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SCAN ARTICLE

# **Court Congestion and Access to Justice in Nigeria: Cancerous or Curable?**

Omoniyi Bukola Akinola\* and Faith Modupe Akinola\*\*

## **Abstract**

*The menace of court congestion is one of the challenges bedeviling the Nigerian Judicial System that calls for concerted efforts among stakeholders in tackling the adverse effect at all levels. Many scholars, judges, lawyers as well as litigants have decried the malady of this cancerous enigma that has eaten deep into the fabric of the Nigerian judicial system. The impact of which is felt in the socio-political realm. Hence, the call for drastic concerted efforts to decongest the courts for the expeditious disposal of cases thereby creates an environment for timely dispensation of justice and economic growth. The paper adopts the doctrinal methodology of research by looking at the opinion of authors, judicial decisions, and opinions as well as some statutes. This paper analyses the concept of court congestion in Nigeria by examining the remote and immediate causes and its effects on the growth of Nigeria into nationhood and made recommendations on the way forward. Consequently, this paper called on all stakeholders in the judicial system to fight against court congestion thereby making for easy, fast, and expeditious dispensation of Justice in Nigeria.*

**Keywords: Access to Justice, Court, Court Congestion, Judiciary**

## **Introduction**

The constitution of the Federal Republic of Nigeria guarantees access to justice to citizens and non-citizens through the courts and tribunals established by law through the National Assembly and State Houses of Assembly. The court system in Nigeria plays a pivotal role in the dispensation of justice. However, over the years, the court has been plagued with several challenges and one of the challenges is the congestion of cases in courts across Nigeria. This paper argues that the challenge of Court congestion is the root cause of most of the ills plaguing the Nigerian judicial system consequently painting the Nigerian judicial system in a bad light among litigants who once saw the courts as their last hope in a disgruntled society. Although,

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there exist divergent opinions amongst scholars as to the reasons behind the current state of court congestion in Nigeria, this paper will proffer solutions to the menace of congestion of cases.

While some scholars blame it on the legal practitioners, who come to court ill-prepared only to make unnecessary applications for adjournment others opine that the requirement of a certain number of cases before being conferred with certain privileges like that of the Senior Advocate of Nigeria (SAN) title will mean that even when cases lack merit, lawyers will be bent on pursuing such cases at the appellate courts to meet up with such requirements, thereby congesting the appellate courts. Others have blamed it on the shortage of Judges that fewer courts have been labored with large number of cases and so many other factors that will be considered in this paper.<sup>1</sup> It is however imperative to state candidly here that despite the divergent opinions on the subject of court congestion in Nigeria, it remains a very strong clog in the wheel of justice that we cannot afford to shy away from; hence the need for immediate intervention to prevent it from ravaging the very fabric of our judicial system.

### **Conceptual Clarification**

In discussing the concept of court congestion, it is pertinent to lay proper foundation by clarifying some of the terminologies used in this paper such as ‘court’ ‘congestion’ the judiciary which is the arm of Government and the institutionalized body legalizing the operations of the courts.

### **Court System**

At the core of the Nigerian Legal System is the Judiciary which is the arm of the government responsible for the interpretation of laws and administration of justice by adjudicating matters between individuals and upholding the rule of law through the instrumentally of duly constituted Courts.<sup>2</sup> Thus, judicial powers have been defined to mean the authority vested in courts and judges to hear and decide cases and to make binding judgments on them. Judicial power is the power to construe and apply the law when controversies arise over what has been done or not

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<sup>1</sup>A Adesomoju, ‘2019/2020 Legal Year: Court Congestion, Top Judiciary’s Concern’ *Punch News Paper* (2019) <<https://punchng.com/2019-20-legal-year-courtcongestion-independence-top-judiciary-concern/>> accessed 5 August 2022.

<sup>2</sup>*Anozia v. Attorney General of Lagos State* [2010] 15 NWLR (Pt. 1216) 207 at 237.

done under it.<sup>3</sup> Like other tiers of government, the powers vested in the judiciary are clearly enunciated in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) as follows:

The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts establishments for the Federation. The judicial powers of a State shall be vested in the Courts to which this section relates, being courts established, subject as provided by this Constitution for a State.<sup>4</sup>

The above provision of the CFRN 1999 provides for the establishment of Superior Courts of Records and further empowered the House of Assembly of States to make enactments for the creation of inferior courts in the respective states of the Federation. It is in this category that courts like the Magistrate Courts, Customary Courts of States, Area Courts and Sharia Court in the northern region and other inferior courts falls under this category and it provides thus:

Nothing in the foregoing provisions of this section shall be construed as precluding-The National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High court....<sup>5</sup>

However, the Constitution precludes the National Assembly or House of Assembly from abolishing any court duly established by them, hence it suffices to say that going by the express provision of the Constitution, the Legislative powers with respect to the creation of Courts is only empowered to promulgate laws for the establishment of various courts but lacks the power to abolish any court upon its creation. The Superior Courts of record expressly stated in the Constitution include: the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital territory, a High Court of State, the Sharia Court of Appeal of the Federal Capital Territory, Abuja, a Sharia Court of

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<sup>3</sup> S Justus and CNNduka, 'The Court System in Nigeria: Jurisdiction and Appeals' [2016](2)*International Journal of Business and Applied Social Science*, 2.

<sup>4</sup> CFRN1999, s. 6 (1) (2)

<sup>5</sup>*Ibid*, s 6 (4).

Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, and Customary Court of Appeal of a State;<sup>6</sup>

It is trite to mention that the powers of these Courts stated hereabove as vested by the Constitution of the Federal Republic of Nigeria relate to the inherent powers and sanctions of the Court and extends to all matters between private individuals, 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.<sup>7</sup>As clearly stated in the above constitutional provisions, the court as a vital tool of social engineering is also saddled with the herculean task of upholding the rule of law as the guardian of the Constitution. This position was given credence in the case of *Attorney General Abia State v. Attorney General Federation*,<sup>8</sup> wherein the Court succinctly held as follows:

It is also important to bear in mind that the judiciary... is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purpose of safeguarding and protecting the constitution and its goals. The judiciary when properly invoked has a fundamental role to lay in the structure of governance by checking the activities of the other organs of government and thereby promoting good governance and respect for individual rights and fundamental liberties and ensuring the achievement of the goals of the constitution and not allow the defeat of such good intendments. It is the duty of the court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizen as demanded by the Constitution.<sup>9</sup>

Also, in the case of *Gadi v. Male*,<sup>10</sup>the Court unequivocally stated as follows:

It is trite that the courts of law in this country and indeed in all the civilized countries of the world are the primary custodians of the constitution, nay the rule of law. The courts are inherently imbued with sacrosanct and far-reaching

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<sup>6</sup>*Ibid.* s 6 (5) (a-i).

<sup>7</sup>*Ibid.* s 6 (6) (a-b).

<sup>8</sup>(2002) 4 SC (Part I) 1.

<sup>9</sup> (2007) 1 CCLR SC 104 at 131; Justus and Nduka (n3).

<sup>10</sup>*Gadi v Male* 9 [2010] 7 N.W.L.R. (Pt 1193) 225.

fundamental powers to preserve, interpret and uphold the constitution. Such laws as may be enacted by the legislature, Federal and/or State.<sup>11</sup>

In concluding on the Nigerian Court system, it is pertinent to reiterate the fact that as pivotal as the role of the court is in the process of social engineering, it is battled with some attendant challenges; at forefront of which is the challenge of congestion which has made it bereft of achieving its potential, as the age-long saying goes justice delayed is justice denied.

### **Court Congestion**

The congestion of courts has been said to not just mar the adjudication process of cases in Nigeria but has also left judges completely overwhelmed with the growing number of cases filed and killed advocacy amongst lawyers. It is major the problem that has over the years militated against speedy dispensation of the justice system in our courts.<sup>12</sup> Congestion connotes an instance where cases are filed at a rate far in excess of what judges in the court's jurisdiction can dispose of within a reasonable time, thus, delaying the expeditious dispensation of justice.<sup>13</sup> It is said to make nonsense of the objective of the rule of law and robs litigants of the fundamental right to a fair hearing within a reasonable time. The narrative is the same across the board although in varying degrees because no court is exempted from this malady ranging from the inferior Courts to the Supreme Court of Nigeria; however, the Supreme Court is the most congested, being the final arbiter in the hierarchy of courts in the Federation.<sup>14</sup>

The Federal High Court of Nigeria, during its 2019/2020 legal year event, considered the major ills plaguing the Nigerian judiciary and on the top of the chat was the challenge of court congestion. Honorable Justice J.T. Tsoho, Chief Judge of the Federal High Court also lamented the predicament of Court congestion bedeviling the Federal High Court. The Learned Justice stated that there were over 100,000 cases pending before the Federal High Court across its divisions with only about 80 Judges on its bench. He emphasized that, it will be baseless optimism to expect a regime of the quick dispensation of justice in the Federal High Court and by extension, the nation's judicial system in the new legal year. In the year under reference

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<sup>11</sup>*Ibid*, 266.

<sup>12</sup>Atake E. 'Congestion in Court is killing advocacy' *The Guardian Newspaper*(2018)

<<https://guardian.ng/features/congestion-in-courts-is-killing-advocacy-says-atake/>>accessed 16 of August 2023.

<sup>13</sup>Nafiu, A. 'Rage over Congestion in Courts' *Stuchlikova & Partners*(2017)

<<http://www.nigeriabar.com/2017/02/rage-over-congestion-in-courts#.YvrMhdIo9Pw>> accessed 16 August 2023.

<sup>14</sup>*Ibid*.

alone, the Judges of the Federal High Court were burdened with 116,623 cases yet there was nothing in the budget for the appointment of Judges for the Court.<sup>15</sup>

He further stated that as at the immediate past legal year in a space of about 3 months, 16,144 cases were filed of which about 12,692 were disposed of. Consequently, it needs not be mentioned that Judges across the various divisions would have been overburdened with working the last legal year, hence the need for the recruitment of more judicial officers in the course of the year.<sup>16</sup>In May 2018, Honorable Justice Opeyemi Oke Lagos State Chief Judge (as he then was) also decried the malady of court congestion stating that there were over 3,000 backlogs of cases in different courts across the state and further proffered significant remedies in tackling this enigma that has eaten deep into the fabric of the judiciary. His Lordship stated frantic efforts made during His stay on the bench in order to reverse the trend and restore the public confidence in the Lagos State Judiciary consequently making room for a fast, effective, efficient administration and dispensation of Justice in the state under her watch.<sup>17</sup>

The Supreme Court as earlier mentioned is the most congested; being the final arbiter in the hierarchy of courts. Scholars have also decried the protracted nature of cases at the Supreme Court as there have been records of cases spanning over 15 or even more years before they were finally laid to rest. A case in point is *Oloyode Akingbade v Lagos Town Council*<sup>18</sup> a legal tussle over the acquisition of land in Lagos in the year 1958 which was settled by the Supreme Court 32 years after the legal battle began at the High Court of Lagos State. Brief facts of the case showed that the then Government of Western Region acquired a vast area of land measuring 5000 acres for public purpose, however, in 1979, The Akingbaiye family and 23 others who were affected by the acquisition approached the Lagos State Lands Tribunal for the purpose of determining compensation payable to them for the acquisition and the sum of N1, 141,631.20 was awarded as compensation.

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<sup>15</sup>Adesomoju (n1).

<sup>16</sup>*Ibid.*

<sup>17</sup>O Olasunkanmi, 'Lagos CJ Decries Backlog of Court Cases- Lagos State Government' *Lagos State Government*(2020) <<https://lagosstate.gov.ng/blog/2018/05/17/lagos-cj-decries-backlog-of-court-cases/>> accessed 17 August, 2022; J Monyeand Others, 'Where are we in Curbing Delays in Administration of Justice in Nigeria' *Punuka*(2020) <<https://punuka.com/where-are-we-in-curbing-delays-in-nigeria/>>accessed 16 August 2023.

<sup>18</sup>*Oloyode Akingbade v Lagos Town Council* (1955) 21 NLR 90.

Dissatisfied with the award and coupled with the delay on the part of the Lagos State Government in paying the sum awarded, the Family filed an originating summons on the 27<sup>th</sup> day of December, 1985 at the Lagos State High Court and Judgment was entered in favor of the Akingbaiye Family who further went on Appeal to the Court of Appeal solely on the issue of interest on the sum awarded which appeal was dismissed and the Family appealed to the Apex Court in 2016 and same was equally dismissed after 32 years of legal tussle; on the ground that The Lagos State High Court lacked jurisdiction to entertain the matter as Section 16 of the Public Lands Acquisition (Miscellaneous Provision) Act of 1976 confers exclusive jurisdiction on the Lands Tribunal to determine issues relating to compensation payable on lands acquisition by the Government, and that where a party is dissatisfied with the decision of the Tribunal the appropriate step to take is to approach the Court of Appeal and not the High Court as the Appellant did.<sup>19</sup>

Another case in the point is the popular case of *State v Rev. Dr. Chukwuemeka Ezeugo King*,<sup>20</sup> which took over 9 years before it was given a befitting burial by the Apex Court on the 26th day of February, 2016, which dismissed Rev. King's appeal while upholding the decision of the trial Court and convicted him for the murder of Ann Uzoh on a 6 Count Charge and sentenced him accordingly to death by hanging. From the foregoing, it is obvious that Court congestion is ultimately responsible for the delay in the administration of justice and as a result, brought ridicule to the face of the Court and untold hardship to litigants who are made to wait unnecessarily for several years before obtaining judgments from the courts for matters that could have been expeditiously decided within short period of time or even loss their lives in the process.

### **Factors Responsible for Court Congestion in Nigeria**

This paper argues that case congestion is a product of a combination of factors and not just a singular act, consequently, practices such as Holding Charge, Trial *denovo*, the limited number of Judges, analog case management system, and lack of trained manpower all create unnecessary delays in proceedings that tends to congest the Court.

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<sup>19</sup>A Oyekanmi, 'Supreme Court Affirms 1958 Acquisition of Ilasamaja/Oshodi Land by Lagos State Government *Encomium*(2017) <<https://ecomium.ng/supreme-court-affirms-1958-acquisition-of-ilasamajaoshodi—and-by-lasg/>> accessed 10 October 2023.

<sup>20</sup>*State v Rev. Dr. Chukwuemeka Ezeugo King*(2013) LCN/6696 (CA).

## **The Practice of Holding Charge in Criminal Trials**

Holding Charge has been considered by scholars as the practice of bringing suspects before an inferior Court that lacks jurisdiction for the primary purpose of securing a remand order. It is a practice wherein a defendant charged for a capital offence is taken before the magistrate Court which lacks jurisdiction to try the matter for the sole purpose of having the defendant remanded without making concrete efforts to having the defendant tried at the appropriate court on time.<sup>21</sup> This remains the practice despite plethora of authorities declaring same to be unconstitutional.<sup>22</sup> The practice does not only allow for docket congestion but also one of the major reasons for the congestion of correctional facilities in the Country. Scholars opine that the Police still engage in this practice to satisfy the requirements of Section 35(4) of the Constitution which provides that where a person is arrested or detained upon reasonable suspicion of having committed a crime, he/she is to be brought before a court of law within reasonable time.<sup>23</sup> The Constitution further defined what amounts to a reasonable time in Subsection (5) to mean 24 hours where a Court of Competent jurisdiction is within forty kilometers and 48 hours where the circumstances are different. Consequently, to satisfy the aforementioned constitutional requirement of not detaining a suspect longer than the constitutionally allowed period, the Police often times charge suspects to the Magistrate Courts for offences for which they do not have jurisdiction to try. This anomaly unfortunately has become the norm because the Police often carry out “arrest-before-investigation” rather than carry out investigation-before-arrest which is practice is illegal.<sup>24</sup>

## **Unnecessary Delay in Court Proceedings both in Civil and Criminal matters**

Another factor that causes court congestion is unnecessary delay in court proceedings. This is one of the major factors militating against Court room decongestion. This challenge does not stand alone as so many factors contribute to warrant unnecessary delays with proceeding. Sometimes, it is because of the act of counsel who comes to court unprepared and therefore seeks for countless adjournments. Some other times, litigants who are no longer ready to go on with their cases in other not to be awarded heavy cost for bringing frivolous actions to the court will pursue

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<sup>21</sup>K Adejumo, ‘Nigeria’s Holding Charge Policy Affecting Access to Justice’ *HumAngle*(2022) <<https://humanglemedia.com/nigerias-holding-charge-policy-affecting-access-to-justice/>> accessed 10 October 2022.

<sup>22</sup>*Olawoye v COP* [2006] 2 NWLR (Pt. 965) 427 at 442-443 para-H-A (CA).

<sup>23</sup> CFRN 1999, s 35(4) and (4).

<sup>24</sup>M Ozekhome, ‘A holding Charge is patently illegal under the Constitution’ *Premium Times*(2015)<<https://www.premiumtimesng.com/features-and-interviews/195426-a-holding-charge-is-patenly-illegal-under-the-constitution-part-1.html>> accessed 10 October, 2023.

such matters at a snail speed rather than withdraw them. Another delay tactics employed by counsel according to Punukais by raising frivolous preliminary objections to challenge the jurisdiction of the trial Court on mere irregularity, or on the validity of the charge in criminal trials. Making the trial court to go on a voyage to decide on the preliminary objection raised while the substantive matter is yet to be heard after which counsel can even decide to pursue the decision of the court on interlocutory appeal.<sup>25</sup>

### **Shortage in the Number of Judges**

Majority of scholars are of the opinion that shortage in the number of judges is a major factor aiding court congestion across the federation, hence the clamor for the appointment of more judges in both Federal and State courts. However, there is an unpopular view that posits that the appointment of more judges has never solved the issue of court congestion; rather it is improved methods of adjudication that makes for docket decongestion. As far back as 1958, while addressing the Assembly of the American Bar association in Los Angeles, Chief Justice Warren posited thus:

While more judges are essential to enable us to keep pace with the growing population, we cannot expect our real strength to flow merely from expanding the judiciary. That has been done in the past and it has been found not adequate. Our strength must come mainly from improved methods of adjusting case loads, dispatching litigation for hearing, resolving complicated issues, eliminating non-essential ones, increasing court room efficiency and through dispatch in decision making and appeal.<sup>26</sup>

As succinct as the foregoing, it cannot rule out the fact that shortage in the number of judges makes the judiciary reel under the burden of overflowing dockets and fatigue the few available judges. Justice Alogbaof Lagos State High Court (as he then was) lamented this unfortunate situation thus:

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<sup>25</sup>J Monye and Others, 'Where are we in Curbing Delays in Administration of Justice in Nigeria?' *Punuka* (2022) <<https://punuka.com/where-are-we-in-curbing-delays-in-administration-of-justice-nigeria/>> accessed 19 August, 2023.

<sup>26</sup>HC Westover, 'The Cause, Effect and Solution of Congestion in the Federal Courts'(1959) 10 *Hastings L.J.* 384'<<https://repository.uchastings.edu/hastings-law-journal/vol10/iss4/3>> accessed 19 August, 2023.

Sometimes in my humble position as an administrative judge, it pains me a lot because at a time, you could give one judge 50 files and within the week more cases are filed; you'd still send more files to that judge. What miracle do you expect a judge to perform in such circumstance?<sup>27</sup>

From the foregoing, it suffices to state that the appointment of more judges is a factor that must be considered when addressing the issue of court congestion in Nigeria.

### **Analogue Court System.**

Another area one must consider keenly when discussing the subject of court congestion is the analog system of the courts. We cannot be in denial of the fact that the world has moved beyond the analog system. Hence, the judiciary cannot afford to be left behind if it must be effective and efficient in its delivery of justice in this age and time. Consequently, staff and officers of the court must be trained to be able provide the service of justice in line with current demands. Scholars have advised that as legal practice has become more technologically advanced, pressure mounts on the courts to join the flow of the technological progress; one aspect of which has been increased interest in implementation of e-filing and/or a more or less paperless court process which is the foundation for modern case management system.<sup>28</sup>

### **Lack of Trained Manpower**

It is trite that a modern case management system will require trained administrative staff to man various gadgets, therefore under trained judicial staff is a major challenge to court room decongestion. The courts do not operate in a vacuum but are rather manned by individuals such as court clerks, bailiffs, registrars, and other officials who for the most part are not properly trained in the nuances of the judicial system hence the reason for unnecessary delays warranting court congestion. Broadly looking at the factors discussed in this paper, it is agreed that court congestion impedes the smooth dispensation of justice, and the aforementioned factors must be addressed if we must attain docket decongestion.

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<sup>27</sup>F Busari, 'Special Report Case Congestion in Lagos Courts hinder access to justice' *Premium Time* (2019) <<https://www.premiumtimesng.com/news/headlines/348468-spaecial-report-case-congestion-in-lagos-courts-hinder-access-to-justice.html>> accessed 14 October 2023.

<sup>28</sup>RSlowes, 'Benefits of a Modern Court Case Management System' *White Paper* (2016) <<https://www.static.legalsolutions.thomsonrer>> accessed 10 October 2023.

## Effects of Court Congestion in the Nigerian Justice Sector

There is no doubt that court congestion poses a major challenge to the smooth dispensation of Justice in Nigeria. Facts abound to the effect that justice in Nigeria today is plagued with unnecessary delays such that the various courts are inundated with cases that last for several years before they can be determined by the courts of first instance.<sup>29</sup> Long adjournments cumbersome and rigorous procedures, difficult and ambiguous rules of evidence, and other several artificial obstacles are largely responsible for the delay which has so much haunted the smooth and expeditious delivery of justice in Nigeria for so long.<sup>30</sup>

The phrase justice delayed is justice denied has become a common statement when discussing about court system or the judiciary, which the gravity of the whole essence of that statement seems to have been lost by virtue of common usage. However, in the late 1800's the phrase that "justice delayed is justice denied." Although, history has it that he was not the first to coin the said phrase. Consequently, it is argued that for a person seeking justice, the time taken for the resolution of the issue is critical to the justice experience of this person and can render their treatment wholly unjust in circumstances where the resolution of a dispute takes too long. Therefore, this position is in tandem with a line of argument that posits that "the time taken to deal with a dispute is in many cases the critical factor in determining whether or not people consider that the justice is just and fair."<sup>31</sup>

The idea of Justice delayed is justice denied is hinged on the fact that if a legal redress or equitable relief to an injured party is available, but is not forthcoming in a timely fashion, it is effectively the same as having no remedy at all. It is the foundation upon which the right to speedy trial is firmly rooted. Delayed justice which is a ripple effect of court congestion goes to the credibility of any justice system because it makes the public to cast aspersions on the integrity of the judiciary. This position was succinctly put by Chief Justice of the United States Warren E. Burger thus:

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<sup>29</sup>FBusari, 'Special Report: Case Congestion in Lagos Courts Hinder Access to Justice' (2019) *Premium Times* <<https://www.premiumtimesng.com/new/headlines/348468-special-report-case-congestion-in-lagos-courts-hinder-access-to-justice.html>> accessed 15 October 2023.

<sup>30</sup>IAkomolede, 'Reflections on Alternative Dispute Resolution (ADR) as an antidote to the Delay in dispensation of Justice in Nigeria' in OOluduro and Others (ed) *Trends in Nigerian Law, Essays in Honour of Oba DVF Olateru Olagbegi III* (Constellation (Nig.) Publishers, 2007) 482.

<sup>31</sup>T Sourdin, *Meditation in the Supreme and County Courts of Victoria* (Australian Centre for Justice Innovation, 2009), 117.

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society:

That people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that the courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe that law- in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work and on the public streets.<sup>32</sup>

Prompt decision-making is integral to justice dispensation. Hence, unnecessary and unwarranted delays rob justice of its very essence, suffice it to be said that not all delays are tantamount to justice denied as the question of whether justice was served or denied is whether the delay is avoidable or disproportionate, or unavoidable and necessary which is a question of fact to be determined by the circumstances of each case; proportionality must be considered critically to arrive at a conclusion on this matter.<sup>33</sup>In concluding on the effect of court congestion, what more can be said is that when courts are congested, they overburden the adjudication process and robs the courts of the crux of its very existence which goes beyond just dispensation of justice but the timely dispensation of justice in line with the age long saying justice delayed is justice denied.<sup>34</sup>

### **The Way Forward**

In proffering a way forward on the issue of Court Congestion, the National Judicial Council has on its part made some frantic efforts in recommending some cogent structural guidelines which if critically considered and enforced, will bring the needed change in the judiciary as well as decongest the Courts and consequently redeem the image of the judiciary. The National Judicial Council is one of the Federal Executive bodies created Pursuant to Section 153(1) of the CFRN 1999, while the National Judicial Institute is a body established by the National Judicial Institute Act, Cap N55 Laws of the Federal Republic of Nigeria 2004. It is responsible for the appointment, promotion, and discipline of Judicial Officers. At the core of its functions, through

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<sup>32</sup>JE Warren, 'What's Wrong with the Courts: The Justice Speaks Out address to ABA Meeting' (1970) <<https://njc.gov.ng/national-judicial-policy>> accessed 20 August, 2023.

<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*

various reforms and policies, it provides for the protection and preservation of the sanctity of the judiciary and fosters a justice system that is fair and speedy that meets the hope of the common man.<sup>35</sup>

In a bid to achieve the forgoing, the National Judicial Council has put in place the following Policies which are copiously enunciated hereunder as same will go a long way to address the issue under reference. These policies are: Judicial Performance Policy; the Access to Justice Policy; the Case Flow Management Policy; and the Judicial Administration and Court Management Policy. The aforementioned Policies although were formulated for the smooth running of the Judiciary and might not have been specifically made to decongest the Courts, it be unequivocally stated that the adherence to these policies will birth the needed fresh air in the Courts across various jurisdictions. Consequently, the NJC believed that:

The Judicial Performance Policy will give prominence to strategies to strengthen judicial performance through constant monitoring and assessment of the adequacy of the facilities available to judges for efficient performance. To this end, the judicial performance and Evaluation Committee will strengthen the quarterly evaluation mechanisms already put in place and introduce new measures will include measures to:

Promote self-evaluation by judges and by State and Federal Judiciaries to set targets for completion of cases classified as small claims, fast track cases, complex cases, criminal cases and normal civil cases and monitor compliance.

Ensure that reasons be given for criminal cases not disposed within the set target period;

Require each judiciary to submit action plan and strategies for clearing backlog of civil cases pending for more than 3 years and criminal cases pending for more than 3 years and criminal cases pending for more than 18 months;

Require each judiciary to submit to an annual judicial system audit and survey of the effectiveness and efficiency of its judiciary system.<sup>36</sup>

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<sup>35</sup> The National Judicial Policy (2022) *National Judicial Council's* <<https://njc.gov.ng/national-judicial-policy>> accessed 10 October 2023.

<sup>36</sup> *Ibid.*

The gamut of the provisions of the Judicial Performance Policy as enunciated above is to create an accountability structure for the timely disposal of criminal and civil cases and also give a timeframe within which courts are to decide upon cases. If the foregoing is enforced, it will no longer be business as usual where cases will span endlessly for 5 years to 10 years before being finally determined at the lower courts.<sup>37</sup>

Another policy that speaks to the issue is what the NJC titled as “Access to Justice Policy” underneath which the Council enjoined that “in order to enhance access to justice, more courts should be built especially at lower level, so that justice is brought to the doorsteps of all citizens. “The Council under the access to Justice Policy also buttressed the need for the appointment of more Judges to man all the courts with adequate supporting staff, which Courts are to be well maintained and comfortable, whilst the enhancement of the welfare of all Judicial Officers and Staff should not be compromised.<sup>38</sup>

The Council stated that the continuous training of manpower is a necessity that must not be relegated to the background and is to be done when due. It also provided for the need of Courts to be at par with current trends in the area of Technology by providing that “All courts should promote the use of Information and Communication Technology (ICT)”.<sup>39</sup>

Furthermore, it provided for the need to update the rules of the Court to meet with current realities and those laws are to be made easily accessible. One of the most proffered solutions to the challenge of Court Congestion is the need to explore Alternate dispute resolution (ADR) which will limit the number of cases filed as where parties are willing to explore amicable settlement outside the four walls of the Court, they should be encouraged to do so without necessarily going through the rigors of a litigious trial process with no certainty as to when they will eventually find remedy for the particular wrong, they have suffered. Thus, the National Judicial Council also towed this line by providing that “Alternative Dispute Resolution (ADR) should be adopted by all courts”.<sup>40</sup>

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<sup>37</sup>*Ibid.*

<sup>38</sup>*Ibid.*

<sup>39</sup>*Ibid.*

<sup>40</sup>SS Ekpenyong and J Otakpor, ‘Nigeria: Is Customary Arbitration the Solution to Congestion of Cases in Nigerian Courts?’ *Mondaq*(2021)<<https://www.mondaq.com/nigeria/arbitration-dispute-resolution/107031/is-customary-arbitration-the-solution-to-congestion-of-cases-in-nigerian-courts>> accessed 30 September 2023.

Another profound remedy to the challenge of court congestion which the National Judicial Council also mentioned is the implementation and compliance with the Administration of Criminal Justice Act/Law in criminal proceedings. The gamut of the Act which has now been domesticated by many states is to fast-track the administration of criminal justice. Consequently, this paper argues that if the Act is complied with by relevant stakeholders where criminal administration is concerned, it will not only decongest the Courts but the Correctional Centers as well.<sup>41</sup>

Bold procedural reforms to promote expedition in civil litigation and criminal trials in every Judiciary will be a priority. To this end the Chief Justice of Nigeria may commission the Law Reform Commission to initiate legislation to promote bureaucratic efficiency of the court and remove procedural obstacles to expedition in civil cases and criminal trials.<sup>42</sup>

The National Judicial Council in line with the foregoing provisions also provided for what it refers to as “Case Flow Management Policy” which if also stringently adhered to will make the issue of Court Congestion a thing of the past. Under the Case Flow Management Policy, the NJC provided that the Judiciary should adopt measures designed to promote flexibility in the handling of cases, while reducing cost, delay and other unnecessary burdens to litigants in the adjudication of cases. It also provides that a time frame for disposal of civil and criminal cases should be fixed with the Criminal Cases having priority due to the sub human conditions in which persons awaiting trial or undergoing trial are kept and that Fundamental Rights Enforcement cases in line with the Fundamental Rights Enforcement Rules are also to be considered on time to the end that justice not only done but that justice is seeing to be done still reiterating the age long statement that where justice is delayed it can as well be said to have been denied.<sup>43</sup>

The idea of the need for the development of a Case Flow Matrix and a Case Tracking Register (where this is not the practice) the essence is mainly to ensure effective and efficient

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<sup>41</sup>O Agbakoba, ‘The Role of the administration of Criminal Justice in the Speedy Dispensation of Justice in Nigeria’ *The Human Rights Law Service (HURILAWS)*(2019) <<https://hurilaws.org/the-role-of-the-administration-of-criminal-justice-act-in-the-speedy-dispensation-of-justice-in-nigeria/>>accessed 16 August 2023.

<sup>42</sup>*Ibid.*

<sup>43</sup> Fundamental Rights (Enforcement Procedure) Rules, 2009.

management of the flow of cases within the respective judicial divisions.<sup>44</sup>This is suggested to be electronic or a combination of manual and electronic registers to meet current technological trends and easy accessibility by stakeholders. In essence, the NJC concluded on the case flow management policy by adding that in order to promote speedy and judicious disposal of corruption, economic crime and high-profile cases, the following must be put in place; which I consider as panacea for the menace of court congestion plaguing the judiciary.

- (a) There is the need to appoint more Judicial Officers in Nigeria considering the large population. The number of Judges to be appointed should be commensurate not only to the population but also to the workload in the State or Court, as the case may be
- (b) Adequate funding for the Judiciary, especially, at the state level and proper infrastructure and ICT equipment as well as conducive work environment must be provided to complement the improved manpower in each jurisdiction.
- (c) The Judge should take firm charge of his court and should be proactive in dealing with interlocutory applications and must not bend to the whims and caprices of counsel.<sup>45</sup>

The last policy of the National Judicial Commission which speaks to the subject matter under reference is what the NJC named as the “Judicial Administration and Court Management Policy” which provides that the Judiciary shall put in place strategies that will achieve the goals of Judicial Administration vis-à-vis, the power in the Courts by Section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria.<sup>46</sup>

Consequent upon the forgoing, it is expedient to clarify that although this paper is not an appraisal of the National Judicial Council’s Policies, it only painstakingly provided the above provisions that speaks to the subject matter under reference to express the fact that, the solution to this enigma which has far reaching implications is not farfetched but are guidelines and scholarly opinions already proffered by the National Judicial Commission, scholars as well as judges who have decried the current state of Courts across the country. It is therefore pertinent to

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<sup>44</sup>CO Obiozor, *Effective Case-Flow and Time Management Techniques* (A Paper Presented at the Refresher Course for Judges and Kadis at the National Judicial Institute, 2021) <<http://effective-case-flow-and-time-management-techniques-by-hon-justice-c.a-obiozor-1.pdf>> accessed 15 of August 2023.

<sup>45</sup>*Ibid.*

<sup>46</sup>*Ibid.*

reiterate that if these measures or policies as identified by the NJC are observed in the various judicial divisions of the Country, we will be able to manage the issue of protracted judicial procedures which in turn births Court Congestion.

It is also worthy to state that this position may not be a popular opinion as Justice Yetunde AyobamiOjo (as he then was) held to the contrary as he stated succinctly while deferring with the opinion that on the issue of the target given to judges as regards cases being handled in courts, the Learned Justice opined as follows:

Where a judge is lazy, you will know. If for instance, a judge says he is only able to deliver two judgments, he has a query.... If he is only able to deliver two judgments, he should explain why this is so. But because they now give targets, judges say they must deliver, judges say I must deliver at all cost. People come before them, he says no, no. I can't wait, I can't adjourn. He goes on to do shoddy work; they now shift the congestion from the high court to the Appeal Court. The NJC itself sends query to them in the high Court, lets know the number of cases you have done irrespective of whether the cases you have done are thoroughly done or not. I think the NJC should reexamine itself. They should not make the judiciary and the High Court look like a factory where they do mass production. In my view, that's what it is because when you say: tell me the number of cases you've had, how long does it take a trial in the High Court? .... Even if it is a summary trial in a civil case, it takes up to four months to deal with it. And you are asking me to produce mass production that is not how a court should be. It should be concerned with quality and justice in what you are doing.<sup>47</sup>

While this paper aligns with His Lordship's opinion on the need for quality justice, it however argues further that quality justice should not come at the expense of timely justice, which is the hallmark of justice and the end to which the NJC has come up with the various polices to enable the timely dispensation of justice in our courts in order to rid the courts of over congestion.

Also, in consonance with the National Judicial Council's policies, the Lagos State Judiciary came up with what they termed as the Lagos Backlog Elimination Programme (BEP) which was

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<sup>47</sup>YA Ojo, 'NJC Should Promote Judicial Ethics' *Guardian* <<https://guardian.ng/features/law/njc-should-promote-judicial-ethics/>> accessed 16 August 2023.

designed to decongest the courts by re-evaluating old cases and finding ways of resolving them through Alternative Dispute Resolution (ADR) or accelerated hearing was launched to redeem the image of the Lagos State Judiciary.<sup>48</sup> Following the introduction of the High Court of Lagos State (Civil Procedure) 2019, the Chief Judge of Lagos State also came up with “the Expeditious Disposal of Civil Cases Practice Direction” which provides that undecided cases pending before the court for over 5 years are designated as backlogs and referred for resolution to a “Special Backlog Conference Judge” for determination.<sup>49</sup>

It is noteworthy to state that reforms like this will not only cure the cancerous disease of court congestion but also make it a thing of the past and restore the lost image of the Judiciary in the wider Society.

## Conclusion

In conclusion, it suffices to state that one of the cardinal objectives of the judiciary is the defence and upholding of the constitution and assuring that the rule of law prevails at all times. In addition to this, the judiciary also has at its core the responsibility of protecting the citizen’s human and constitutional rights and ensures that adequate remedy is provided where these rights are trampled upon either by the executive or between private individuals or institutions in their dealings with one another in the larger society. Therefore, the judiciary is an essential tool of social engineering which cannot be relegated to the background that makes for and holds the fabric of a functional society together. To actualize the foregoing, the judiciary plays a significant role of ensuring order and tranquility in society by providing an institutionalized structure for the resolution of conflict and disputes through the corridors of the various courts across the nation. The courts are therefore the frameworks within which people seek redress and dispute resolution.

Consequently, the effectiveness of the apparatus of the courts goes beyond achieving equity and fairness for litigants but also that cases before it are decided timeously as justice delayed is said to be justice denied. It is however noteworthy to state that the Nigerian Judicial system operates

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<sup>48</sup>A Abdulwahab and D Onozure, ‘Lagos State Courts in a State of Emergency – CJ’ *Vanguard*(2018) <<https://www.vanguardngr.com/2018/05/lagos-state-courts-state-emergency-cj/>> accessed 12 October 2023.

<sup>49</sup>AA Osinuga and B Adepoju, ‘The High Court of Lagos State (Civil Procedure) Rules 2019- A Step to Improving the Administration of Justice’ *Lexology*(2019) <<https://www.lexology.com/library/detail.aspx?g=f390e0-a2f6-4173-8fd1-4eaff242f72a>> accessed 12 October 2023.

at a snail speed and leaves much to be desired by litigants. This paper has consequently paid a closer look at the Nigerian court system, *viz a viz*, the causes and effects of court congestion in Nigeria and has thereafter highlighted various recommendations on the way forward in achieving a decongested court. It is our finding that, though, the menace of court congestion appears perennially cancerous, it is curable when the political will to implement the recommendations in this paper among others is given the attention it deserves by all stakeholders in the justice sector.



#### ARTICLE INFORMATION

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