

5th March 2013

The Chairman,
National Judicial Council,
Supreme Court of Nigeria Complex
Three Arms Zone, Abuja.

Your Lordship,

Complaint against Practice of Arbitrary Transfers of Federal High Court Judges without Adequate Consideration to the Impact of transfers on Litigants, and without Institutional Arrangements to Mitigate effects of Transfers

We send warm greetings.

We wish to draw the attention of the National Judicial Council (“NJC”) to a serious problem affecting the administration of justice in Nigeria as well as the public perception of the court and the level of confidence that may be reposed in our courts. If not addressed, the problem will continue to cause serious disaffection with the way justice is delivered and will clearly not help the Judiciary's efforts to win back public confidence in the administration of justice.

We refer to the problem of the arbitrary and probably routine transfers of Judges of the Federal High Court from one judicial division to the other.

But first of all, let us introduce ourselves. Access to Justice is a non-governmental and non-profit justice advocacy group that works to facilitate access of marginalized and indigent persons to equal and impartial justice, advocates for judicial independence and integrity, as well as undertaking research and providing resources that enhance legal professional capacity in defence of human rights. AJ's work not only boasts considerable impact in the justice constituency in Nigeria within the last 12 years, it has received both local and international recognition with the award of the First Gani Fawehinmi Prize for Human Rights and Social Justice in 2010, and Macarthur Foundation's Award for Creative Institutions in 2009.

In the last quarter of last year, Access to Justice was surprised to learn that some Judges who were handling some of its court cases in the Federal High Court had been transferred out of the Lagos division of the Federal High Court to other divisions. This was so in at least cases. It also became clear to us that other cases, besides where we were involved, were also affected by the transfer of the Judges.

After a trial has effectively commenced and witnesses have given evidence and then the presiding Judge is transferred, the rule is that such cases must be begun de novo before a new Judge. These transfers can occur after the case has already spent several years on the docket of the court of the transferred Judge. Take for example, in one of the cases affected by these transfers had been in the court's docket since when it was filed. Only one witness was remaining to be called.

There are many cases like this that have been affected by the transfers of Federal High Court Judges and these cases have to be begun afresh. To re-start cases that have already spent several years on a cause-list afresh is painful, agonizing and very hard on litigants who at this time have themselves probably already laboured under considerable strain exertion, and, for some exhaustion. This would entail recalling witnesses and re-rendering different varieties of evidence. Some of the cases affected by these transfers may also be fundamental rights cases, where issues of constitutional rights – including liberty or movement – may also be in question.

These transfers work considerable hardship therefore on court users: they force litigants to outspend themselves in the course of litigations, in view of the spectrum of additional expense involved in attending fresh trials, as well as underwriting the costs of others who are involved in the litigation too, such as their legal representatives. Transfers take their toll on, and burden witnesses too, some of whom may be unable, on health or other grounds, to return to court to give evidence again. When witnesses are unable to re-appear in court to give evidence and a case is thereby prejudiced, this perpetuates and amplifies very negative public impressions about our court system and its ability to uphold the rule of law and dispense justice freely and efficiently. No person affected by these kinds of transfers would have a positive impression of the court or how the courts take their responsibility to dispense justice. The cliché will immediately kick in that “cases never end once they go to court” or that courts are “come today, come tomorrow”. These kinds of experiences will also colour how Nigerian courts are assessed in the international community.

Our complaint is that these routine, administrative transfers do not take the rights of court users into account in any meaningful sense or degree; in fact, they violate and negate those rights, and in some cases, quite brutally. The Nigerian Constitution guarantees the right to a fair trial, and that right is interpreted as the right to a reasonably fair and speedy trial. The African Charter as well as the International Covenant on Civil and Political Rights also enshrine and protect these basic rights.

We argue, Mr. Chairman, that before Judges are transferred out of their judicial divisions where they are already presiding over trials, an impact assessment of such transfers must first be made to determine whether such transfers can or will adversely affect trials being conducted by Judges who are subject of the transfers. If they will, such transfers must be suspended or kept in abeyance and not take effect until all pending cases by those Judges are disposed off. Those who make transfer decisions ought to give priority consideration to the needs of court users before making transfer decisions. Otherwise, scenarios like those we have recounted above will keep re-occurring. .

Our concerns are not just over transfers of Federal High Court Judges. As a public interest defender, we extend these concerns and representations to cover every other State or Federal jurisdiction where transfers like this are routinely carried out and have the same effect, whether they be in the Court of Appeal the National Industrial Court, or the High Courts. The principle must remain the same across board: Chief Judges who exercise these powers of transfers must exercise them in ways that are consistent with the rights of court users and should not exercise them where they will foreseeably violate these rights

or impact negatively on the enjoyment of them. Undoubtedly, powers to make transfers can be exercised in ways that are consistent with the general rights to fair hearing secured and guaranteed by the Constitution.

We ask the NJC to inquire into these concerns and adopt and issue policies that will effectively end these administrative transfers of Judges in ways of course that do not interfere with the powers given to Chief Judges of the respective States and federal jurisdictions. The Constitution provides the Council the powers to do this under para 21(i) of Part 1 of the Third Schedule to the 1999 Constitution, which provides that the National Judicial Council shall have powers to "(i) deal with all other matters relating to broad issues of policy and administration". We now urge the NJC to:

1. Require the Chief Judge of the Federal High Court to make immediate provisions for Judges of the Federal High Court transferred out of their divisions or stations, beginning from the last quarter of 2012 to return to their courts to complete all part-heard cases
2. Adopt and issue a clear, enforceable policy that prevents any Judge from being transferred or relocated from his or her court or division without an impact assessment of the effect of such transfers on part-heard cases.
3. Where Judges have begun to hear cases, clearly insist that they will not be transferred out of their courts until they have completed the hearing and determination of all pending or part-heard cases, in order to safeguard the interests and rights of court users.

We thank you for your consideration and look forward to the NJC's action in this regard.

Yours sincerely,

Joseph Chu'ma Otteh
Director