal Capital Territory, the Grand Khadi or Khadis of Sharia Court of Appeal of States and of the Federal Capital Territory, the President and Judges of the Customary Court of Appeal of States and of the Federal Capital Territory, President and Judges of the National Industrial Court and other Tribunals or person acting in similar capacity in a court of record.

1.4.2 ADMINISTRATION OF JUSTICE: This refers to activity directed towards the execution of judicial functions such as interpretation of the law, enforcement of citizens right and obligation, and determination of the rights and liabilities of parties before the court in civil or criminal proceeding. The presumed goal of such an administration is to provide justice for all those accessing the legal system without any discrimination.

re-appoint a person whose appointment has lapsed."

The following facts become evident from the above provisions of the Constitution.

- (a) In the event of vacancy in the office of the Chief Judge of a State which may be due to: (i) death, or suspension or retirement from office of the occupant or (ii) inability of the occupant to perform the functions of the office due to ill-health or other causes, the Governor has the sole power to appoint a person as Chief Judge in an acting capacity.
- (b) The Governor has no discretion in the matter but to appoint the most senior Judge of the High Court of the State to perform the functions of the office of the Chief Judge.
- (c) The appointment in acting capacity shall be for an initial period of three months from the date of such appointment and a person whose appointment has not been renewed before the expiration of three months shall not be reappointed by the Governor.
- (d) On the recommendation of the National Judicial Council, a person can be reappointed severally and for unspecified period or length of time in an acting capacity to the office of the Chief Judge, as long as the Governor seeks and obtains the approval and recommendation of National Judicial Council before the lapse of three months.

- (e) The Governor cannot appoint anyone outside the High Court of the State in an acting capacity under Section 271 (4) of the Constitution.

(2) IN SUBSTANTIVE CAPACITY

Section 271 (1) of the 1999 Constitution of Federal Republic of Nigeria as amended provides that the,

"The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State". See Sections 276 (1) and 281 (1) of the Constitution on the appointment of Grand Kadi and President Customary Court of Appeal respectively.

The appointment to the office of a Chief Judge is initiated by the State Judicial Service Commission which is saddled with the power of advising the National Judicial Council on suitable persons for such appointment. See part II paragraph 6 of Third Schedule to the Constitution which provides that the Judicial Service Commission of the State shall have power to:

and appointed; for if the process of judicial appointment is fraught with irregularities and bias, the end product from such judicial institution in term of justice would also be questionable and leading to distrust in the judiciary by the citizenry of the country and the international community. The effect of this to the wellbeing of the citizens and the overall growth and development cannot be overemphasized.

- 1.2 Inherent in the topic under consideration is a tacit admission that the current process of Judicial appointment is fraught with challenges necessitating a dialogue on the way and manner of promoting effective and efficient administration of justice in Nigeria.
- 1.3 In the course of this discussion, we shall evaluate the appointment process into the courts of record in Nigeria and identify the bodies saddled with the responsibilities of making such appointment. We shall also discuss the issues and challenges facing the present judicial appointment process while possible solutions are also proffered as a way forward to achieving a desired judicial system capable of administering justice efficiently and effectively.

1.4 DEFINITION OF RELEVANT TERMS

- 1.4.1 **JUDICIAL OFFICERS:** A judicial officer is a person saddled with the responsibilities and powers to facilitate, arbitrate, preside over and make decisions and directions with regard to the application of the

EXAMINING THE PROCESS OF APPOINTMENT OF JUDICIAL OFFICERS AS A MEANS OF ACHIEVING EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE IN NIGERIA

A PRESENTATION BY:

K. K. ELEJA, SAN

1.0 INTRODUCTION

- 1.1 Every society is governed by laws, paramount of which is the grundnorm. The attainment of justice represents one of the enduring promises of constitutional democracy like that of Nigeria. In a proper democratic setting, no one is above the law which, as an engine of social change, regulates the conduct of persons, institutions and government. Law is a guide to decision-making by courts. It has been recognised that law itself is incapable of solving human problems since it is not an end in itself but a means to an end. Justice is what the courts should do while interpreting laws because justice; inclusive of substantial and social justice, is the pivot of law. In a democratic state, justice should not just be done but be evidently seen to have been done. The process of attaining an effective and efficient administration of justice is not that which starts and end in the court, rather it begins with the process through which judicial officers saddled with the responsibility of administering justice are selected

"(a) advise the National Judicial Council on suitable persons for nomination to the office of:

(i) the Chief Judge of the State.

(ii) the Grand Kadi of the Sharia Court of Appeal of the State , if any,

(iii) the President of the Customary Court of Appeal of the State, if any"

The practice is that whenever a vacancy occurs or is about to occur in the headship of the Court, the Judicial Service Commission or Committee as the case may be requests the most senior Judicial Officer and person next to him in rank to forward their curriculum vitae together with relevant documents to the Secretary of the Commission. The Chairman of the Commission shall then send the list of the two names with a request for comments on their suitability to: (i) All serving and retired Heads of the relevant State Court. (ii) All the branches of Nigerian Bar Association in the State (iii) Every member of the Judicial Service Commission. (iv) The department of State Services.

A memorandum on each of the two candidates is prepared together with the report of Department of State Services, medical report, comments from the branches of Nigerian Bar Association in the State and comments of all serving and retired Heads of the relevant State Court.

The list of candidates and comments made by serving and retired heads of the court, branches of Nigerian Bar Association in the State, medical certificate of fitness and Department of Security Services report are served on the members of the Commission who have the discretion whether or not to invite the shortlisted candidates for an interview or interaction.

After deliberations by the Commission, a memorandum on the candidates who are categorised into priority and reserve lists and which contain the comments of Chairman and members; the comments of retired heads of the Court; Report of Department of State Services; comments from the branches of the Nigerian Bar Association and medical reports on each of the candidates together with the minutes of meeting of the Commission signed by the Chairman and Secretary is then forwarded to the National Judicial Council, where a panel headed by the Justice of the Supreme Court next in rank to the Chief Justice of Nigeria conducts an interview for the two candidates.

The role of the National Judicial Council in the appointment of Heads of Courts is provided in paragraph 21 (c) Part I of Third Schedule to the Constitution which states that the National Judicial Council shall have power to:

- recommend to the Governor from among the list of persons submitted to it by the State Judicial Service Commission persons for appointments to the offices of the Chief Judges of the States, Grand Kadis of the Sharia Courts

by the answers to four questions- Were we truly men of courage ? Were we truly men of judgment? Were we truly men of integrity? Were we truly men of dedication?"

Once again I want to thank Adebayo Adelodun & Co. Law firm for affording me this wonderful opportunity to share my thoughts on this topical issue which incidentally is the first of its kind that I will be attending after my retirement from office almost twenty (20) months ago.

I wish you all a fruitful, fulfilling and prosperous new legal year in advance.

The flipside of this requirement is that, where the Governor for whatever reasons fails in this regard, no appointment can be proceeded with even where the need is dire. The requirement also gives the Governor, in some cases, the opportunity to make demands concerning candidates for appointment, thus laying the foundation for an erosion of judicial independence.

I suggest that the responsibility for the provisions of these items be transferred to and included in the NJC budget.

As stakeholders in the administration of Justice, we must collectively shine our eagle eyes not only when the process for the appointment of Judicial Officers is ongoing but also, post appointment. We must hold all Judicial Officers to a strict observance of the Code of Conduct For Judicial Officers of the Federal Republic of Nigeria as a means of securing an enduring, effective and efficient Justice administration.

Let us all be guided on our duty as citizens by the address of the late American President, J.F Kennedy, to a ***Joint Convention of the General Court of Commonwealth of Massachusetts on Monday January 9, 1961*** which reads in part:

"When at some future date the high court of history sits in judgment over each one of us- recording whether in our brief span of service we fulfilled our responsibilities to the State- our success or failure in whatever office we hold, will be measured

of Appeal of the States and Presidents of the Customary Courts of Appeal of the States.

The National Judicial Council at plenary under the Chairmanship of the Chief Justice of Nigeria, after deliberating on the memorandum together with all the attached documents and the report of its interview panel will usually but not necessarily recommend the candidate on the priority list as head of the Court concerned to the Governor who then makes his appointment subject to confirmation by the State House of Assembly. See Section 271 (1) of the Constitution earlier referenced in this paper.

The last stage in the process of appointment of the Chief Judge after confirmation by the State House of Assembly is for the Governor to administer the oath of allegiance and judicial oath in the Seventh Schedule to the Constitution, on the appointed candidate, who thereafter assumes office.

APPOINTMENT TO THE COURT OF APPEAL AND SUPREME COURT OF NIGERIA

Rule One of the 2014 Revised NJC Rules provides that appointments to both Federal and State Courts must be in line with the Rules, as follows:

"The Federal Judicial Service Commission, State Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory shall comply with these Rules in their advice to National Judicial Council (NJC) for nominations or

recommendations of candidates for appointment of Judicial Officers for the Superior Court of Record under the 1999 Constitution of the Federal Republic of Nigeria (as amended)."

The appointment of persons to the offices of Chief Justice of Nigeria, Justice of the Supreme Court, President of the Court of Appeal and Justice of the Court of Appeal is substantially the same with the process of appointment to State superior courts of record and their heads as earlier discussed in this paper except in the following respects which are inconsequential:

- (1) The role of the State Judicial Service Commission on the appointment of State Judicial Officers and FCT Judicial Service Committee on the appointment of FCT Judicial Officers is played by the Federal Judicial Service Commission when it comes to appointment of Federal Judicial Officers.
- (2) Whereas in the appointment of Judicial Officers to State Courts, the Chief Judge or head of Court is required to give notice of the proposed appointment to the Governor, the Heads of Federal Courts or Federal Capital territory (FCT) High Court, on the other hand are required to give notice to the Chief Justice of Nigeria and Chairman of the Federal Judicial Service Commission.
- (3) In the States, newly appointed Judicial Officers take oath of allegiance and judicial oath before the

- (i) *successful in the legal profession either as a private legal practitioner or a legal officer or Magistrate ?*
- (ii) *of good character and reputation, honest and of high integrity?*
- (iii) *Garrulous or quarrelsome?"*

With due respect to the drafters of the Rules, I do not see any candidate for appointment to a Judicial office answering any of the above questions in the negative. I suggest therefore that paragraph 22 of the NJC Form A be removed and directed to persons nominating candidates or members of the Judicial Service Commission concerned with appointment or the department of state services.

4. Before considering the appointment of any Judicial Officer, whether Federal or State, the NJC must satisfy itself that official houses, brand new vehicles, court halls and office facilities like furniture, laptops, photocopying machines e.t.c are available for all the candidates to be appointed.

In as much as these requirements are intended for the benefit of the candidates to be appointed and the dignity of judicial office, they have a major drawback.

This is because at least at the State level, it is the Governor that makes these items or the fund for their procurement available to the Judiciary.

recognition and approval of the institution issuing such certificate at the discretion of NJC. Question – is the NJC as a body sufficiently equipped to deal with such an issue?

I suggest most humbly that paragraph (b) of Section 261 (3) of the Constitution be removed since we have a good number of people in possession of the qualification required under Section 261(3)(a). Ditto for Section 276 (3) on the same issue.

2. I also suggest that subparagraph (b) of Section 266 (3) of the Constitution be removed because it allows a person to be appointed as a Judge of the Customary Court of Appeal if, *"in the opinion of the National Judicial Council he has considerable knowledge of and experience in the practice of customary law."* This provision, in my view, allows a candidate who has no formal education at all to be appointed to the high judicial office simply because the NJC considers him to possess considerable knowledge and experience in the practice of customary law. In any case, there is a pool of candidates to satisfy the requirement for appointment under Section 266(3)(a) of the Constitution.
3. Paragraph 22 of NJC Form A requires the candidate for a judicial appointment to answer the following questions:

"22. Does the candidate consider himself –

Governor, all Federal Judicial Officers and Judicial Officers of the Federal Capital Territory (FCT) on the other hand take their oath of allegiance and judicial oath before the Chief Justice of Nigeria who in turn is sworn in by the President of the Federal Republic of Nigeria.

- (4) The appointment of a person to the office of the Chief Judge of a State is made by the Governor subject to confirmation by the State House of Assembly while the appointment of a person to the office of the Chief Justice of Nigeria or a Justice of the Supreme Court of Nigeria is made by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate.

The process for the appointment of Judicial Officers of all Superior Courts of Record in Nigeria contained in the 2014 Revised National Judicial Council Guidelines and Rules can be summarized as follows:

1. Letter of request for approval to proceed with appointment is written by the Head of Court concerned at federal level to the Chief Justice of Nigeria.
2. Letter of request for approval to proceed with appointment is written by the Head of Court at the State level to the Governor.

3. After securing the approval of the Chief Justice of Nigeria/National Judicial Council to commence the exercise as authorised in the National Judicial Council budget of the particular Court for the year, a call is made for expression of interest and nominations from Heads of Courts in the Federation, serving Judges of the Court concerned and where the appointment is that of a Head of Court, all former heads of the particular Court, President of the Nigerian Bar Association in case of Federal Courts and Chairman of the branches of Nigerian Bar Association in the State for State Courts and members of the Judicial Service Commission.
4. Shortlisting of candidates and circulation of same to members of the Judicial Service Commission concerned, serving and retired Judges of the particular Court, president of Nigerian Bar Association for Federal Courts and Chairmen of branches of Nigerian Bar Association in the State for their comments.
5. Serving every shortlisted candidates with the NJC form A to be completed and returned to the Commission and requesting them to undergo comprehensive medical test.
6. Serving the Department of State Services the list of the shortlisted candidates together with their curriculum vitae for security report.

on the appointment of Judicial officers which I believe should be reworked or removed entirely.

1. Section 261 (3) of the Constitutional provides that:

"A person shall not be qualified to hold office as Grand Kadi or Kadi of the Sharia Court of Appeal unless-

- (a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognised qualification in Islamic Law from an institution acceptable to the National Judicial Council; or*
- (b) he has attended and has obtained a recognised qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than twelve years*
....."

Whereas the bar raised in Section 261 (3) (a) above for appointment as a Kadi is very high, the qualification requirement in subparagraph (b) which by interpretation will admit of a holder of certificate or diploma in Islamic Law is not only low and nebulous, but leaves the

Why then is the elaborate process put in place for the appointment of Judicial Officers not producing the desired results?

I think the answer lies mainly in the fact that members of the Bench, both serving and retired, senior and junior members of the Bar, security agencies, medical practitioners, and members of the public do not observe due diligence in carrying out the respective roles assigned to them in the appointment of Judicial Officers. We all focus more on sentiments of religion, ethnicity and other extraneous considerations as the basis for our recommendations while shutting our eyes to any known factors that may disqualify candidates for judicial appointments.

Since candidates for judicial appointments are not from Mars or the Moon, but come from the same locality with us, we are very familiar with their characters and tendencies, strengths and weaknesses. We are therefore sufficiently equipped with the knowledge of their suitability or otherwise for judicial appointments. If we know them so much, are we willing to reveal their dark sides for the sake of our nation? These are some of the pertinent issues that we must consider as stake holders in our search for an effective, efficient and enduring justice administration in Nigeria.

CONCLUSION

In concluding my paper, I will like to draw attention to some constitutional provisions and the 2014 Revised NJC Rules

7. Presentation of the final list of candidates before the State or Federal Judicial Service Commission as the case may be together with completed NJC form A, medical certificate of fitness and Department of State Services report, comments by NBA and of persons nominating candidates, petition/protest against a candidate if any together with the response of candidate, for approval.
8. The final decision of the Commission on the candidates shall be authenticated by the minutes of meeting of the Commission duly adopted and signed by the Chairman and Secretary which is then included in a memorandum with all relevant documents attached, addressed to the Chief Justice of Nigeria/Chairman National Judicial Council or the Secretary seeking the recommendation of National Judicial Commission (NJC) for the proposed appointment of Judicial Officers.
9. Recommendation of candidates for appointments by National Judicial Council to the President of the Federal Republic of Nigeria or the State Governor as the case may be.
10. Appointment by the President/Governor of Heads of Federal/State Courts subject to confirmation by the Senate/House of Assembly followed by swearing-in. In case of other Federal/State Judicial Officers, appointments without any confirmation hearing followed by swearing-in.

11. Assumption of office by the respective Judicial Officers.

4. Whether the process for the appointment of Judicial Officers of Superior Courts of record highlighted above is designed to ensure an effective and efficient Justice administration in Nigeria, or is it one of garbage in garbage out?

An effective and efficient Justice administration is one in which the court renders to each party involved in litigation, his or her due after a fair and even-handed contestation of facts, in a timely manner.

In his paper delivered on 25th November, 2019 at the 2019 All Nigeria Judges' Conference with the theme – ***SUSTAINING DEMOCRACY THROUGH EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE***, His Lordship, Honourable Justice Mohammed Lawal Garba JCA (as he then was) JSC opined as follows:

"... for the Court to be in a position to efficiently and effectively discharge its duty of safeguarding, protecting, defending and ensuring compliance with the provisions of the Constitution, as its guardian, it has to be virile, bold, dynamic, astute, upright, courageous, just, honourable, respectable and independent of external interferences and undue influences."

- (f) *rendering dishonest or questionable legal opinion or advice or suppression of truth and suggestion of falsehood in any legal matter in dealing with colleagues, clients, or the Courts of Law;*
- (g) *deliberate, improper or wrong completion of NJC Form 'A' with intent to deceive or mislead;*
- (h) *submission of false credentials and or deceitful or fraudulent curriculum vitae;*
- (i) *or is shown to have no or very limited exposure to practice at the Bar and conduct of cases in the Superior Courts of Record."*

Notwithstanding my view that the current process for appointing Judicial Officers in Nigeria is designed to throw up our best on the Bench, the truth is that today in Nigeria, there is a pervasive lack of public trust in our judicial system which is fuelled mainly by corruption, prolonged proceedings, conflicting decisions by Courts of same jurisdiction, unenforceability of Court decisions, especially against government institutions and officials and in some cases, Courts decisions that defy reason and legal precedents.

including Court of Appeal and Supreme Court of Nigeria, shall be disqualified and shall not be recommended for appointment if found to have been involved in:

- (a) canvassing or lobbying for the appointment directly or indirectly in any form and/or through any person or persons, such as but not limited to, politicians, traditional rulers, public officers or other Judicial Officers;*
- (b) bad behaviour, whether in or out of Court;*
- (c) activity suggesting impecuniosities and/or display of lifestyle that indicates that the candidate has been living above his/her means;*
- (d) influence peddling;*
- (e) any act of dishonesty or corruption or corrupt practice either, on behalf of himself or of any other Judicial Officer or professional colleague;*

It is my considered view that the elaborate process highlighted in this paper for the appointment of Judicial Officers of Superior Courts of record in Nigeria which involves inputs from members of the Bar, the Bench and the public, the medical profession, security agencies, the Executive and Legislative branches of Government is designed to produce incorruptible, disciplined, energetic/healthy and knowledgeable Judges and ensure an effective and efficient justice administration.

Some of the provisions contained in the 2014 Revised NJC Rules which are designed to ensure that the process of appointment throws up our best as Judicial Officers are as follows:

1. Rule Three (2) of the Rules provides that:

"Any person nominating a candidate must do so in writing and indicate clearly and in detail, that he/she has sufficient personal and professional knowledge of the candidate's requisite attributes for a reasonable period of time as would make him competent to make the nomination. He/She shall expressly certify that from his/her personal knowledge of the candidate, the candidate possesses the qualities set out in Rule 4 (4) (i) a – b of these Rules; and where applicable the qualities set out in Rule 4 (4) (i) (d)

and/or (e)". The qualities referred to in Rule 4 (4) (i) are:

"Good character and reputation, diligence and hard work, honesty, integrity and sound knowledge of the law and consistent adherence to professional ethics."

2. Rule Three (6) & (7) of the Rules provides guidance on what the Chairman of Judicial Service Commission should do in shortlisting candidates for judicial appointment as follows:

"(6) In carrying out the provisional shortlisting exercise, the Chairman of the Judicial Service Commission/Committee shall take into consideration as much as possible, (i) professional expertise and competence, including in the case of appointment of Judges from the High Court to the Court of Appeal and Justices of the Court of Appeal/Chief Judges/Legal Practitioners/academicians to the Supreme Court, the quality of judgments and performance and demonstration of judicial skills of the Judge; and in the case of Appointment from the Bar, evidence of 6 contested cases in the last 5 years; (ii) sound knowledge of law; (iii) seniority at the Bar and or the Bench; (iv) Federal

character or geographical spread where necessary and possible, without comprising the independence of the judiciary or allowing politics to permeate or influence the appointment.

(7) The Chairman of the Judicial Service Commission/Committee shall not include in the provisional shortlist any person whose reputation in the locality is low or had been tarnished, and where applicable, shall not include any Judicial Officer whose performance has been consistently rated low or not satisfactory in judicial performance evaluation reports."

3. Rule Four (4) provides that:

"In considering candidates, Judicial Service Commission/Committee shall take into account the fact that Judicial Officers hold high office of State and occupy an office carrying enormous powers and authority.

Accordingly, the National Judicial Council shall,

(ii) Consider that:

Candidates for the high office of Judicial Officers of the Superior Courts of Record