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An insight into the notion of law, justice and judiciary under Nigerian jurisprudence

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Abstract
The focus of every democratic government is the guarantee of justice dispensation. At the centre of this is the judiciary. In order to safeguard the rights of the citizenry and ensure unfettered access of the litigants to justice, the nation has patterned her Constitution alongside that of the United States of America to allow for separation of powers and judicial review mechanism. In addition, the Nigerian Constitution is founded on the principles of rule of law, equality and justice. The supremacy of the Constitution is preeminent and the court is sieised with the power to declare any act of the government contrary to the spirit and the letters of the organic law void.
However, philosophical perspectives to justice are often the main subject of discourse among legal scholars and commentators, this study nonetheless found it imperative to espouse the notion of justice as the end product of the law itself. This reflects in the popular maxim that" justice should not only be done but it should be manifestly and undoubtedly seen to be done".
Therefore, whilst this study found succor in analyzing the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), case laws and relevant journal articles on this subject, it however found that most of the statute books need to be revisited with a view to ensuring that some conflicting provisions hindering the course of justice dispensation are expunged. Judicial activism needs to be encouraged in the country to ensure that litigants are not shut out of the gate of justice through adherence to technicalities.

Keywords: justice, jurisprudence, insight, *Adhomini*, whimsical laws and *locus standi*

1. Introduction
The system of law is the greatest invention of man and without it, the modern society may have been made worse than we find it now. The courts exist in order to enable the aggrieved persons express their grievances by removing conflicts from the streets to the serenity of the Courts – "the Temple of Justice" for adjudication as *Ubi Societa, Ubi jus" that is, where there is a society, there must be laws and where there are laws, there must be remedies – "Ubi jus, Ubi remedium* [1].
When people lack this avenue, the legal system will collapse as people will take the law into their hands and consequently, there will be disorderliness and anarchy – the very antithesis of civilization – based on the domination of the weak by the strong. A situation which Thomas Hobbes described as existing in a state of nature.
The institution of Courts and its role towards achieving the end product which is Justice is the main focus of this paper albeit, it is considered apt to explain briefly what the court is all about as a foundation background. Later, the concept of, and quest for justice together with some related concepts like law, freedom and other desiderata of justice will be considerably treated in order to show how well the courts have discharged or have been discharging those ascribed roles. The Webster Encyclopedic Dictionary of English Language [2] defined a Court as:

> *A place where justice is administered; the persons or judges assembled for hearing and deciding causes, as distinguished from the counsel or jury, any judicial body, civil, military or ecclesiastical, the sitting of a judicial assembly.*

On the other hand, the Black Contemporary Laws Dictionary 5th editions, defined it as, "an organ of the government belonging to the judicial department whose function is the application of the law to the controversies before it and the public administration of justice".
A broader definition was given by Professor Nwabueze [3] interalia:

> *The judiciary refers to the whole body of lawyers who preside at the court. The term therefore embraces judges of superior as well as the inferior courts.*

It is instructive to note from the outset that no definition of law, no matter how well made is sacrosanct. It follows from all the above definitions that the judiciary is made up of the judicature which consist of courts of law established by the Constitution or under other statutes. The word court, or judge, or the judiciary are frequently used interchangeably and for every intent and purposes, it shall be adopted in that context here as they are synonymous.

The Role of Courts in Nigeria
The Nigerian 1999 Constitution (as amended), is fashioned to suit the presidential system of government similar to what obtains in the United States of America. This is premised on the concept of separation of powers which enhances

[1] See Nasiru Bello & Ors v. Attorney-general of Oyo State (1986) NWLR (pt. 45) 825, also Oshevire v. British Calendonia Airways (1996) 7 NWLR (pt. 163) 507.
[2] 1977 ed., Chicago, U.S.A.
[3] B. O. Nwabueze, "Machienry of Justice" 1963, p. 262.

constitutionalism and efficiency. Sections 4, 5 and 6 of the Constitution provides for the Legislature, Executive and the Judiciary. It however, proceeded in S.6 (1)(2) to vest the Judicial powers of the Federation or of a State in the Courts, being courts established for the Federation or for a State (as the case may be). Although, the Constitution did not define what is meant by Judicial powers however, this has been defined as, "the power to decide and pronounce a judgment and carry it into effect between persons and parties who bring cases before it for adjudication" [4] The right to determine actual controversies arising between diverse litigants is duly instituted in Court for proper jurisdiction [5] Section 6 (5) went further to enumerate the different types of courts through which judicial powers can be exercised. These specified Courts are expressly empowered by Chapter VII of the 1999 Constitution as the only superior courts of record. It follows therefore, that there is no power in either the National Assembly or a State House of Assembly to create a new court equal in status to any of the listed courts. There is however ample powers to create courts inferior to the superior courts, such as the Magistrates, Customary or the Native Courts" [6] Be that as they may, these courts were clothed with the following wide ranging constitutional powers pursuant to Section 6 (6) which provides that the powers "shall extend notwithstanding anything to the contrary in the Constitution, 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 question as to the civil rights and obligations of that person". The exceptions in those provisions are those specifically excluded by the Constitution [7] it is instructive to note from the above fundamental knowledge, that the preamble to our Constitution is a commitment binding and illustrating the founding spirit of the Constitution to be freedom, equality and justice for all Nigerians. In furtherance of these, directive principles of State Policy, Section 17 (e) provides that:

> *Enforcement of these guiding principles shall be the responsibility of independent, impartial and honest courts of law, to which easy access thereto shall be secured and maintained.*

The principles which guaranteed the freedom and liberty of the citizens are already enshrined in the Constitution [8].
The truth of these provisions can be found in the respected opinion of Oputa, JSC (of blessed memory), when he quoted Lord ATKIN, L. C. [9]. Who during the Second World War asserted that:

> *In this country England, amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It has always been one of the pillars of freedom and liberty for which on recent authority we are now fighting, that judges are no respecter of persons and stand between the subjects and the government any attempted encroachment on their ability by the executive, and are alert to see that any coercive action is justified in law.*

The Hon. Justice Oputa, went further to add in another case that:

> *I can safely say that here in Nigeria, even in the Military Government, the law is no respecter of persons, principalities, governments or power and that the courts stand between the citizens and the government, and are alert to see that the state or its agencies are bound by the law. Under our law, it is the respondent, Chief Ojukwu, a trespasser on the premises situate at No. 29, Queen's Drive, Ikoyi, after due hearing on the relevant evidence is adjudged the aggrieved party* [10].

These judicial opinions were further strengthened by the memorable pronouncement of the late Hon. Justice Kayode Eso, when he opined ex-cathedra that the courts have been appointed sentinels to guard over the fundamental rights secured to the people of Nigeria by the Constitution, and to guard against any infringement of it by the State [11].
The judiciary through the courts and in promoting justice, serve as a means of achieving social justice and orderliness in the society, and as an avenue for the redress of grievances and reducing vengeance through self-help by giving verdicts on the basis of known laws and thus accentuating the sense of justice in the generality of the people [12]. This is the traditional role of the Courts. The Court also ensures the survival of democracy through the observance of the rule of law. The rule of law is the bedrock of a democratic government. Judges therefore must ensure to preserve it as their sacred duties. Democracy being the government of the people, by the people and for the people, [13]. does not allow any room for tyranny, arbitrariness and oppressive use of powers by those in authority. For it to survive, government must ensure that its programmes or agenda are executed and or administered according to law, irrespective of gender, class, status, religion, nationality or political view. On this note, it is instructive and appropriate to reference the judgment of Marshall C. J. in *Marbury v. Madison* [14] where the learned jurist said that:

> *The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the law whenever he receives an injury. One of the first duty of the government is to afford that protection termed "a government of laws and not of men", and it will certainly cease to deserve this appellation if the law furnishes no remedy for the violation of a vested right.*

Obaseki J.S.C., gave judicial recognition for the concept and

[4] See Muskrat v. United State, 2098 US 346 at 361 (1911).
[5] United States v. Arrevdondo, 31 US 691 (1932).
[6] See S. 6 (4), 6(5) j – k, 1999 Constitution.
[7] Elufiaye v. Halilu (1993) 6 NWLR (pt. 30) 570 S.C., also Arch. Anthony Pkpgie v. V.A.G. of Lagos State (1981) INCLR 218 – 232.
[8] See generally Chapter IV, 1999 Constitution.
[9] See Hon. Kayode Eso, in paper entitled "The Court as the Guardian of the Constitution" to the All Nigeria Judges Conference at Abuja, 1986.
[10] Military Governor of Lagos State v. Ojukwu (1986) Supra.
[11] By President Abraham Lincoln of USA.
[12] U.S (1 Cranch) 137 1803.
[13] Supra, at p. 638.
[14] Fawehinmi v. INEC (2002) also Guardian Newspaper Ltd. v. A. G. of Federation (1995) NWLR (pt. 398) at 745.

the role of the Courts in this regard in Ojukwu's case [15] (Supra) at p.638 that:

> *The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means that government should be conducted within the framework of recognized rules and principles which restricts discretionary powers which Coke, C. J colourfully spoke of as the golden and straight net wand of law as opposed to the uncertain and crooked cord of discretion…The judiciary cannot shirk this sacred responsibility to the nation by maintaining the rule of law, 'it is in the interest of the government and all persons' in Nigeria that the law should be even-handed between the government and the citizens.*

There is no gainsaying the fact that this respectable opinion is a truism.

Another very important role of the Court is to act as the interpreter and watchdog of the Constitution. In acting out this interpretative role, the court enjoys a wide-ranging power expressly conferred by Section 4 (8) of the Constitution to keep surveillance over, and to review legislative and executive actions. In pursuance of this provision, the courts had in a plethora of judicial decisions [16] intervened in the legislative process and have never relented from setting aside any law which runs contrary to the provisions of the Constitution. The words of Obaseki, J.S.C again in *A. G. of Bendel State & Others v. A. G. of Federation & Others [17]* is quite apposite here wherein, he said:

> *The Constitution has opened the gates to the courts by its provisions and there can be no justifiable reason for closing the gates against those who do not want to be governed by a law enacted not in accordance with the provisions of this Constitution.*

No wonder then why a Frenchman, Alexis de Tocqueville [18] who was very much impressed with the America scene opined that: "Scarcely any political questions arises in the United State that is not results sooner or later, into a judicial question." This view was buttressed by Hugo L. Black (1936), who boastfully declared that "the America Constitution is what we, the Supreme Court declares it today", that is, only what is given judicial imprimatur by the court, is the law. These assertions are true of Nigeria as its Supreme Court [19] has since the *A. G. of Bendel State's case (Supra)* maintained a commendable tradition in that direction. According to B. N. Cardozo, in his book, "*The Nature of Judicial Process"* [20] "The judge is the interpreter for the community of its sense of law and order, must supply omissions, correct uncertainties and harmonize results with justice through a method of free decision." The attitude of the courts to the interpretation of the Constitution is enshrined in the golden words of the late Sir Udo-Udoma, JSC in the case of *Nafiu Rabiu v. The State* [21] wherein he said:

> *My Lord, it is my view that the approach of this court to the Constitution should be and so it has been one of liberation, probably a variation on the theme of the generam maxim 'Ut res magis valeat quam pereat'. I do not believe it to be the duty of this court so to construe any of the provisions of this constitution as to defeat the obvious ends for which the constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such end.*

This objective of interpretation as exercised by Courts has been echoed and re-echoed by the Supreme Court in so many constitutional matters and other areas of law [22].

Lastly, the court is constitutionally empowered to exercise all inherent powers and sanctions of a court of law [23] One of such inherent powers of the court is the power to punish for contempt of their authority. This power owed its origin to the law and practice of England where disobedience of court orders was regarded as contempt of the King himself "the Fountain of Justice", and attachment was a prerogative process derived from presumed contempt of the Sovereign. Justice Field declared in ex-parte Robinson [24] that:

> *The power to punish for contempt is inherent in all courts, it existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments orders, and writs of courts, and consequently to the administration of justice". And "he who muddles or obstructs the waters of the streams of justice is punishable by contempt of court [25].*

Also, according to Niki-Tobi, JCA court orders are its sanctions which are meant to be obeyed by the parties-the plaintiff; defendant, the prosecution and the accused. Non-parties can even carry out court orders. A party who fails to obey court orders does not only show disrespect to the court, but by his conduct, has shown disregard to the constitution – the Supreme law of the land, the *fons et origo*. Be he an individual or corporate personality, disobedience of court orders is inimical to the well-established tenet of democracy, because by such conduct, he has brutalized not only the rule of law, but the administration of justice in the society. Above all, it is a most uncivilized conduct. While individual disobedience of court orders is serious, corporate disobedience is not only serious but heinous and devastating.

One example of constant corporate disobedience of court orders is by the government. An instance of this came up and was seriously condemned in the same familiar case of Ojukwu (supra) [26] where Kayode Eso, J.S.C started that:

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[15] (1982) 3 NCLR 1 at p.88.
[16] de Tocqueville, "Democracy in America" Vol. 280 (1959)
[17] See A. G. of Federation v. A. G. of Abia State and 35 Ors (2002) II NWLR 6895.
[18] (1921) at p.16.
[19] (1981) 2 NCLR 368
[20] See Garba and Ors v. University of Maiduguri (1986) 1 NWLR (pt. 18) 550, also Ojokolobo v. Alamu (1987) 2 NWLR 377
[21] See S.6 (6) (a).
[22] (1981) 1 NCLR 4, op cit, also Atibu v. Oduntan (1992) 2 NWLR 210
[23] Lord Dennings: Due Process of Law, p.15.
[24] Per Niki-Tobi JSC, "Law, Justice and the Constitution-wither Nigeria" All Nigeria Judges Conference papers (SC) p. 73.
[25] (1986) Supra, see also the dicta of Obaseki, JSC at p. 636 – 8; Oputa; Uwais, at p. 639.
[26] Ibid at foot note 15.

> *It is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court is by the executive.*

This is no doubt the unquestionable voice of the highest court of law in the country which all other courts are bound to follow. The principles of stare decisis do not demand less. The role of courts is such that their pronouncements or orders are binding on the society. Felix Frankfurter could not have been more right when he said of the U.S. Supreme Court, that "we are final because we are infallible but we are infallible because we are final". This is trite, since appeals from their decisions lay to no other authority except God.

On a final note, it is noteworthy from the foregoing that the roles of the Nigerian courts have been generously condensed into latitudinal statements by eminent statesmen and jurists such as "the court as the Guardian of the Constitution; the court as an instrument of justice and democracy".

Justice and Related Concepts

The desire for human perfection, and of happiness, the quest for change, nay, to adore and see justice done in society is intrinsic in the nature of mankind. Throughout the ages, the disputation and discourses of philosophers and jurists have been centered on the welfare of human beings and of the societies leading to the same result which is the highest good of all. The French and American Revolutions, the Aba Women riot of 1929, the Coal Miner Strike of 1958, the Perennial Workers (i.e. ASUU) strikes and student disturbances, the continuous agitation of the Niger Delta youths, the regular feuds and family disputes now familiar in our courts are all traceable to the long appeal to the voice of justice against a train of abuses and usurpation by the governing authorities.

Justice has been and is still the central objectives to governance throughout the world. The earliest discovered written secular code of King Hammurabi of Babylon (1728 – 1868 BC), said that his purpose of giving the code to his people was to make justice appear in the land, to destroy the evil and the wicked. However, the word has not found any solution to the nagging question and the nature of justice.

To effectuate the perfection of happiness of "Homo sapiens" and the well-being of the society, the idea of guiding rules of law becomes a derivative necessity. The idea of law is to provide the general framework for the regulation of human behavior. Salmond has defined law as "the body of rules recognized and applied by the State in the administration of justice". The purpose and ultimate end of law is to attain justice. And that is, justice according to the law as it is, lex lata.

What then is Justice? The concept of justice is mostly based on platitudes and generalizations. It is not only a lousy term. It is also an omnibus term, nebulous, generic and abstract. Justice like beauty, is often in the eyes of the beholder, and is therefore incapable of any precise meaning. This diversity arose because of the complexities of the subject-matter.

Be that as it may, the main thrust of the discourse here is not the philosophical or jurisprudential perspectives to justice, but it is centered on justice as the end product of law. For it is appropriate to note that whenever the notion of justice comes up for examination, it is the activities of the Judges or Judiciary that are called into question because they are "the exponents of written law, the representative of the royal front of justice and depositories or living oracle of the law" [27]

In the strict legal sense, justice is the end-product of the effective application of the law of the land, as made by the competent law-making authority. That is justice according to the law as it is. In a broader and more acceptable sense, justice is fairness, fairness in adjudication, in the process of adjudication and in the ultimate decisions reached by the decision making authority.

An eminent English Judge, Lord Worthley, says that "Justice among men involves an impartial and fearless act of choosing a solution for a dispute within a legal order, having regards to the human rights which that order protects. These assertions lent support to the proposition that the notion of justice is Judge (court) centered. And speaking about the role of a Judge, Lord Denning said in his book, *The Family Story*, that:

> *My root belief is that proper role of a judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can do to avoid that rule or even change it – so as to do justice in the instant case before him.*

He went further to say in another work of his [28] that:

> *All I would suggest is that justice is not something you can see. It is not temporal but eternal. How does one know what is justice? It is not the product of his intellect but of his spirit. The nearest we can get to defining justice is to say that it is what the right-minded members of the community who have the right spirit within them-believe to be fair.*

It follows therefore from the foregoing that it is not what member of a tribunal do or say, that is justice but what reasonable members of the society believe to have been fairly done is said to be justice. In order words, it is what the right-minded common man-the man on the Clapham Omnibus-sees and believes has been fairly done that is justice or whether from their observation, justice has not been done in the case [29] However, when they leave the courtroom churning and grumbling that the judgment just delivered has been unfair, then justice has not been done, though the law must have been applied.

"The Judge, says Oputa, JSC (of blessed memory) [30] has no other end to serve except the impartial dispensation of justice" and this "justice", is rooted in confidence, and confidence is destroyed when right-thinking people go away thinking that the judge is biased".

Blackburn J [31] quoting Lord Hawart [32a] authoritatively said that "Justice should not only be done but should be manifestly and undoubtedly been seen to be done". Another

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[27] Dennis Iloyd; "Introduction of Jurisprudence" 1973, 2nd ed. P.97 – 98.
[28] Dennings "The Road to Justice".
[29] In Isiaku Mohammed Kano N. A. (1964) 1 All NLR 424 – PER Ademola, CJN.
[30] Oputa C. A. "The Law and the Twin Pillars of Justice (1981)".
[31] In R. v. Rand (1986) L. R. 1 Q. B. 834 at 836S.
32a. Herwart L. C. in R. v. Sussex Justice, exparte McCarthy (1924) IK B. 256.

eminent English Jurist, Lord Wright [32] has this to say:

> *I am not afraid of being accused of sloppiness of thought when I say that the guiding principle of a judge in deciding cases is to do justice that is justice according to the law, but still justice. I have not found any satisfactory definition of justice. What is just in any particular case is what appears to be just to the just man, in the same way as what is reasonable is what appears to be reasonable to the reasonable man.*

With due respect, the authors of this paper are very much in agreement with His Lordship on this statement.

Justice is so fundamental to the foundation of civil society that the alternative to it can only be disintegration and dissolution or at best chaos and a state of permanent social discontent e.g. Libya war, Afghanistan, Syria, etc. Justice lies at the heart of human existence and in its absence, mankind slides inexorably to beastly depth [33] Injustice or miscarriage of justice is the direct opposite of justice and it means failure on the part of the court to do justice. It is justice misplaced, justice misappreciated. It is an ill conduct on the part of the court and day never comes when they shall cease to be courts of justice [34] If a judge thinks that injustice has been done to a party based on technicality, I should have no problem in getting rid of the technical objection [35] Thus, advocating that technicalities should not be allowed to becloud justice. Justice according to the late respected jurist, Oputa, JSC, "is not a one-way traffic". It is not even a two-way traffic. It is really a three-way traffic- Justice for the appellant or accused of a heinous crime of murder. It is justice for the victim of the murdered man, the deceased, whose blood is crying to the heaven for vengeance, and finally justice for the society at large [36] Indeed, Oputa in his paper titled - "Towards Justice with a Human Face submitted that" under our constitutional provisions guaranteeing the right to justice, the justice to be administered is not abstract justice as conceived by the judex but justice according to law. Justice cannot be administered *in Vacuo*. It must be administered according to the constitution and the law of the land. Dealing specifically with the aspect of administration of justice. Oputa said, "We believe in the rule of law and we believe in justice through law. Today, the consciousness of justice and the quest by everyone for justice to all manner of men, without fear or favor, affection or ill-will and without distinction and discrimination. This is the oath the judges all sworn to uphold.

On a final note, Mohammed Bello, a former Nigeria CJN in a memorable pronouncement that may be taken as ex cathedra said:

> *The judge-every judge in Nigeria have sworn to apply the law as it is. That is his duty. He does not change the law, he applies it, he cannot say that I am not going to comply with the law, he is not doing his job and he is not complying with his oath of office, which is not a matter of how bad it is…justice, that is theoretical is not justice, but we do justice according to the law, we passed judgment which we knew does not comply with our conscience [37].*

A judicial officer who is fully aware of the responsibility of his office must keep with his judicial oath to dispense justice according to law, there must therefore be no room for sentiments [38] (Justice Bello was a strict constructionist of the law).

Justice and Law

Much juristic ink has flowed in an endeavor to provide a universally acceptable definition of law, but with little sign of attaining that end. It is important to note that no definition is exact since law itself is not objective. There are many conflicting disciplinary perspectives by different writers and interests who use law to perform so many different functions; scholars now find it difficult to agree on a simple definition that applies to all aspects of law [39]

According to Blackstone and the Analytical School of Jurisprudence, law is a "rule which is prescribed by some superiors and which the inferior is bound to obey" [40] This is the "Command Theory" approach. To Salmond, law is "the body of rules recognized and applied by the State in the administration of justice". Perhaps more aptly stated was the views of Justice Holmes, describing it as, "the prophesies of what the courts will do in fact, and nothing more pretentious are what I mean by law".

Law comprises of rules by societies through constitutions, statutes, administrative rules and regulations, rules of courts, executive orders, courts decisions, discovering and applying "common law" principles, that court decisions defining and interpreting the specific provisions of all forms of law. The Law is not self-implementing but requires agencies of government through which it can work. Here comes in the institution of the courts whose constitutional role is to administer justice according to law. This is without doubt, the goal of our law-the Nigeria Constitution; the fundamental law of the country, the *fons et origo* of our laws. The constitution stated clearly through the seven sections of Chapter II [41] that freedom, equality and social justice shall be the fundamental objectives and directive principle of the state policy, the enforcement of which shall be obligatory to all organs of government and all authorities and persons exercising legislative, judicial or executive powers, to conform to, observe and apply the provisions of the constitution. This is exactly what the judges sworn to preserve, defend and administer.

This fundamental role of the courts has led some people to conceive justice as the same thing with the judicature which dispense justice according to law, in conformity with the standards prescribed by the law. This is the notion of legal justice which is the view of the positivists represented by John Austin [42] and lately H. L. A. Hart insisting that "Gesetz al Gesetz- the law is the law.

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[32] Lord Wright: "Legal Essays and Addresses"
[33] See Onagoruwa v. The State (1993) 1 NWLR (pt. 303) 46.
[34] Erisi and Ors v. Idika (1987) 4 NWLR (pt. 66) 503 per Nnamani Jsc.
[35] In Rescowby v. Scowby (1897) 1 Ch. 742 C, Also Saude v. Abdulahi (1897) 4 NWLR (pt. 116) p. 39 per Kayode Eso, JSC.
[36] Oputa C. A., JSC in Godwin Josiah v. The State (1985) NWLR 125
[37] Paper presented at the 1989 All Nigeria Judges Conference in Abuja entitled "Law versus Justice".
[38] Per Alexander, CJN in Onyiuke v. Okere (1979) 1 NWLR 285 at 290.
[39] H. L. A. Hart; "The Concept of Law" New York, Oxford University Press; 1961 at p. 16.
[40] Dennis Lioyds, op. cit. p. 39.
[41] See severally sections 13 to 22, 1999 Constitution.
[42] Austin; "Lectures on Jurisprudence" 5th ed. Vol 1, p. 268.

Justice and Fair Hearing

Some school of thoughts, most especially the Naturalistic school, maintained that justice must not only be done but must be seen to have been done through the due process of the law, that is, in conformity with a set of procedures. Fair hearing connotes two principles namely – *Audi alterram partem* – hear the other side. No one shall be condemned unheard [43] Secondly – *Nemo Judex in causea sua* – no man should be a judge in his own cause. A judge must not have any personal interest in the case before him. He must not be biased [44] To the Naturalists school anything short of this, is no justice.

Justice and Freedom

Justice is being allowed to do whatever one wants to do; Injustice is whatever prevents him from doing so. Justice being taken away, then what are kingdoms but great robberies [45] Jacques Rousseau did not mince words when he stated that "man is born free but he is everywhere in chains". This chain is the law, which made Cicero said that we must all be servants of the law if we are to be free. Freedom on the other hand is the concept of one being in a position to do what he will and how he likes to conduct his affairs as he chooses, but under the laws of the land. Freedom does not mean licentiousness; it has some restraints attached to it for harmonious interaction or orderliness in society.

In other words, freedom is not absolute. It is hedged around by restraints of law. It is relative to the freedoms of others and the laws of the land. The 1979 and 1999 Nigeria Constitutions (as amended), contained provisions on Fundamental Rights [46] to enable the citizens live the fullest life they can under the laws of the land. However, Section 45 off the 1999 Constitution introduced the types of restraints and derogation therefrom; whenever such restraints and derogations is or are reasonably justifiable, and to protect the nation's defense, public safety, order, morality, health, the rights, and freedoms of other persons. Whenever these fundamental freedoms and rights are unduly restricted or derogated from, the aggrieved party can seek free access to the court for the enforcement of such guaranteed inherent rights by virtue of Section 46. It is instructive to note that by virtue of Section 6 (6) (c) of the Constitution the jurisdiction of any Nigerian court is expressly ousted from entertaining any matter or cause emanating from Chapter II [47] which are non-justice-able. Thus, in *Uzoukwu v. Eze-Onu II* [48] Nasir, JSC (rtd), stressed that: "no right outside the provisions of Chapter IV of the Constitution found any enforcement under the jurisdiction of the court as provided by Section 46 of the Constitution. It follows therefore that only what is guaranteed by the law can be justice-able and the kind of justice a litigant can get from the court-legal justice. This is what prompted Professor Osita C. Eze to declare that, "no matter how fundamental a right may be, unless it is guaranteed under a given legal system as positive right, it has no judicial leg to stand upon" [49].

The Essentials of Justice

The idea of law discussed above is to provide the general framework for the regulation of human behavior. It is an indispensable means of attaining orderliness and justice in all societies. The law is not an end in itself but a means to justice. Thus, when the courts are called upon to dispense justice, the steps to be taken must be and are as spelt out under the laws; as the courts cannot administer justice in vacuum but in accordance with the Constitution and the laws of the land [50] The validity of a law is predicted on the manner of justice which flows from its application.

The 1999 Nigerian Constitution (as amended) in its preamble, expresses a commitment binding on all Nigerian by providing that all Nigerians are avowed "to the promotion of the good government and welfare of all persons in Nigeria on the principles of freedom, equality and justice and for the purpose of consolidating the unity of our people…". This constitutes the guiding spirit of the Constitution that these ideals shall be the heritage of all Nigerians. And in Chapter II, it proceeded to state in Section 14(1) that the Nigerian state be based on the principles of democracy and social justice, social ideals which by the provisions of Section 17 is founded on the ideals of freedom, equality and justice; and the securing and maintenance of free access to an independent, impartial and honest court of law for the enforcement of any derogation from these ideals. For the foregoing provisions, it is the authors' view that those rights guaranteed by the provisions of Chapter IV [51] are fundamental and inherent rights of all Nigerians.

By the provisions of Section 13, the courts' exercising judicial powers is enjoined to observe and apply the provisions of Chapter II. Also judicial power to enforce justiceable rights entrenched in Chapter IV is vested in the courts by Section 6(1) and specifically by subsections (a) – (d) and where there is violation, a free access to the courts for redress is guaranteed by Section 46. The judiciary vide the court from this premise became the guardian of the Constitution and a mighty fortress against injustice. This position was aptly noted by Kayode Eso, JSC, [52] when he opined that, "the courts has been appointed sentinels to guard over fundamental rights secured to the people of Nigeria by the Constitution, and to guard against any infringement of the rights by the state".

The Court as the main pilot to chart the course of legal plane to the coast of justice should therefore be freely accessible, effective, virile, and independent if it is to conduct itself truly to its oath to do justice to all manner of people according to law and to faithfully and honestly preserve, defend and protect the Constitution [53] There is no doubt whatsoever that a free, fearless and honest court is a *sine qua non*, for the proper administration of justice and the maintenance of the rule of law-equality before the law.

An independent judiciary as one of the principal pillars upon which the dispensation of justice has been hoisted is premised on the principle of separation of powers – a

[43] De Smith "Judicial Review of Administrative Action" 3rd ed. P. 134.
[44] Fawehinmi v. L. P. D. C. (1982) 2 NCLR 719, also R. v. University of Cambridge (1723) 1 Sf. 557.
[45] Samuel Johnson: "The Conscience Dictionary" 1770.
[46] See Chapter IV, Section 33 – 466, 1999 Constitution (as amended).
[47] Ibid, Section 13 to 22, Supra.
[48] (1991) 6 NWLR (pt. 200) at 709.
[49] Yinka Badjio v. Federal Minister of Education (1999) wbrn 48 (C. A.)
[50] Per Hon. Justice Mamman Nasir, P.C.A. in a paper delivered at the All N.J.C., 1988,
[51] See generally Sections 33 – 46, Supra.
[52] See Kayode Eso, JSC op. cit. Note II.
[53] Holy Bible, Deuteronomy 1 vs. 16 – 17 NKJV.

constitutional actualization of those glorious theories of John Locke and Montesquieu which are emulated by the American model of democracy after which the Nigerian Constitution is fashioned.

The doctrine requires that governmental powers to make, enforce and interpret laws in a state, should be separated and exercised by different person or body of persons or authority, and that none should interfere with the preserve, functions and responsibility of the other. It cannot be controverted that the concentration of these powers in one person or organs, means absolute powers which can be arbitrarily exercised; for "power corrupts, and absolute power corrupts absolutely" [54].

However, whenever there is a clash or conflict in the discharge of these governmental powers as vested in the legislature, executive and judiciary respectively, the judiciary comes into play. Nasir, JSC (rtd) [55] stated that "normally, the court will not interfere with the internal affairs of the legislature or the executive but if in the exercise of its powers, it infringed on any of the provisions of the Constitution, the courts have the power and duty to see to it that there is no infraction of the provisions of the constitution".

This note of warning has been reiterated in a plethora of cases particularly in *Ladejobi v. A. G. Federation (1981) 3 NCLR 505* where Eso JSC in his lead judgment stated that, "the organs exercising those powers vested by Sections 4,5,6 of the 1999 Constitution must never exist in sabotage of the other or else there will be chaos. Indeed, there will be no federal government, and where one arm impinges into the area of constitutional responsibility of another, that is unconstitutional and the overbearing organ is guilty of lawlessness". A free and unfettered judiciary is a necessity for the fair and proper administration of justice. Independence will ensure impartiality.

Flowing from the above desideratum is the necessity for equality of all before the law which is a derivative of the principle of Rule of Law postulated by Albert Venn Dicey [56] Simply put, the concept means firstly the absolute supremacy or predominance of regular law as opposed to influence of arbitrary power, and that everything must be done according to the law that men are ruled by law, and punished for nothing else than for the breach of the law [57] Secondly, it means equality before the law or the equal subjection of all classes to the ordinary law court. This requirement ensures that justice is done at all times and under all circumstances, thus justifying the assertion that the courts is the last hope of the common man as well as the state.

Article 10 of the Universal Declaration of Human Rights states that, "Everyone is entitled to full equality, to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations, and of the criminal charge against him".

The Declaration further emphasized that it is essential if a man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression and that human rights should be protected by the rule of law. The above declaration has found a place in our Constitution under the inalienable Fundamental Rights provisions of Chapter IV. Inalienable because they cannot be taken away. The constitution further provides for equality of rights, obligations and opportunity before the law, by specially allowing a person to enforce his fundamental rights as entrenched in the Constitution before an independent, impartial and honest Court of law [58].

Judicial recognition of these concepts have been given by our courts in several decisions. In one of such cases, Ayoola, JCA (as he was then) [59] quoting with permission the well-grounded decision of *Obaseki JSC in Governor of Lagos State v. Ojukwu* [60] that:

> *The Nigeria Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It also means that the government should be conducted within the framework of recognized rules and principles which restricts discretionary powers, it means that disputes as to the legality of acts of government are to be decided by judges who are independent of the executive by virtue of the Constitution. The judiciary cannot shirk this sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria.*

The rule of law is the bedrock of a democratic system of government. It is an unarguable fact that without a faithful maintenance of the Rule of Law by an independent and impartial judiciary, the concept of justice will be an empty slogan, at best an ideal. The powerful submission of Marshall, C. J [61] in maintaining the pre-eminence of the American courts, still stands till present. The essence of civil liberty certainly consists in the right of every individual to claim the protection of the law whenever he receives an injury. One of the first duties of government is to afford that protection. The government of the United States has been emphatically called, "a government of laws and not of men". It will certainly cease to deserve this high appellation if the law furnishes no remedy for a violation of a vested interest. It is the views of the authors of this paper, that standard should be the position in Nigeria.

Apart from these essentials, the court must dispense justice according to the requirements of natural justice which is codified by Section 36 of the 1999 Constitution guaranteeing to a litigant the right to fair hearing within a reasonable time by an independent and impartial court or tribunal established by the law. This fundamental principle of justice is a natural right antecedent to humans society as firstly exemplified by God before they were condemned [62] This right, though characterized as a common law concept, has nevertheless received universal recognition in the Universal Declaration of Human Rights and particularly, Article 7 of the African Charter on Human Peoples' Rights which provides that every individual shall have his cause heard. This encompasses the right to be tried within a

[54] Baron John Austin (1834 – 1902).
[55] Nasir, JSC: 1992 Lecture paper at Nigeria Judicial Institute.
[56] A. v. Dicey: "Introduction to the Study of Law of the Constitution" 1959 ed.
[57] S. 35 (1) of the 1999 Constitution, also Magna Carta Act, 1215.
[58] See S. 17(2) (a)(e) and S. 36 of the 1999 Constitution (as amended).
[59] In Guardian Newspaper Ltd v. A. G, of Federation (1995) 5 NWLR (pt. 398) at 744.
[60] (1986) 1 NWLR 638, see also Garba v. Federal Civil Service Commission (1988) 19 NSCC 320 Per Eso JSC, also Labiyi v. Anretiola (1992) 8 NWLR (pt. 258) 139 at 170 – 1.
[61] In Marbury v. Madison, 5 U.S. [1 Cranch] 137 (1803).
[62] See Genesis 3 vs. 9 – 12 KJV.

reasonable time, the right to appeal, the right to be presumed innocent until proved guilty and the right to fair trial.
The applicability of these provisions in Nigeria is re-iterated in the case of *Abacha v. Fawehinmi* [63] where Ogundare JSC (of blessed memory) said:

> *"The African Charter is now part of the laws of Nigeria and like all other laws, the court must uphold it. The charter has been incorporated into the Nigerian domestic laws by virtue of Section 12 of the 1999 Constitution* [64].

The concept of fair hearing as provided in Section 36 (1) is in essence a rule of expediency and impartiality in the administration of justice. It is embodied in the twin pillars of natural justice, namely; (a) *audi alteram partem*, and (b) *the nemo judex in causa sua-the rule* against bias. These rules are designed to ensure that "justice should not only be done, but must be seen to have been done" [65]. It was against this background that Lord Denning warned that "a judge must deal with the case before him and conduct himself in such a way that any reasonable person watching the proceeding will go away with definite impression that justice was done in the case" [66].
Ademola, CJN (of blessed memory) in the locus classics case of *Mohammed v. Kano Native Authority* [67]. addressed the issues that constitute fair hearing by saying that:

> *The true test of fair hearing must involve a fair trial of a case, and consists of the whole hearing. The true test of a fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation; justice has been done in the case.*

The necessity of fair hearing in the administration of justice cannot be over emphasized; it has intruded into all aspects of law-civil and criminal. Thus, without fair hearing, the principles of natural justice guided by the concept of the rule of law are abandoned and cannot be established and grow in the society.

Conclusion
The courts in the exercise of its traditional role of administering justice must be properly seized of a matter before it can act. Where a person's right is infringed upon or violated, he has a guaranteed access to the court to seek for redress by virtue of Section 46, 1999 Constitution, [68] by way of originating motion or writ of summon, [69] disclosing the cause of action. Without the court being asked to give remedy for breach or threatened violation of right, it cannot so act as the court will not give what is not asked for [70].

The court cannot be properly seized of a matter if the issue is not triable and if there is any bar to the exercise of the judicial powers conferred on it. The court is expressly precluded from entertaining suits or causes arising from the violation or non-implementation of the Fundamental Objectives of state policy set out in Chapter II of the Constitution [71]. This is the concept of justice ability and is analogous triability, which requires that there must be a serious issue to be tried, the claim must not be frivolous, vexatious and speculative. Non-justiceability bars the court from adjudication [72].
As a corollary to the above, we have the concept of *locus standi* which means that the party instituting the case must have a place to stand or legal interest in the case. Where a person has no *locus standi*, and has not suffered or is not likely to suffer any injury by the act or omission of another person or authority, the court might not grant him a hearing [73] A party who comes to the court for relief must show that he has sufficient interest in the subject-matter or that the allegation of an infraction of the law adversely affects his civil rights and obligations calling for determination. On constitutional issues, plaintiff must show special interest over and above the community whereby the issue becomes academic and it would be dangerous for the court to go into it.
The concept of *locus standi* is still recognized in Nigeria and has been approached in different ways from the strict constructionist approach in the *locus classicus* case of *Adesanya v. The President of Nigeria* [74] adopted in *Fawehinmi v. Akilu, re. Oduneye, D.P.P*. [75] the initial intendment was to prevent frivolous and vexatious cases by mere adventures, and meddlesome or professional litigants from coming to the court. However, the apex court had in the Fawehinmi's case held that even if the concept imports a floodgate of litigation, it is good for a free and unfettered access to the court to be afforded litigants, as doing so will allowed the constitution to be tested in the court and in turn give satisfaction to the people for whom the constitution was made [76].
Apart from the aggrieved litigant having the required special legal interest, a parent, guardian could act in *loco parentis* (or next-friend), and the Attorney-General can sue or be sued for and on behalf of the government as their Chief Legal Officer. Thus, suing the Attorney-General, amounts to suing the government and its functionaries [77].
Jurisdiction is the other side of *locus standi*, without which a court cannot be competent to decide on a case brought before it. It is the authority a court has to decide a matter before it or to take cognizance of matters presented in a formal way for its decision. The concept of jurisdiction is an essential factor to the dispensation of justice by the court, and it is conferred by a statute [78] Where a court has no

[63] (2002) 4 SCNJ 422 at 423, also Uzo-Ukwu v. Eze-Owu II (1991) 6 NWLR 708.
[64] Now the African Charter on Human and People's Rights (ratification and modification) cap 20, 1990 L.F.N.
[65] Per Aniagolu, JSC in Ariori v. Elemo (1983) NSCC 28, Federal Republic of Nigeria v. M.K.O Abiola (1995) 7 NWLR (pt. 405) 1.
[66] In Rothermere v. Times Newspaper Ltd (1973) 2 ALL E. R. 1013 at 1027.
[67] (1968) NSCC 325; also Otapo v. Smmonu (1987) 2 NSCC 667 at 693.
[68] Amadi v. NNPC (2000) 10 NWLR 674; also Oshevire v. British Calendonia Airway (1996) 7 NWLR (pt. 163) at 507.
[69] National Bank of Nigeria Ltd v. Lady Alakija (1978) S.C. 59.
[70] Bayo Akinterinwa & Ors v. C. Oladunjoye (2000) 4 SCNJ 149.
[71] S. 6 (6) (c) and (d).
[72] Okoye & Ors v. Nigeria Construction and Furniture Co. Ltd (1991) 6 NWLR 501.
[73] Gani Fawehinmi v. Tinubu (2002) S.C.S.
[74] (1981) 2 NCLR 338, also Titiloye v. Omoniyi Olupa (1991) 7 NWLR (pt. 205) p. 51.
[75] (1987) 4 NWLR (pt. 67) 779, also Yinka Badejo v. Education Minister (1990) WBRN 48 C. A.
[76] Onyeason v. Christopher Nmenedium & 30 Ors (1992) 3 SCNJ 129 at 130.
[77] Yinka Badejo's case Supra, Fawehinmi v. Akilu, Supra and A.G. of Federation v. A.G. of Abia State and 35 Ors (2002) 11 NWLR 689.
[78] S.6 (60), and S. 46 of 1999 Constitution (as amended).

jurisdiction to entertain any claim, anything done in respect of the claim thereof will be an exercise in futility, however well conducted [79]. "*Nemo dat quom non habet"* Once there is a defeat in competence, it is fatal as the proceedings are nullity. This position was restated in *Ajao v. Alao [80]* where the view of Lord Denning, M. R., in *U. A. C. Ltd v Macfoy* [81] was adopted by Olatawura, JSC that:

> *If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void. Without much ado, though it is sometimes convenient to do so, for you cannot put something on nothing and expect it to stay there. It will collapse.*

Thus, every proceeding which is founded on it is also bad and incurable bad (*void ab initio*). The issue of jurisdiction can be raised at any stage of the proceedings and even on appeal, but where raised, the onus is on the party raising it to give *prima facie* evidence of such lack of jurisdiction [82].

No discussion on the essential of justice will be completed without mentioning the raw material, which the court uses in processing the end-product (justice). Law is the material. Justice must be based on valid laws made by the appropriate authority and must be sufficiently general in scope; precise; non-contradictory; prospective; amenable and enforceable against both their makers and non-makers. This dispensation of justice according to law by courts is obtainable only in a democratic society whereby the rule of law is in vogue as against tyrannical and oppressive type of government interested under the military regimes in Nigeria. Under the military government, where the ruling clique do not balk at ensnaring its perceived enemies [83] through *ad hominin*, oppressive, capricious and whimsical laws and when all else fail, resort could be had to retroactive lawmaking, a phenomenon once described by Lon Fuller [84] as "the brutal absurdity of commanding a man today to do something yesterday".

Notorious examples of such flagrant acts abounds in their use of ouster clauses to strip the court of their competency to adjudicate on issues touching on the constitutionality of their acts, and the courts did rise up appropriately to the challenges of their validity [85] An unjust law, Socrates submitted will fail to bind the conscience of the upright man, they are rather iniquitous than law. Where there is constitutionalism, the citizens and particularly the litigants will know that what is not prohibited is allowed. However, Nigeria courts have made comfortable affronts to the imposition of ouster clause [86].

The nature of our statutory laws and procedures including the residual application of common law, often create problems of comprehension in the context of our system of administration of justice. Thus, the technicalities of pleadings in civil cases and plea in criminal cases, do not make much sense to litigants, complainants, accused persons, and their witnesses as well as members of the public. The nature of our judicial findings for only one party or the other (except in cases involving contributory negligence) is not compatible with our traditional justice system under which both parties are told that they are right, or and wrong at the same time, in the same case. There are also the exclusionary rules of the law of evidence like the Rule against Hearsay [87] which our courts operate today but which our traditional judicial process does not recognize and has never operated. Other instances of this incompatibility are the issues of bigamy in a polygamous society [88] the requirement that a Nigerian should plead guilty or not guilty when that is precisely what a criminal court is expected to decide, or for a Nigerian to remain silent when confronted with an allegation of a serious criminal offence [89] rights which may not make much sense in the customary judicial system.

Apart from the fact that the common man does not share the ethos and idiosyncrasies of the imported legal culture, the non-personalization of cases by counsel as does the litigants, the numerous jokes and alien languages buttressed the views of the vast majority of Nigerians that the legal profession is a veritable "conspiracy against them – the laity [90] They detested the strange paraphernalia, bureaucratic court forms, procedural technicalities and considered such hallowed principles of the common law like equality before the law and the presumption of innocence [91] as mere fictions invented by the lawyers in their bid to confuse and give cold comfort to the poor and the under-privileged.

Justice cannot remain justice if it is not comprehensible to the citizens who are parties before the courts and who arethe consumers of the justice administration system. Without the understanding of both the substantive and procedures of the system of justice administration, there will be no psychological and sociological acceptability among the system [92].

Poverty is a condition whereby a person lacks the means to satisfy the necessities of life. It is obvious that majority of Nigerians lives in abject poverty and thus cannot afford enormous litigation expenses including hiring of good lawyers in a situation where they have serious grievances that should be brought before the court for adjudication. Apart from this, the slow pace of trials in our courts through unnecessary adjournments tends to discourage citizens from going to court. To an average Nigerian, justice is only for the rich people who can afford to hire the Senior Advocates of Nigeria (SANs). Thus, "The scales of justice are inevitably weighted in favour of the rich people who can comfortably afford the outrageous court fees and lawyers' charges [93].

[79] Okoye ors v. Nig. Construction and Furniture Co. Ltd (1991) Supra S.
[80] (1986) S. C5 NWLR 821, Supra.
[81] (1961) 3 WLR 1405 at 1409.
[82] Akpataku and ors v. Nkemditim (1962) NSCC 374.
[83] E.g Saro-Wiwa and the Ogoni 9 Episode (1995), also the Gen. Lkewot Trial 1988.
[84] In Inner Morality of Law.
[85] Gen. Abacha v. Fawehinmi (1996) 7 C. A. NWLR also Agbakoba v. Director of State Security Services (1994) 6 NWLR (pt. 351) 475 C. A. also Guardian Newspaper Ltd v. Attorney-General, Federation (1995) Supra.
[86] Jennifer Madike v. I.G.P (1992) 3 NWLR (pt. 227) 70 at 121. See also Decree No. 28 of 1967, and Lakanmi v. A.G. of Western Region (1970). NSCC 143.
[87] See Sec. 75 & 76, Evidence Act Cap 112, LFN 1990.
[88] R. v. Princewell (1964) S. 370 Criminal Code, also Sec. 36(11) of the Nigerian Constitution 1999.
[89] Olufemi Babalola & Ors v. The State (1989) 4 NWLR (pt. 115) 256 S. C.
[90] Per George Benard Shaw, quoted by Akin Oyebode, in "Re-Thinking the Legal System in Journalism and Society", pg. 166.
[91] O. Adewoye "The Judiciary System in the Southern Nigeria" 1851 – 1954 at p. 14 (1977).
[92] Okoya v. Santili (1991) 7 NWLR (pt. 206) 753 per Niki-Tobi.
[93] Krishna Iyer, "Law versus Justice", New Delhi, 1981 pg. 81.

Aguda J [94]. Of blessed memory and an eminent jurist of his time opined that?

> *To think of a situation where the poor and the marginalized wretched of the Nigerian earth can ventilate their grievances, whether real or imagined and or to have a meaningful day in court on account of their impecuniosity is to live in a fools' paradise, and is clearly not one in which the judicial process could be harnessed in the peoples cause. Furthermore, he believed that most of the fundamental Rights enshrined in the Constitution are nothing but meaningless jargons, as what is the value of justice to the poor who cannot pay summons fees let alone afford the services of a counsel. If he cannot afford these, he loses faith in the judicial system and leaves everything to God.*

Finally, it is hereby submitted that easy access to court will bring justice to the people with less pressure than rebuilding the confidence of Nigerians in our judicial system. There is also the need to seriously continue to reform our criminal justice system to keep it in tandem with best practices in other developed jurisdictions. Doing this will minimize injustice and ensure the sustenance of justice with a view to keeping insurrections and crisis at bay because no nation founded on injustice can stand.

References

1. See Nasiru Bello and Ors v. Attorney-general of Oyo State. 1986; 45:825.
2. Also Oshevire v. British Calendonia Airways,1996:7:163:507.
3. ed., Chicago, U.S.A, 1977.
4. Nwabueze BO. "Machienry of Justice", 1963, 262.
5. See Muskrat v. United State, 2098 US 346 at 361, 1911.
6. United States v. Arrevdondo, 31 US 691, 1932.
7. See Sjk. Constitution,1999:6(4):6(5).
8. Elufiaye v Halilu. NWLR 570 S.C., also Arch. Anthony Pkpgie v. V.A.G. of Lagos State (1981) INCLR, 1996, 218-232.
9. See generally Chapter IV, Constitution, 1999.
10. See Hon, Kayode Eso. In paper entitled "The Court as the Guardian of the Constitution" to the All Nigeria Judges Conference at Abuja, 1986.
11. Military Governor of Lagos State v. Ojukwu (1986) Supra, 1986.
12. By President Abraham Lincoln of USA.
13. U.S (1 Cranch) 137 1803.
14. Supra, at, 638.
15. Fawehinmi v INEC. Also Guardian Newspaper Ltd. v. A. G. of Federation NWLR (pt. 398) at 745.
16. [1] (1982) 3 NCLR 1 at, 1995, 88.
17. Tocqueville de. "Democracy in America, 1959, 280.
18. See AG. Of Federation v. A. G. of Abia State and 35 Ors II NWLR, 2002, 6895.
19. At 1921, 16.
20. 2 NCLR, 1981, 368
21. See Garba, Ors v. University of Maiduguri. 1 NWLR (pt. 18) 550, also Ojokolobo v. Alamu,1987:2(77):18.
22. See S (a), 6(6).
23. 1 NCLR 4, op cit, also Atibu v. Oduntan (1992) 2 NWLR, 1981, 210
24. Lord Dennings: Due Process of Law, 15.
25. Per Niki-Tobi JSC, "Law, Justice and the Constitution-wither Nigeria" All Nigeria Judges Conference papers (SC), 73.
26. Supra. See also the dicta of Obaseki, JSC at p. 636 – 8; Oputa; Uwais, at, 1986, 639.
27. Ibid at foot note 15.
28. [1] Dennis Iloyd; "Introduction of Jurisprudence" 1973, 2nd ed. P.97 – 98.
29. Dennings "The Road to Justice".
30. In Isiaku Mohammed Kano NA. 1 All NLR PER Ademola, CJN, 1964, 424.
31. Oputa CA. "The Law and the Twin Pillars of Justice, 1981.
32. In R. v. Rand. L. R. 1 Q. B. 834 at 836S, 1986.
33. Herwart LC. In R. v. Sussex Justice, exparte McCarthy (1924) IK B 256.
34. Lord Wright: "Legal Essays and Addresses"
35. See Onagoruwa v. The State 1 NWL 1993; 46:303.
36. Erisi and Ors v. Idika 4 NWLR per Nnamani Jsc. 1987; 66:503.
37. In Rescowby v Scowby. 1 Ch. 742 C, Also Saude v. Abdulahi (1897) 4 NWLR (pt. 116) p. 39 per Kayode, Eso, JSC, 1987, 39.
38. Oputa CA. JSC in Godwin Josiah v. The State NWLR, 1985.
39. Paper presented at the All Nigeria Judges Conference in Abuja entitled "Law versus Justice".
40. Per Alexander, CJN in Onyiuke v. Okere 1 NWLR at, 1979, 290.
41. HL A Hart. "The Concept of Law" New York, Oxford University Press, 1961, 16.
42. Dennis Lioyds, op. cit, 39.
43. See severally sections 13 to 22 Constitution, 1999.
44. Austin. "Lectures on Jurisprudence" 5th ed. 1:268.
45. De Smith. "Judicial Review of Administrative Action" 3rd ed. 134.
46. Fawehinmi v LPDC. 2 NCLR 719, also R. v. University of Cambridge (1723) 1 Sf. 557, 1982.
47. Samuel Johnson. "The Conscience Dictionary", 1770.
48. See Chapter IV, Section Constitution (as amended), 1999, 33-166.
49. Ibid, Section 13 to 22, Supra.
50. 6 NWLR (pt. 200), 1991, 709.
51. Yinka Badjio v. Federal Minister of Education wbrn 48 (C. A.), 1986.
52. Per Hon. Justice Mamman Nasir, P.C.A. in a paper delivered at the All N.J.C, 1988.
53. See generally Sections 33-46, Supra.
54. See Kayode Eso, JSC op. cit. Note II.
55. Holy Bible, Deuteronomy 1 vs. NKJV, 16-17.
56. Baron John Austin, 1834-1902.
57. Nasir JSC. Lecture paper at Nigeria Judicial Institute, 1992.
58. Dicey Av: "Introduction to the Study of Law of the Constitution" Ed, 1959.
59. S. of the Constitution, also Magna Carta Act, 1999, 1215.
60. See S. 17(2) (a) (e) and S. 36 of the 1999 Constitution (as amended).
61. In Guardian Newspaper Ltd v. A. G, of Federation (1995) 5 NWLR (pt. 398), 744.
62. NWLR 638, see also Garba v. Federal Civil Service

[94] Aguda, "The Common Law and the Common Man in the Crisis of Justice" (1986) p. 31 – 32.

Commission (1988) 19 NSCC 320 Per Eso JSC, also Labiyi v Anretiola NWLR (pt. 258) 1986; 139:170-1.
63. In Marbury v. Madison, 5 U.S. [1 Cranch], 1803.
64. See Genesis 3 vs. KJV, 9-12.
65. SCNJ 422 at 423, also Uzo-Ukwu v. Eze-Owu II. 1991; 6:708.
66. Now the African Charter on Human and People's Rights (ratification and modification) cap L.F.N, 1990.
67. Per Aniagolu. JSC in Ariori v. Elemo (1983) NSCC 28, Federal Republic of Nigeria v. M.K.O Abiola NWLR, 1995, 1.
68. In Rothermere v. Times Newspaper Ltd ALL E. R. 1013 at 1027, 1973.
69. NSCC 325; also Otapo v. Smmonu (1987) 2 NSCC 667 at 1968, 693.
70. Amadi v NNPC. 10 NWLR 674; also Oshevire v. British Calendonia Airway (1996) 7 NWLR, 1996, 507.
71. National Bank of Nigeria Ltd v. Lady Alakija. S.C, 1978, 59.
72. Bayo Akinterinwa, Ors VC Oladunjoye SCNJ, 2000, 149.
73. S. 6 (6)(c) and (d).
74. Okoye, Ors v. Nigeria Construction and Furniture Co. Ltd NWLR, 1991, 501.
75. Gani Fawehinmi v Tinubu S.C.S, 2002.
76. NCLR 338, also Titiloye v. Omoniyi Olupa (1991) 7 NWLR, 1981, 51.
77. NWLR. Also Yinka Badejo v. Education Minister (1990) WBRN 48 C. A, 1987, 779.
78. Onyeason v. Christopher Nmenedium & 30 Ors 3 SCNJ 129 at, 1991, 130.
79. Yinka Badejo's Case Supra. Fawehinmi v. Akilu, Supra and A.G. of Federation v. A.G. of Abia State and 35 Ors 11 NWLR, 2020, 689.
80. S, S. of Constitution (as amended), 1999.
81. Okoye ors v. Nig. Construction and Furniture Co. Ltd Supra S, 1991.
82. S C5 NWLR 821, Supra, 1986.
83. 3 WLR 1405 at 1409, 1962.
84. Akpataku, ors v. Nkemditim. NSCC, 1962, 374.
85. E.g Saro-Wiwa and the Ogoni 9 Episode (1995), also the Gen. Lkewot Trial, 1988.
86. In Inner Morality of Law.
87. Gen Abacha v, Fawehinmi CA. NWLR also Agbakoba v. Director of State Security Services, 1994, 6
88. NWLR C. A. also Guardian Newspaper Ltd v. Attorney-General, Federation Supra,1995:475:351.
89. Jennifer Madike v IGP. NWLR (pt. 227) 70 at 121. See also Decree No. 28 of 1967, and Lakanmi v. A.G. of Western Region (1970). NSCC, 1992, 143.
90. See Sec. Evidence Act Cap 112, LFN, 1990.
91. Princewell Rv. 370 Criminal Code, also Sec. 36(11) of the Nigerian Constitution, 1999.
92. Olufemi Babalola and Ors v. The State NWLR. 1989; 256:115.
93. Per George Benard Shaw, quoted by Akin Oyebode, in "Re-Thinking the Legal System in Journalism and Society", 166.
94. Adewoye O. "The Judiciary System in the Southern Nigeria,1977:14:1851-1954.
95. Okoya v. Santili NWLR per Niki-Tobi, 1991, 206-753.
96. Krishna Iyer. "Law versus Justice", New Delhi, 1981, 81.
97. Aguda. "The Common Law and the Common Man in the Crisis of Justice, 1986, 31-32.