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JOURNAL OF PUBLIC AND INTERNATIONAL LAW (A.B.U.J.P.I.L)

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The Judiciary, the Press and the Doctrine of *Subjudice* in Nigeria

Abdulrazaq Adelodun Daibu*

Abstract

The role of the judiciary and the press cannot be over emphasized in any democratic setting. They play paramount role in relation to the protection of human rights and rule of law, hence they are regarded as the last hope of the common man. The judiciary is constitutionally saddled with the responsibility of resolving disputes among citizens as well as between the government and the governed, while the press enlightens the public on the happenings in the society. This article examines the intersection between the roles of the judiciary and the press in Nigeria in relation to the doctrine of subjudice. It contends that the doctrine of subjudice is one of the justifiable exceptions to freedom of expression and makes recommendations towards striking a balance between freedom of expression and the doctrine of subjudice.

1. Introduction

The judiciary is one of the three organs of government in Nigeria.¹ It is vested with power to interpret and apply the law as well as to resolve disputes between/among persons or between government and authorities.² It also serves as a check on the activities of the other organs of government by reviewing their actions to ascertain that

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¹ Other organs of Government are the executive and the legislature. The Constitution of the Federal Republic of Nigeria 1999 (as amended) vests the legislative powers in the National and State Houses of Assemblies while the executive powers is vested in the president and Governors for the Federation and States respectively. See sections 4 and 5 of the constitution of the federal republic of Nigeria 1999 (as amended). See also the Valedictory Address delivered by Hon. Justice Olajide Olatawura at the special court session to mark his retirement from the Supreme court of Nigeria on 9th May 1994, p. 15

² Black's Law Dictionary 6th Edition (West Group Publishing Co. 1990) p. 849; B. A. Bukar "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" Arbitration (2013) Vol. 79 No. 1 p. 72. See also section 6 of the Constitution of the Federal Republic of Nigeria 1999(as Amended) which vest the judicial power of the federation in the courts established by the constitution and such other courts as may be created by the National Assembly and State Houses of Assemblies.

they act in accordance with constitution. Since the inception of democratic dispensation in 1999, the judiciary has been adjudged as the most virile, vibrant and proactive organ of government in Nigeria.⁴ The press (otherwise referred to as the mass media)⁵ is an institution too that has also been in the fore front of protecting and promoting democracy and rule of law in Nigeria.⁶ The importance of the judiciary and the role of the press in the preservation of rule of law, human rights and democracy in any society cannot be over emphasized. The judiciary and the press are not only partners in progress but also seen as the last hope of the oppressed and the common man because of their

⁴ N. A. Ajanah "Maintaining a Strong Judiciary: Corruption as an Albatross" Being a paper presented at 8th Hon Justice J. M. Adesiyun Biennial Memorial Public Lecture at Banquet Hall, Kwara Hotel, Ilorin on 15th May 2004. P.5. Inakoya "Adelick" (2007) 4 NWLR (Pt. 1025) 427 Abertey. The speaker, Abuja State House of Assembly (2000) LPTLR 6801.

⁵ See *Secretary B.O. Nwabueze, The Judiciary as the Third Estate of the Realm (Gold Press Ltd. Ibadan 2007)* Pp. 3-52; A. T. Shehu and Isaac "M. K. Iorah: Supremacy of Hon. Justice Isa Ayo Salami: Implications for Rule of Law, Judicial Independence and Constitutionalism" *Nigeria Judiciary: Contemporary Issues in Administration of Justice (Nigerian Bar Association Ilorin Chapter 2013)* P. 55; R. A. Lawal, Rabana "Promoting Democracy through the courts" *The Jurist (Law Students Society University of Ilorin 2002)* Vol. 7 Pp. 74 - 88; T. O. Iredia "Nigeria: Law, Politics and National Development" A paper delivered at the NBA (Ilorin Branch) Annual Law Dinner on 1st December 2004. R. Olorun "The Law as a Cornerstone of Democracy: The Role of the Courts in Sustaining Democracy" *The Jurist (Law Students Society University of Ilorin 2002)* Vol. 7 Pp. 128 - 144; A. O. Ali "Delay in the Administration of Justice at the Magistrate Court - Factors Responsible and Solution" *Nigeria Bar Journal 2006* Vol. 4 No. 2 Pp. 18 - 44.

⁶ The Press or mass media though not a constitutionally recognized organ of government is generally referred to as the 4th estate of the realm. The press is an important institution in Nigerian nascent democracy with obligation to uphold the fundamental objectives and directive principle of the constitution, dissemination of information, opinions and ideas to the general public as well as the responsibility of ensuring accountability of the Government to the people. See sections 22 and 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also T. Oyesina "Striking a balance between Press and Judiciary" available online at <http://tribune.com.ng/index.php/tribune-law/6098-striking-a-balance-between-Press-and-Judiciary> accessed 15th November, 2013.

⁷ T. Oyesina "Striking a balance between Press and Judiciary" available online at <http://tribune.com.ng/index.php/tribune-law/6098-striking-a-balance-between-Press-and-Judiciary> accessed 25th February, 2014.

⁸ R. Olorun "The Law as a Cornerstone of Democracy: The Role of the Courts in Sustaining Democracy" Pp. 128 - 144; A. O. Ali "Delay in the Administration of Justice at the Magistrate Court - Factors Responsible and Solution" Pp. 18 - 44. R. A. Lawal-Rabana "Promoting Democracy through the courts" Pp. 74 - 88; B.O. Nwabueze *The Judiciary as the Third Estate of The realm* Pp. 3-52.

indispensable roles in the society.⁸ The doctrine of *subjudice* on the other hand presupposes that matters before the court which are yet to be decided are not allowed to be discussed by the public. Matters are considered to be *subjudice* (Latin for "under Judgment") once legal proceedings become active.⁹ The doctrine of *subjudice* therefore, regulates all forms of utterance, communication and publication on matters which are under judicial consideration by the court.

This article examines the roles of the judiciary and the press in Nigeria vis-à-vis the doctrine of *subjudice* with a view to enlighten lawyers, the media, as well as the general public on the rarely discussed doctrine of *subjudice*. Contrary to the general misconception, the article contends that matters which are considered *subjudice* constitute a valid and justifiable limitation to the right to freedom of expression and thus an important restriction to the press. The article further discusses the rationale for this very important restriction on freedom of expression and the press in a democratic society and makes recommendations.

2. Conceptualisation: Judiciary, Press and Doctrine of Subjudice

The judiciary apart from being an organ of government vested with judicial power to interpret, construe and apply the law and settling disputes,¹⁰ has also been described as a term collectively used to refer to judges, magistrates and other adjudicators.¹¹ The judicial powers of the government of the Federal Republic of Nigeria are vested in the superior courts of record although State Houses of Assemblies are also constitutionally entitled to establish such other courts.¹² The powers of the judiciary are derived from the constitution itself and not at the sufferance or generosity of any other arm of government.¹³ Judicial powers extend to all matters between persons or between government and authority and to any person in Nigeria and to all actions and proceedings

⁹ T. Oyesina "Striking a balance between Press and Judiciary" available online at <http://tribune.com.ng/index.php/tribune-law/6098-striking-a-balance-between-Press-and-Judiciary> accessed 15th February, 2014.

¹⁰ The Subjudice Rule and Contempt of Court. Available on line at <http://www.out-law.com/page-9742> accessed 11th December, 2013.

¹¹ A. T. Shehu "Modeling Separation of Power for Constitutionalism: The Nigerian Approach" *University of Maiduguri Law Journal* (2011) Vol. 9 p. 10; Black's Law Dictionary 6th Edition (West Group Publishing Co., 1990) p. 1185.

¹² E. Falana "The Anti-Corruption War in Nigerian Judiciary: The Journey So Far" *Nigeria Judiciary: Contemporary Issues in Administration of Justice (Nigerian Bar Association Ilorin Chapter 2013)* p. 303.

¹³ See section 6 (1) of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*; B. A. Bukar "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door Arbitration" p. 72. See also section 6(3) *the Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

¹⁴ See the Supreme Court of Nigerian decision in *Ameachi v. INEC* (2009) NWLR (Pt. 1080) 227 at p. 324.

relating thereto, for the determination of any question as to the civil rights and obligations of that person(s).¹⁴ The judiciary as the third arm of government exercises its powers of adjudication, interpretation of the constitution and laws made by the legislature through the courts created by the constitution and other courts as may be established by the National Assembly or any State House of Assembly.¹⁵ Therefore, the judiciary represented by the courts is essentially concerned with adjudication of disputes between or among parties with a view to doing justice according to law in order to maintain societal equilibrium.¹⁶ Hence the judiciary and the courts are used interchangeably in this article as they imply the same thing.

The press is described as the act or process of printing or publishing news and comments in newspaper and periodicals.¹⁷ Thus, the press gives publicity to one's opinion through the medium of printing and other medium.¹⁸ The press otherwise and generally referred to as "mass media" though not a recognized organ of government is generally referred to as the 4th estate of the realm. The press is an important institution in Nigerian nascent democracy with obligation to uphold the fundamental objectives and directive principle of the constitution, dissemination of information, opinions and ideas to the general public as well as the responsibility of ensuring accountability of the government to the people.¹⁹ On the other hand, *subjudice* is defined as a matter before a judge or court, under judicial consideration; undetermined.²⁰ The doctrine of *subjudice* is important in both civil and criminal matters. It refrains members of the public from commenting on matters pending before the courts in order to protect the dignity of judicial officers, interference with proper administration of justice, as well as preserving the rights of litigants to fair trial in civil and criminal proceedings.

3. A Critique of the Role of the Judiciary in the Nigerian Administration of Justice
The primary duty of the judiciary in any jurisdiction is to settle disputes between parties according to the merits of their respective cases based on the applicable law without fear or favour in such manner that precludes any form of bias, sentiment, personal inclination

¹⁴Section 6(6)(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (As amended) (See also R. A. Lawal-Rubana "Promoting Democracy through the courts" p. 74.

¹⁵Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (As amended); A. T. Shetiu "Modeling Separation of Power for Constitutionalism: The Nigerian Approach" p. 10.

¹⁶K. A. Ajamoh "Maintaining a Strong Judiciary: Corruption as an Albatross" p. 6.

¹⁷Webster's All-In-One Dictionary & Thesaurus: Federal Street Press, a Division of Merriam - Webster, Incorporated Springfield, Massachusetts 2008) p. 502.

¹⁸Black's law dictionary p. 1185.

¹⁹See sections 22 and 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also T. Oyewusi Striking a balance between Press and Judiciary available online at <http://tribune.com.ng/index.php/tribune-law/6095-striking-a-balance-between-Press-and-Judiciary> accessed 15th February 2014.

²⁰Black's law dictionary p. 1425.

and or arbitrariness.²¹ The court has the sacred responsibility to do justice to everyman who appears in matters before it.²² When the courts set out to do justice, so as to cover new conditions or situations placed before it, there is always that temptation, a compelling one to have recourse to equitable principles.²³ A court in the exercise of its equitable jurisdiction must be seen as a court of conscience. Therefore judges who dispense justice in court of law applying law and equity, must always be ready to address new problems and even create new doctrine where the justice of the matter so requires.²⁴ It is pertinent to note that the courts in the exercise of their functions and powers cannot go beyond the law(s) establishing them most importantly, the constitution of the land nor can their jurisdiction be ousted by the legislature.²⁵ What this means is that if the National Assembly or the State House of Assembly enact an Act (or a law, as the case may be) irregularly in contravention of the constitution, the courts will declare such an Act or law unconstitutional and accordingly null and void and of no effect whatsoever.²⁶ The above clearly show the powers of the courts in Nigeria. It can therefore be simply put forward that the survival of any democratic government in Nigeria would be determined or is determined by the role of the courts.²⁷

In the case of A-G Lagos State V. A-G Federation,²⁸ the Supreme Court declared the withholding of fund meant for Local Governments of Lagos State by the President as illegal and unconstitutional while also maintaining that the newly created Council Development Areas remain inchoate until the National Assembly amend the constitution to that effect. In Inakoju V. Adeleke²⁹, the Supreme Court held the purported impeachment of Gov. Rashidi Ladoja as unconstitutional because the laid down

²¹A. T. Shetiu and Imam - M. K. Tamim "Suspension of Hon. Justice Isa Ayo Salami: Implications for Rule of Law, Judicial Independence and Constitutionalism" pp. 38-39; B. A. Bakar "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" p. 72; N. A. Ajamoh "Maintaining a Strong Judiciary: Corruption as an Albatross" pp. 6-7.

²²Amacchi V INEC (2008) All FWLR (Pt 407) p. 1 at 203.

²³Ibid.

²⁴Ibid. See also Agbaje V. Fashola (2008) 6 NWLR (Pt. 1082) 90 at 130; AG V. Abubakar (2007) 10 NWLR (Pt. 1041) 1.

²⁵See Section 4 (8) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

²⁶See generally section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also the cases A-Bendel State V. A-G Federation & 22 Ors. (1981) 10 SC 1 - 330; A-G Ogun State V. A-G Federation (1982) 3 NCLR 1; A-G Abia State V. A-G Federation (2002) 6 NWLR (Pt. 763) 264; A-G Lagos State V. A-G Federation (2003) 12 NWLR (Pt. 833) 1; A-G Abia State V. A-G Federation (2006) 16 NWLR (Pt. 1005) 265.

²⁷AbdulGaniyu Ambali "Indelible Footprints: A Text of Address Delivered on the Occasion of the 7th MMA Akanbi Faculty of Law, University of Ilorin Annual Public Lecture on Thursday April 24, 2014 at the University Auditorium, p. 3 see also A. T. Shetiu "Modeling Separation of Power for Constitutionalism: The Nigerian Approach" p. 3.

²⁸(2004) 15 NWLR (Pt. 904) 1.

²⁹(2007) 4 NWLR (Pt. 1025) 427.

procedure was not complied with. In *A-G Federation V. Abubakar*,³⁰ the Supreme Court upheld the decision of the Court of Appeal that the President of the Federal Republic of Nigeria does not have any power under the constitution to remove the Vice-President. The court further held that by virtue of Section 40 of the 1999 Constitution of the Federal Republic of Nigeria the Vice-President has the right to peaceful assembly and association. In *Amaechi V. INEC*,³¹ the Appellant who won the gubernatorial primaries of his party; PDP in Rivers state was substituted with another name, he challenged the substitution of his name at the Federal High Court. Election was conducted at the pendency of his appeal to the Court of Appeal, on a final appeal to the Supreme Court, the apex court relying on its earlier decisions in *ENGINEERING ENTERPRISES CONTRACTOR COMPANY OF NIGERIA V. ATTORNEY-GENERAL OF KADUNA STATE*,³² Sections 6 (6) (a) and Section 22 of the of the Constitution of The Federal Republic of Nigeria 1999 (as amended) and the Supreme Court Act, respectively held that there ought not to be hindrance or constraints in the way of dispensing justice to the parties thereby declaring Rotimi Amaechi as the Governor of Rivers State in the following words:

In view of the above provisions, there can be no doubt that there is a plenitude of power available to this court to do which the justice of the case deserves. It enables a court to grant consequential reliefs in the interest of justice even where such have not been specifically claimed. Having held as I did that the name of Amaechi was not substituted as provided by law, the consequence is that he was the candidate of the PDP for whom the party campaigned in the April 2007 elections not Omehia and since PDP was declared to have won the said elections Amaechi must be deemed the candidate that won the election for the PDP. In the eyes of the law, Omehia was never a in the election much less the winner. It is for this reason that I on 25/10/2007 allow Amaechi's appeal and dismissed the cross appeals. I accordingly declared Amaechi the person entitled to be the Governor of Rivers State...

In *Elelu-Habeeb V. A G Federation & 3 Ors*,³³ the Supreme Court held that Governor of a state and House of Assembly cannot discipline and or remove the Chief Judge of a state without the impute of the National Judicial Council. The above cases have demonstrated how the courts have given effect to the provisions of the constitution and protection of rule of law in Nigeria. The decisions of the courts have thus saved the Nigerian nascent democracy from being truncated.³⁴ Thus from the above cases, one can safely conclude that the judiciary has lived to expectation and has fared better than the other organs of government by promoting and ensuring justice, fairness, equity as well as the

enthronement of rule of law and democracy in Nigeria³⁵ although, there is always room for improvements.

4. Freedom of Expression and of the Press under the Nigerian Law

Freedom of expression occupies a very significant position in the hierarchy of fundamental human rights and civil liberty. It is an important requirement for the protection of all forms of human rights.³⁶ Historically, the right to freedom of expression is traceable to the social contract contained in Article 11 of the French Declaration of Rights of man 1789, and later the first Amendment to the American constitution. The United Nations General Assembly in its resolution 59(1) Of December 1946 declared that freedom of information is a fundamental human right that must be consecrated.³⁷ The Universal Declaration on Human Rights (UDHR), the European Convention on Human rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) provides and guarantee right to freedom of expression which includes rights to hold opinion, receive and impart information and ideas without any interference from public authority and regardless of frontiers.³⁸ Today, virtually all national constitutions acknowledge the fundamental nature of this right and make provision for it.³⁹ The fact that the right to freedom of expression can neither be trampled upon nor truncated either by persons or authorities shows that it is so fundamental to the existence of human being in the society.⁴⁰

³⁵ A review of the following cases Inakoju V Adeleke (2007) 4 NWLR(Pt. 1025) 423 ; A-G Federation V. Abubakar (2007)10 NWLR (Pt. 1041)1; Ameahi V. INEC (2008)5 NWLR (Pt. 1080) 227 ; Olorunmba-Oju v. Abdul-Raheem (2009)13 NWLR (Pt.1157) 83 ; Olufagba v. Abdul- Raheem (2009) 18 NWLR (Pt. 1173) 385 and Elelu Habeeb V. A G Federation & 3 Ors (2012) NWLR (Pt. 1318) 423 among others will attest this fact.

³⁶ Imani I. et al. " Striking a Balance Between Freedom of Expression and Political Violence : Rights and Restrictions Under International and Domestic Instruments" Ahmadu Bello University Zaria. Journal of Public and International Law (2010) Vol. 1 No. 4 p. 178

³⁷ Imani I. et al. " Striking a Balance Between Freedom of Expression and Political Violence : Rights and Restrictions Under International and Domestic Instruments" p. 179

³⁸ Article 19 of the universal Declaration of Human Rights (UDHR), Article 10 the European Convention on Human rights (ECHR) and 19 Article of the International Covenant on Civil and Article Political Rights (ICCPR) . Similar provision is contained in Article 9 of the African Charter on Human and Peoples' Rights

³⁹ See Section 39(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended); Article 33 Constitution of the Republic of Rwanda 2003; Article 33(1) of Kenya revised edition of its Constitution 2010; it provides (1) every person has the right to freedom of expression, which includes (a) freedom to seek, receive or impart information or ideas; (b) freedom of artistic creativity; and (c) academic freedom and freedom of scientific research. Section 16(1) of South African Constitution, 1996 and Article 19(1) of Indian Constitution of 1949

⁴⁰ Charley Black, perspective in constitutional Law 1970, pretile Hall, in which the right to freedom of speech was rated higher than the right to life.

³⁰ (2007) 10 NWLR(Pt.1041)1

³¹ (2008)5 NWLR (Pt. 1080)227

³² (1987) 1 NSCC 601 AT 613; (1987) 2 NWLR (PT. 57) 381

³³ (2012) NWLR (Pt. 1318) 423

³⁴ A. T. Shetu "Modeling Separation of Power for Constitutionalism: The Nigerian Approach" pp. 3 and 12

Freedom of speech presupposes the right of a person to disseminate his ideas, thoughts and beliefs freely no matter how unpopular or radical they may be.⁴¹ A learned author put the importance of freedom of speech in any nation succinctly thus:

Whoever must overthrow the liberty of a nation must begin by subduing the freeness of speech.⁴²

The Constitution of the Federal Republic of Nigeria 1999 (as amended) made provision for right to freedom of expression and the press when it provides that:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.⁴³

It follows therefore that freedom of speech is an irrepressible attribute of a man and so long as he lives, he cannot be prevented from speaking if he wants to do so.⁴⁴ Other constitutional rights are by nature tied to the right to freedom of speech.⁴⁵ This shows just how important it is. Thus democracy is entirely predicated on free speech and human society does not survive on the basis of this right.⁴⁶

The press reports matters of general public importance, promote civic and legal education and mirrors the society by exposing societal ills. The press has the constitutional duty of educating the public and informing the citizenry of sinister findings and unbecoming conduct in the society⁴⁷ and cannot in law be under an obligation, save in exceptional circumstances, disclose the identity of the persons who supply it with the information appearing in its reports.⁴⁸ The press has the solemn duty and alienable right in any society to uphold the rule of law and disseminate information to members of the public with true facts and honest comments.⁴⁹ Section 39 of the constitution which

⁴¹ *A-G Ibo State V. UKAEGBU Reported in Fawehinmi's Nigeria constitutional Law Report 1981: See also Archbishop Okogie V. A-G Lagos State (1981) 2 NCLR 337 at 353*

⁴² Benjamin Franklin, cited in Haiman et al "Freedom of Speech" National Textbook Company, Skokie, Illinois, 1981.

⁴³ Section 39(1) of the Constitution of Federal Republic of Nigeria (as amended)

⁴⁴ Nwabueze, B.O. "The Presidential Constitution of Nigeria C. Hurst publications London.

⁴⁵ Per Karibi Whyte JSC in *Din V. African Newspapers Ltd.* (1990) 21 NSCC(Pt.11) 313 at 324; (1990) 3 NWLR(Pt.119) 392 at pp. 408-409

⁴⁶ See Address by Hon. Justice M.L. Uwais, CJN (as he then was) at the laying of the foundation stone of Abuja office complex of Thursday Newspaper Publishing Company Limited On Tuesday 31st July 2001 in Niki Tobin ed. *Uwais through the speeches (2006) Snap Press Ltd Pp. 323 at 324*

⁴⁷ See *Per Pats-Acholonu JCA* (as he then was) in *Gomes V. Punch(Nig.) Ltd.* (1999) 5 NWLR (Pt.606) 303 at 313

⁴⁸ *Nwabueze Op. Cit. P. 457*

⁴⁹ *Per Aderemi JCA* (as he then was) in *Gomes V. Punch(Nig.) Ltd.* (Supra) at 312; *Akomolafe V. Guardian Press Ltd (853) 1 at 16*

guarantees freedom of speech and expression (and press freedom) does provide a constitutional protection of freedom of information in respect of the press, the editor's or reporter's constitutional right to a confidential relationship with his source stem from that constitutional guarantee.⁵⁰ If this right does not exist or is not protected by the courts when contravened or when there is a likelihood of its being contravened, the press's sources of information will stop existing and the public would be deprived of being informed of many matters of great public importance thereby stifling and stultifying the role of the press as a watch dog of the government.

The constitution apart from providing for right to freedom of expression and the press also place a very important and onerous role on the Nigerian press; to uphold the fundamental objectives and directive principles of state policy.⁵¹

The power to perform this function is of course provided and supported by the provisions of the Fundamental Rights on right to freedom of expression and press under section 39 of the Constitution. Subsection (1) of the section stated that every person is entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference. In subsection (2) of the section, the constitution allows every person to own, establish and operate any medium for the dissemination of information, ideas and opinions.⁵²

It is submitted that access to information which the constitutional freedom of expression and the press guarantee is a key to sustainable democracy, good governance and public accountability. Therefore any attempt to strangle and truncate the right to freedom of expression and the press must not be allowed in a free and democratic society like Nigeria.

⁵⁰ See *Tony Momoh V. Senate of the National Assembly (1981) 1 NCLR 105*

⁵¹ Section 22 of the Constitution of the Federal Republic of Nigeria 1999 provide as follows: "The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people...". This chapter in the above quoted provision refers to chapter 2 of the Constitution of Federal Republic of Nigeria 1999 (as amended) which borders on fundamental objectives and directive principle of State Policy. See sections 13-24 thereof

⁵² Saseghon's Laws of Nigeria (First Edition) Vol. 4, 2005 DSC Publications Lagos, Nigeria p. 359

⁵³ The judiciary as guardian of the fundamental law of the land has the role of passing on the validity of the

Exercise of powers by the legislative and the executive to require them to observe the constitution of the land. See generally *Gibson V. Florida Legislative Investigation General Committee* 372 U.S. 539; *De Gregory V. Attorney-General* 383 U.S. 825; *Tony Momoh V. Senate of the National Assembly (Supra)* and *Adikwu V. Federal House of Representatives (1982) 3 N.C.L.R. 394 at 417*

5. The Doctrine of Subjudice Vis-À-Vis the Right to Freedom of Expression and the Press

The word subjudice as earlier stated means an issue submitted before a judge or court; under judicial consideration, undetermined.⁵⁴ The doctrine is to the effect that a matter before a court or judge and not yet legally decided is not allowed to be a subject of discussion by the public in whatever guise. The basis for this is that parties involved in either civil or criminal trials and their witnesses may be swayed by comments that are directed to the issues in the trial without some measure of insulation of public comments as the course of trials and indeed the outcome may be affected by extraneous comments irrelevant to the merits of the case. The doctrine of subjudice is a common law principle bequeathed on Nigeria as a result of our colonial historical link with Britain.⁵⁵ It is also an ethical tradition in the noble profession of law to ensure that the sanctity of the courts and independence of the judiciary is well protected. The Rules of Professional Conduct for Legal Practitioners 2007 made pursuant to the Legal Practitioner Act,⁵⁶ provides as follows:

A lawyer or law firm engaged in or associated with the prosecution or defence of a criminal matter, or associated with a civil action shall not, while litigation is anticipated or pending in the matter, make or participate in making any extra-judicial statement that is calculated to prejudice or interfere with fair trial of the matter or the judgement or sentence thereon.⁵⁷

The above is unequivocally lucid enough, but some legal practitioners have chosen to ignore this rule of professional ethics by doing the exact opposite under the guise of freedom of expression, the press as well as right to hold an opinion by making comments and granting interview on pending cases before the courts in Nigeria. It is now common for legal practitioners especially the seniors ones to make public comments on pending

⁵⁴ *Black's Law Dictionary 6th edition* (West Group Publishing Co. 1990) p.1425

⁵⁵ For a brief history of the Nigeria Legal System, see generally J. O. Asein Introduction to Nigeria Legal System 2nd Edition (Ababa Press Ltd. Lagos 2005) pp. 98-104; Arthur-Worrie F. and Osibamu O. Cross Examination Mastering the Trial lawyer's Most Potent Weapon (lexis Nexis BUTTERWORTH'S 2006) pp.1; B. A. Bukar "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" Arbitration (2013) Vol. 79 No 1 p. 72; M. Gluckman "Cross-examination and the substantive law in African Traditional Courts" in Mac D. Cormick (ed) *Lawyers in their Social Setting*, 1976 pp. 30-62; O. Adewoye, *The Legal Profession in Nigeria 1865-1962* (Nigeria Longman 1977) p.7; Doherty O. *Legal Practice and Management in Nigeria* (London: Cavendish Publishing Ltd. 1998) pp. 6-7; Y. Fashakin "Right to Legal Practice in Nigeria" in K. N. Nwosu (ed.) *Legal Practice and Skills* (Lagos DC/ON Consulting 2004) pp. 90-91; N. Toibi *Sources of Nigerian Law* (MJ Professional Publishers, Lagos, 1996); A. O. Obidate *The Nigerian Legal System* (Spectrum Books Ltd, Ibadan 1979)

⁵⁶ CAP L11 Laws of Federation of Nigeria LFN, 2004

⁵⁷ Rule 33 of the Rules of Professional Conduct for Legal Practitioners 2007

applications or cases on pages of news papers and or on television contrary to the rules of professional conduct with impunity. The practice of granting media interview by senior lawyers after court proceedings with their wig and gown in hand is not only inappropriate but also gross violation of the rules of professional conduct and ethics of the legal profession.⁵⁸ Such interview or comment on pending cases may have influence on the independence of the judiciary and proper administration of justice. Lawyers appearing before the court are always expected to treat the court with utmost respect, dignity, honour, courtesy and all sense of decorum to enhance the smooth administration of justice.⁵⁹ It is submitted that a combined reading of Rules 31(1) and 35 of the Rules of Professional Conduct for Legal Practitioners 2007,⁶⁰ clearly shows that the same decorum, respect and honour accorded to the court in open court is also expected outside the court room.⁶¹ The Court of Appeal in a ruling in respect of a bail application depreciated the acts of such legal practitioners involved in media trial of cases and advised government agencies to engage the service of "calm, deliberate and thorough professionals" as opposed to activist lawyers who "can busy themselves with their courageous noises and commendable revelations."⁶² A legal practitioner is supposed and expected to argue his case in the court and not on the pages of newspapers or on interview with radio or television stations.

The practice of commenting, criticizing and analyzing a case pending at trial court or on appeal is not only unethical but also unprofessional. But can it be said to be unconstitutional? Clearly the freedom of expression is constitutional provision while the doctrine of subjudice is a common law principle. But we do also know that the freedom of expression is not absolute, it has exceptions and one of the exceptions should be the doctrine of subjudice⁶³ particularly for legal practitioners whose rule of professional conduct forbids commenting on matters pending in court.⁶⁴ It is however, unfortunate that some lawyers in recent time observe the rules more in breach than in compliance. Lawyers argue their cases on the media journalists, politicians, and public commentators have joined in commenting on pending cases in court to the extent of pre-empting what

⁵⁸ See the Speech delivered by Hon. Justice Aloma Mariam Muktar CJN on the Occasion of the 2013 Call to Bar Ceremony on 28th November, 2013 at the Nigeria Law School, Bwari Abuja P.4

⁵⁹ Rules 31(1) and 35 of the Rules of Professional Conduct for Legal Practitioners 2007

⁶⁰ *ibid*

⁶¹ Hon. Justice Aloma Mariam Muktar CJN Op. Cit, p. 4

⁶² Monica Bolna'ari Doughan- Mensvem JCA quoted in Falana F. New Prospect and Challenges Under the Fundamental Right Rules, a paper presented at seminar on Fundamental Rights (Enforcement Procedure) Rules 2009 held at the Social Justice Centre, Falana & Falana's Chambers, Lagos on 29th January 2010 p.1

⁶³ Other exceptions to freedom of expression includes : defamation, libel slander and sedition among others

⁶⁴ See Rule 33 of the Rules of Professional Conduct for Legal Practitioners 2007

the judgment ought to be. For example a national newspaper wrote thus:

...It could not have said so in view of the Supreme Court decision in Atiku V. Obasanjo case in which the apex court interpreted the provision of section 137 (1) (ii) the 1999 constitution. With due respect to the panel of justice who sat on the case, I have my doubt about the reasoning behind the judgment. I see it as a judgment given simply to curb the excesses of the then presidency under Obasanjo.⁶⁵

Also a legal practitioner in his contribution as Editorial opinion titled "Sokoto puts Supreme Court on trial" analyzed the then pending case of Dingyadi v. Wamakko before the Supreme Court. He went further to criticize the Justices of Supreme Court as well as the National Judicial Council (NJC) thus:

...The question on the lips of many Nigerians is where the NJC and the Supreme Court derived the power to arrest a judgment from?⁶⁶

The most prominent is the one that examined some legal implications of the then pending Osun State Governorship petition before the Court of Appeal Ibadan as follows:

On the other hand, the petitioner, ruthlessly and unsparingly excavated and employed every available science, logic and material fact, every power and instrumentality of law to demonstrate that votes were actually stolen in Osun State on the 14th of April 2007 and that, in fact and in truth, a wrong person was sworn in as the Governor of Osun State. It is the cruelty of this injustice against the legitimate winner of that election, against our public sense of decency and against our fundamental laws that the Appeal Court in Iyaganku has the historical responsibility to address.⁶⁷

It is sad that so much has been said on cases pending before the courts in Nigeria on the pages of newspapers and other media outlets without sanction. The new technology of internet reporting has added to the comments, some doubting the integrity of the presiding justice(s) to do justice according to law.⁶⁸ This should not be encouraged as it is inimical to the sanctity of the courts and the administration of justice in general. The doctrine of subjudice if not properly adhered to, has the greatest effects of preempting judgments of courts, misrepresentation of facts of pending cases and heightening expectations of the public thereby causing a state of public bias against the final decisions

⁶⁵ A columnist on "The Point" in an article titled 'Much Ado about an Anti-Gratt advisory' Thisday newspaper of Friday 29th October, 2010 p. 72

⁶⁶ See The Nation newspaper of Thursday, 25th November, 2010 p. 20

⁶⁷ Oluwegun Mayegun "Legal impact of Osun election petition" The Nation newspaper of Thursday, 25th November, 2010 p. 13

⁶⁸ Per Niki Tobi JSC in *Buhari V. INEC & 4 ORS (2008) 12 S.C (pt. 1) p. 171*

of courts and the judiciary at large.

The concept of bias has been defined in plethora of judicial authorities. It is for instance generally defined as "a feeling in favour of one side in dispute or argument in the likelihood that the court so influenced will be unable to hold an even scale in the matter before it."⁶⁹ OGUNBIYI JCA (as he then was) aptly defined bias thus:

Anything which tends or may be regarded as tending to cause that person to decide a case otherwise than on the evidence⁷⁰

Bias is an inclination, predisposition or preparation, to determine a matter or Cause in a certain pre-conceived way, without any regard to the laid down principles of law.⁷¹ Public bias may be attributed to a number of factors including partisanship, friendship, partnership, vengeance, family ties, religious bigotry, ethnic sentiments, group/membership or association and corruption among others.

The court seems to be helpless on these unwholesome and ignoble conducts of some legal practitioners who engage in media trial of cases probably because of the conventional or conservative attitude that they are meant to be seen and not be heard. Therefore the Nigerian Bar Association and the Body of Benchers are called upon to tame this unhealthy, unethical and unprofessional conduct of such legal practitioners in the outmost interest of the legal profession and the Nigerian administration of justice.

6. Conclusion and Recommendations

The article appraised the role of judiciary and the press in Nigeria considering the impact of the duo in the promotion and protection of rule of law and democracy through interpretation of the constitution/laws and dissemination of information respectively. The article further examined the right to freedom of expression and the press vis-à-vis the doctrine of subjudice and contends that the doctrine is one of the justifiable exceptions to the constitutional right of freedom of expression and the press and safely conclude without any equivocation that the doctrine has been abused by lawyers, media, politicians and the so called public commentators with impunity in Nigeria.

The Supreme Court per Niki Tobi JSC in the case of *BUHARI V. INEC & 4 ORS*⁷² observed as follows:

It is sad that so much has been said in the Newspapers of this country on the case. The new technology of internet reporting has added to the comments, some of them doubting our integrity to do justice according to law. I regard them as

⁶⁹ *Ogunbiyi JCA (as he then was) in Yakubu V. State (2007) 9 NWLR (Pt. 1038) p. 1 at 18*

⁷⁰ *Yakubu V. State (Supra) at p.24 Para C - E*

⁷¹ *ANPP V. R.E.C., Akwa Ibom State (2008) 18 NWLR (Pt. 1090) 453 at p.525-526 G- A*

⁷² *Buhari V. INEC & 4 ORS (Supra)*

blackmail and I will not succumb to blackmail. I swore on that eventful day as a High Court Judge to do justice to all manner of persons without fear or favour. I have never departed from that oath and I will not; God helping. It is too late in the day to do so. Nigeria is a country where suspicion of wrong doing is the past time of the citizens...

Selective and sensational reporting of serious court cases especially criminal and election petition cases is not only capable of prejudicing and intimidating the judges who man our various court but also a disservice to the cause of justice. Media trial of cases is against the norms of the rule of law which they claim to be protecting and promoting.

Parties involved in civil and criminal trials as noted may be swayed by comments directed to issues involved in pending actions and the course of trials and indeed the outcome may also be affected by extraneous comments irrelevant to the merits of their case.

Law is a technical field and only those that have sound knowledge of the field should report it without contravening the rules of professional ethics and preferably at the conclusion of the trial to avoid any form of subjudice. A person who does not know the difference between the *ratio decidendi* and *obiter dicta* of a case will not likely report accurately what transpired in at the hearing and the decision of the court.

Extraneous comments which can affect the independence of the judiciary or the proper exercise of judicial office and the outcome of a judicial trial must be avoided by all and sundry. Also any person who wants to report the activities of the court for the media must be very familiar with the nuances of law, procedures as well as the ethics involved.

Nigerians should have faith in the judiciary and once a matter is before the court, parties must not make unnecessary comments. Also when a case is lost or an application is refused, rather than finds faults or make derogatory and uncomplimentary remarks about the court, a legal practioner should advice his or her client properly to take a legal and constitutional step i.e. an appeal which is not an offensive weapon.

The Nigerian Bar Association and the Body of Benchers are enjoin to swiftly respond and salvage the legal profession and the Nigerian administration of justice from the risen acts of media trial by legal practitioners and the general public through sanctioning of any legal practitioner involved in such dastardly, ignoble, unethical and unprofessional conduct. This will not only serve as deterrent to other legal practitioners and the general public but also bring more sanity and decorum to the legal profession and administration of justice.