

PETITIONS, PARTICULARS AND THE PROFESSION: WHAT LAWYERS, LITIGANTS AND THE PUBLIC EXPECT FROM JUDGES

By

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Abstract

There is no doubt that the work of adjudication is not only one of the most arduous but also the most scrutinised tasks in the land. Because it determines the fate of individuals and groups, including a nation, members of the society have very high, sometimes exceedingly high, expectations from those engaged in it. Adjudication is a task that is essentially one person's but which innumerable multitude of persons have expectations and opinions, founded or unfounded, of what ought to emanate from the seat of judgment. It is perhaps the usual experience of every umpire, from sports to entertainment to the court hall. One unfortunate feature is that those with those expectations rarely inform the adjudicators what they expect in advance but clamp down on them if the expectations are not met. This is more so in judicial adjudication. In the bid to break out of that bind, the article has tried to identify some of the expectations which lawyers, litigants and members of the public expect from judicial officers in order to reduce 'complaining in our streets' which can sometimes be so pernicious as to erode confidence in the body whose work is rooted in confidence. The article advocates also that there should be prior education for those that aspire for the Bench so that they 'do not have to learn dexterity in old age'.

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1. Introduction

The Bench and the Bar constitute the Court. Together they perform one of the most complicated and eternally significant tasks that human beings are confronted with: adjudicating between human beings contending for the truth of matters of their rights and obligations. They agree that each is beneficial to the other in the discharge of the onerous task¹ but often do not complement each other. This situation gives rise to some unnecessary frictions that do no good to the image of justice for which the courts are set up and vested with judicial powers.²

Rather unfortunately, in our system of legal education, there is relatively little instruction to aspirants to the Bench and the Bar at the earliest points of their training on what each expects or should expect from the other. It is more so as to what the Bar expects from the Bench. Each assumes that the other knows. The Bench has all the opportunities, which its occupants often use, to tell the Bar what is expected of it by the Bench and to even punish the members of

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¹ According to Brougham, L.C. ‘The interests of justice cannot be upholding, the administration of justice cannot go on without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting the rights and obligations which form the subject of all proceedings’ in *Greenough v Gaskell* (1833) 1 Myl. & K. 98. Before him, Best J., in *Morris v Hunt* (1819), 1 Chit. Rep. 555 had also opined that ‘There is nothing which has so great a tendency to secure the due administration of justice, as having the Courts ... frequented by gentlemen so eminently qualified by their education and principles of honour, as at this time appear to discharge the duties which they are called upon to fulfil’.

² Z. Adangor, ‘The Powers of the Court to Administer Justice: Philosophy, Principles, Scope and Limitations’ in C.E. Halliday (Ed), *The Journey: Legal Essays in Honour of Snr. Chief Kola Babalola, SAN*, 2021, Vivid Media, Nigeria, 25. ‘Doing justice is ... the central role of the judiciary’. C.A. Oputa, *Our Temple of Justice*, Friends Law Publishers Ltd (1993) 253.

the Bar when they overstep their bounds. Sometimes they are formally given, as at the Law School or during conferences, where they are handed down to the Bar like the Ten Commandments were given by God to Moses.³ It is akin to the parents-children relationship where the parents give all the prescriptions as to what they expect from the children and little is heard from the children as to what they expect from the parents. On such occasions the Bar,⁴ is expected, like Moses, to descend from the Mount, gather its members, with the hope that they had not embarked on eating and drinking and rising up to play, like the Israelites at the foot of the Mount, and read out the commandments to them. They should hear it, keep it and live. They should be on the 'Lord's side'. Otherwise, they would be in danger of the wrath of the law and of the lord(s) even if not spiritual. Lawyers are subject to discipline for most failures in their professional conducts.

2. The Law of the Courts and Its Ministers

The Law that exists between the Bench and Bar, which we are concerned with here, is not given by the dispensation of angels. That could perhaps have made the law or its deliverer(s) impeccable. Even though it is administered in a temple it is not the temple of God where sacrifices of blood are made and smoke is released to signify God's acceptance. The law of the Courts is made by humans and it is administered in mundane temples made with men's hands and by human beings subject to the frailties and foibles of man. The

³ See *The Holy Bible*, Exodus 32: 15, 16. King James Version, Jet Move Bible. For a people that place high premium on religion and where Judges at the beginning of the legal year appear before God in churches and renew their oaths of allegiance and duty to Him, it is in my view, apart from personal idiosyncrasy, appropriate to find authority for what one asserts here from the Holy Scriptures of the Christian Faith of which virtually all the Judges in Rivers State, for instance, claim to belong. I am sure other holy books also address some of the issues.

⁴ Or perhaps their leaders who themselves were not taught but perhaps learnt by experience or are assumed to know because they had not been 'officially' or formally indicted.

administrators are the human beings of whom Benjamin Cardozo, later Associate Justice of the Supreme Court of the United States, said that ‘The great tides and currents which engulf the rest of men do not turn aside in their course, and pass Judges by’.⁵

All great judicial officers⁶ admit that they are human and that they are only ‘superhuman’, where they so claim, in a very restricted sense. In *Adigun v Attorney-General of Oyo State (No.2)*,⁷ where Eso, J.S.C said in his judgment that Justices of the Supreme Court were superhuman, he was careful and quick to delimit the province of his assertion. He said, in answer to Chief Rotimi Williams on the powers of the Justices of the Court and why they could not review and possibly reverse their decision:

Such is the constitutional power of the Supreme Court, that learned counsel, probably rightly, wondered if the Justices of the Supreme Court were superhuman. Let me answer the question. The Supreme Court is under the Constitution, a super court, deliberately meant and made so, by the organic law, and the Justices of that Court, now only to that

⁵ B Cardozo, *The Nature of the Judicial Process* (Yale University Press, New Haven Connecticut 1921) 168. Cardozo served on the Bench of the New York Supreme Court (1913-1918), Court of Appeals (1918-1932) and later the United States Supreme Court (February 1932 until his death on July 9, 1938). ‘All his life he was fascinated by the problem of finding the right way to reconcile the conflicting demands of stability and change in law. Consequently, his briefs and judicial opinions were marked by a concern for the nature of the law, its mode of evolution, and the limits of its authority... With rare insight he discerned the emergent trends and forces of the nation and made public law more responsive to them’. Henry M. Holland, Jr. in *Encyclopedia Americana*, Vol. 5, 2000, Grolier International, 637. To David Field ‘Judges are but men, and are swayed like other men by vehement prejudices’.

⁶ In this article ‘judges’ and ‘judicial officers’ are used interchangeably to represent all members of the Bench, irrespective of their levels, unless otherwise stated.

⁷ (1987) All NLR 328.

extent of their decision are super men, meant to be so and so made by the Constitution.⁸

His learned brother Nnamani, J.S.C., was not prepared to go that far. He demurred: ‘this Court never held itself so bound by its decisions as to perpetuate errors. The Court is not manned by super humans nor can it in my view, claim infallibility.’⁹

In *Federal Civil Service Commission v Laoye*¹⁰ Oputa, JSC, while conceding that ‘Justices of the Supreme Court are human beings capable of erring’ (and that) it will be short-sighted arrogance not to accept this obvious truth’, advised that the dictum of Eso, J.S.C. ‘should not be read out of its proper context’. He interpreted it in the context of infallibility, saying that ‘All it amounts to is saying that we are not final because we are infallible but rather we are infallible because we are final’. ‘The court can do inestimable good through its wise decisions. Similarly, it can do incalculable harm through its mistakes.’¹¹

If, therefore, it is agreed that judicial officers are humans, subject to the tides of life, from emotional and intellectual limitations to spiritual inclination and personal idiosyncrasies, it would not be out of place to let them know what those who have to interact with them, whether as lawyers, litigants, other servants of the sector or even the public expect of them. The expectations may be reasonable or unreasonable, fanciful or realistic, founded or unfounded but they are often the factors that affect the image or reputation of the courts

⁸ Ibid at 344.

⁹ Ibid at 357. The opinion of Oputa, JSC on infallibility was in tandem with that of a past Attorney-General of the United States, Dick Thornbourg (US A-G, 1988-1991) who may have read Oputa’s view when he said: ‘As the saying goes, the Supreme Court is not final because it is infallible, it is infallible because it is final’ in Richard Panchyk, *Our Supreme Court: A History with 14 Activities*, 2007, Chicago Review Press, Inc.

¹⁰ 1989 All NLR 350, 391.

¹¹ See also Oputa, J.S.C., in *Adegoke Motors v Adesanya* (1989) 3 NWLR (Pt. 109) 250, 274-275.

in every society. While no judicial officer should embark on the arduous and ultimately unrewarding task of seeking to please men, be they lawyers, litigants or other bystanders,¹² it would be a disservice to the Blind Lady to make her completely unattractive by odious reputation and disdain for the opinions of the consumers of the products of the temples.

Very often in recent times Judges have in different fora, from the open court to the law reports and when they have opportunity to speak to generality of lawyers in conferences, been very quick to point at the errors, foibles or weakness of lawyers who appear before them. Lawyers must be grateful, for those are additions to what they learnt at the Law School, read in books, were admonished in chambers and cautioned themselves on in the self-preservative urge to save themselves and their clients' interests. It is always a blessing to have someone who chastises one or he becomes a bastard, as the Holy Writ puts it.¹³

Judges do not have that fortune or luxury. They are the lords of their courts and perform with relatively little supervision. In the words of Godfrey Chaucer in his *The Franklin's Tale*, judicial officers 'swallow their penance whole', having no one to make their confessions to. They are only chastised, when it is perhaps too late, by statutory bodies like the National Judicial Council or Judicial Service Commission. Most Chief Judges and heads of Court, on the idea of legal equality with their brothers and may be in show of solidarity may not effectively or at all reprove their erring brothers.

In a profession that emphasises candour but in which timidity and sycophancy can be elevated to high culture in the name of respect for the judicial officer, the Judge can be like a king dancing naked who has no one, not even a palace clown or court jester, to tell him that he falls short of any expectation or minimum standard. He

¹² Oputa, *Our Temple of Justice*, (n2) 250-252.

¹³ *Holy Bible*, Hebrews 12: 5-11 (3)

becomes the butt of rumours and slanderous conjectures by lawyers and litigants who swear behind of knowing the evil that he is guilty of but look askance when asked in the open.

Everyone in the position of a judicial officer, addressed as ‘my Lord’ or equivalent title of reverence, sitting on the elevated podium, dishing out instructions, orders or judgments and having everyone yield to him, ‘as the court pleases’, under the protection of the Law and tradition, can easily fall into the temptation of thinking that he is above expectation and possible errors. After all he is in charge in his court!

The admonition that one should take everything he is given or sees in court hook, line and sinker or, if he is dissatisfied go on appeal, as useful as it is, does not often appreciate that what makes a great or poor judicial officer is more often than not the unwritten non-appealable grounds. The heads of Courts or disciplinary institutions like the National Judicial Council (NJC) or Judicial Service Commissions (JSC) would testify that the petitions they receive against judicial officers are less on matters of the law and facts of cases, for which parties have recourse to appeal as effective remedy, than on conducts which may not ground appeal in law. Yet it would always be counter-productive to sweep such matters aside on the ground of law and its technicalities.¹⁴

In the same way the complaints of judicial officers against lawyers and litigants are less on their handling of the law and facts, which are the concerns of their judgments and rulings but more on the

¹⁴ The Eso Panel on the reform of the Judiciary in the last decade of the 20th Century decided not to sweep aside such complaints or rumours based on technicality because, as Oputa, JSC (rtd.) who was a member of the Panel, reported at the 2000 Law Week lecture of the Nigerian Bar Association, Port Harcourt branch, the Panel realised the pernicious impact of persistent rumours and complaints against a particular judge in any jurisdiction.

unwritten conducts and expectations – ‘the little foxes that spoil the vine’.¹⁵

The expectations from the Bench are so high that it is universally agreed that every judicial officer should have inherent powers, to be exercised judicially and judiciously without constraint,¹⁶ and work and live in conditions that would not lead them to temptation of sin against God and man.¹⁷

God has expectations from the judicial officers. When Moses was constituting the nation and government of Israel, he received special instructions for judicial officers from God:

'Hear the cases between your brethren, and judge righteously between a man and his brother or the stranger who is with him. You shall not show partiality in judgment; you shall hear the small as well as the great; you shall not be afraid in any man's presence, for the judgment is God's. The case that is too hard for you, bring to me, and I will hear it.'¹⁸

Again,

You shall appoint judges and officers in all your gates, which the LORD your God gives you, according to your tribes, and they shall judge the people with just judgment. You shall not pervert

¹⁵ *Holy Bible*, Songs of Solomon 2: 15.

¹⁶ See Oputa, JSC in *Adigun* (n7) 371

¹⁷ The only basis on which anyone may seem to oppose any effort to enhance the welfare of judicial officers in Nigeria and perhaps elsewhere is on procedure or due process to avoid breach of the fundamental tenets of separation of powers and judicial independence. See Yusuf Shehu Usman, Global Law Discussion Group, 29th October, 2024 hosted by Leesi Ebenezer Mitee. <https://publiclegalinformation.com> accessed March 8, 2026. The learned writer argued that building houses for the judiciary by the executive is an attempt to compromise the Judiciary. See also *Jumbo v Attorney-General of Rivers State* FHC/PH/CS/165/2020 judgment delivered on 24/6/22.

¹⁸ Deuteronomy 1:16-17, NKJV, (Thomas Nelson, 1982).

justice; you shall not show partiality, nor take a bribe, for a bribe blinds the eyes of the wise and twists the words of the righteous. You shall follow what is altogether just, that you may live and inherit the land which the LORD your God is giving you.¹⁹

Human beings, some of whom had no direct contact with the courts but pontificated on their expectations from the one tripod of governmental power that is concerned with adjudication, had also laid down their expectations from judicial officers. The Greek Philosopher, Socrates said that four things belong to a Judge: to hear courteously, answer wisely, consider soberly and decide impartially.

3. Prior Education for Judicial Officers

Unfortunately, the training of persons who later become judicial officers in Nigeria, and perhaps many other nations, has one foundational and fundamental defect. Law students go through the universities and Law School trained in the rudiments of the law and practice to function as solicitors and advocates. The rules of ethics and etiquette that they learn are for would-be legal practitioners in line with the Rules of Professional Conduct of Legal Practitioners.²⁰ They are taught how to relate with their colleagues, the courts and their clients. They are not instructed on any of the things that anyone would expect of a judicial officer and for which there is complaining in our streets when they do not deliver. And at the end of their professional training they are inducted into the profession as ‘Solicitors and Advocates of the Supreme Court of Nigeria’, a Court only a very small proportion of those so inducted ever appear in to practise.²¹ Yet when they become judicial officers they are judged

¹⁹ *Ibid*, Deuteronomy 16:18-20,.

²⁰ See in general the Rules of Professional Conduct in the Legal Profession, 2023.

²¹ With the increase in nepotism in the appointment of judicial officers at all levels, some of those appointed to the Bench had not even solicited or advocated in any court, not to talk of the apex court.

by the standards of the best or better regarded Judges.²² When they are called, not by God (as through their innate and proven skills, talents and competences) but by men and women who hold the levers of power to appoint and position them, as Madam Salome tried to position her two sons, James and John Zebedee, on the right and left hands of Jesus Christ in His kingdom,²³ they face the challenges of high expectations of qualities of ethics and etiquettes which they never learnt how to meet at home, school or elsewhere. They become subject to comparison with the best not the mediocre²⁴ and they are vilified when they manifest their own best which is not enough. Then there is increased complaining in the streets and taverns.

Yet, as it is said, it is unfair to blame a worker if the employer had not trained him. Serious societies agree with that and take training seriously before appointment and during the tenure. In this contribution one is urging that the training is lacking in Nigeria. While continuous training is good and necessary for serving judicial officers, it is submitted that training persons for service in an office after they had been sworn in and assured tenure of office except for misconduct is not going to have the effect of producing capable workers. It has been not heard that poor performance at the National

²² Discussion of the quality of Judges in the past 60 years in Nigeria would include such great judges as Taylor, Fatayi-Williams, Idigbe, Oputa, Eso, Obaseki, Bello, Tobi, Mary Peter-Odili, all former Justices of Supreme Court and some others. Such discussion would praise these men without considering the depth of their learning, moral upbringing and experience. While their learning and erudition are appreciated the honour of these Judges derive from conducts outside the courts and beyond the cases they handle. It even extends to the views of them by persons against who they took firm and fair decisions.

²³ *Holy Bible*, Matthew 20: 20, 21 NKJV, (Thomas Nelson, 1982).

²⁴ In his valedictory from the Supreme Court in January, 2005, Uwaifo, JSC bemoaned the invasion of the Bench in Nigeria by mediocrity. See L. Pedro and A. Ibrahim, *The Supreme Court of Nigeria: History, Establishment, Jurists and Speeches*, (Lawal Pedro, SAN & Associates and Abdul Rasheed Ibrahim & Associates, 2023) 188, 191-195.

Judicial Institute, for instance, can warrant the termination of a Judge's appointment.

It has been realised that while it may be legitimate to complain about unexpected and inappropriate conduct or output by judicial officers it may be unjust to do so if those who occupy the literal, metaphorical and functional high office of judicial officers were not given prior instruction of the expectations from the occupants. Many judicial officers have been exposed to the challenge young David faced when King Saul adorned him with the armour of the Commander-in-Chief to go and fight the intimidating giant, Goliath, who had been taunting the army of Israel for 40 days. David was humble enough to realise and admit that he could not go to the battle adorned in those heavy and unfitting outfits.²⁵ Not many public officials today would do that. The tendency is to assume that once one has the basic qualification and the right connection, he is entitled to occupy any office no matter how technical and sensitive it may be. Many cannot say 'no, thank you' to positions that others are lobbying, praying and selling themselves and all they have to gain. The consequence is the much complaining and founded and unfounded rumours against judicial officers.²⁶

The judicial office should be one against which there should be minimum complaining. It is a solution provider not a problem emanatory. People should proceed out of a court with one party feeling that his problems have been solved and the other feeling that though he lost the best effort had been put into the search for truth and dispensation of justice. The impact of a judicial system where the image is smeared by rumours and expression of frustration goes beyond the courts. It often leads others to think that nothing good can come out of the society if its supposedly most trustworthy

²⁵ *Holy Bible*, I Samuel 17: 38-40.

²⁶ As in #alleyesonthejudiciary.

officers are not sources of confidence in which justice is ordinarily rooted.²⁷

Even with prior training, it may be impossible to have error-free judicial officers since each of them, in the seclusion of his court and chamber has to confront multifarious and hydra-headed human problems and idiosyncrasies of sometimes implacable and insatiable petitioners and claimants and respond to it in his peculiar way, to the limits of his comprehension and ability. However, it would be expectedly more challenging when those who are appointed are like the 400 men David selected to build his army unless those who appointed them undertake the sort of training David had for those men which turned rabbles to nobles. The last and perhaps least of them Uriah was so noble that he refused the king's ill-motivated indulgence to go home and sleep with his wife when his Chief of Defence Staff was in the warfront. When the Commander-in-Chief gave him a letter which contained instruction to set him up for death the Chief knew that he would not open it and he did not open it but delivered it to the Chief of Defence Staff who, carrying out the king's order, set him up and he was killed.²⁸ Nigeria cannot continue to put little premium on the training of those who are engaged for the most important tasks in the society and expect them to produced great results. That may be worse than garbage in, garbage out but rather expecting something from nothing, which is mathematically and spiritually wrong. Faith must have its works to expect fruits.

Complaining against judicial officers is so much that chiefs of the courts never address lawyers these days without bemoaning the flood of petitions they receive. Many of the petitions may be misconceived and a few downright mischievous but it would be, with due respect, an error of judgment on the parts of those who should always judge aright to conclude that the petitions are

²⁷ Many are not surprised but the nation is embarrassed that for a long time many sporting bodies such as FIFA, CAF, FIBA and others do not engage Nigerian referees even as lines men!

²⁸ See the *Holy Bible*, 1 Samuel 22: 2. Cp. 2 Samuel 23: 8-39.

unwarranted without first reading them dispassionately. Complaints against judicial officers in Nigeria in particular can be reduced if lawyers are trained *for* the job.²⁹ Some think it is unnecessary to have special training for the job based on some fallacies which one has identified.

4. Fallacies on Specific Training for Adjudication

1. **Generalisation:** The generalisation that Judges like Oputa, Eso, Bello, Daniel-Kalio and some others did not have special training for the bench and yet made excellent judges and as such there is no need for specialised *for-the-job* training is a fallacy which flies in the face of universal acknowledgement of need for training before engaging in any specialised activity. Societies and systems are not built on exceptionalism whether in excellence or incompetence.
2. **Legal Training:** The often-banded idea that having been trained as lawyers there is no need for specialised training for judicial officers who are appointed from among lawyers is also wrong. One dares posit that just as judicial officers sit opposite and face the Bar so are their respective responsibilities almost diametrically and functionally opposite each other and it is on those opposing issues that differences exist and conflicts often arise between them. Again, it is often on those that the difference between the reality of the performance of judicial officers and the expectations from them manifest.
3. **Experience:** Often it is thought that experience and time would cure whatever deficiency is found in a judicial officer.

²⁹ See C.A.J. Chinwo & Mondenghe A. Essien, 'Education for Judges and Judicial Officers and Pursuit of Excellence in Nigeria' in U.U. Chukwumaeze, I. Nnadi and O.C. Kingsley (Eds.), *Beyond Excellence: A Book of Readings in Honour of Hon. Justice Paschal O. Nnadi*, (Imo State Judiciary, 2020) 16; Chukwuma A.J. Chinwo (Ed. & Compiler), *In Search of a Saner Society*, (Life, Law and Grace Bookhouse, Port Harcourt, 2020) xxvi-xxvii.

This is a fatal fallacy. Every judicial officer at first instance sits alone and is the director of his proceedings. There is not much a person would learn from himself when everything is done at his or her pleasure. Those who use the Courts know of judicial officers who did not change in their ways from the first day they commenced sitting until they retired from the bench even at the highest level as Chief Judge or at the Supreme Court. Experience helps to improve on what is already possessed. It does not inculcate new ideas and practices.

4. **Not Teaching Everything:** Some argue that not everything can be taught in school. This is true but there are some fundamentals of every discipline which if not taught at school would remain a scar for all time for the practitioners because, as it is said, it can be very difficult to learn ambidexterity in old age.
5. **Inherited Character:** Inbreeding and nepotism have become undeniable in the judicial sector in Nigeria. Admitted, it cannot be rightly argued that children should be deprived of their rights to be or even exceed what their parents became by dint of hard work and favour. But it would be utterly mistaken to think that a child who is engaged in the same work the parent was known by would inherit the qualities of the parent. It is only in a small proportion of persons that character is inherited and influence productivity in public professional work. Of course, it can be dangerous if the character inherited had been a reason for complaining in the streets. What would happen to lawyers, litigants and the public in a court of a scion of a judicial officer who was known to fall short of the legitimate expectation from a judicial officer if he or she perpetuates those traits?

It is therefore of utmost necessity that there should be prior education for the job. And this is more so with the invasion and perversion of the recruitment process in Nigeria's public

service including, and regrettably so, the judiciary. If objective and equal standards are not used to recruit new occupants of high offices the society would be subject to such sense of entitlement and arrogance that would destroy the system of administration of justice as the nation is already experiencing in several sectors. Prior education can minimise the damage.

5. Curriculum of Legal Education in Nigeria

As stated earlier, the curriculum of legal education in Nigeria is directed at raising lawyers, especially defence lawyers. It does not provide for the training of judicial officers, and only to a little extent, of prosecutorial and other sector counsel.

It is suggested that the National Judicial Institute (NJI), Institute of Advanced Legal Studies and other similar institutes ought to pay critical attention to training lawyers for the most critical aspect of the work of the legal profession – adjudication.

6. The Expectations

The things that lawyers, litigants and the general public expect from judicial officers, beyond their primary responsibilities of hearing and determining cases brought before them, include;

7. Conclusion

Some persons may deem it presumptuous for a member of the Bar to seek to prescribe to the Bench what should be expected of its members. This is not prescription. It is only unfurling a folded banner of known truth. These are some of the things that make lawyers, their clients and the public to make some conclusions, often unfounded but enduring, against members of the Bench, a sect that should always not only be but be seen to be above board. Those of us who pray always pray that God would grant every judicial officer grace to do right to all manner of persons in all manner of cases before them.