

Off to a Faulty Start: Chief Justice Musdapher Must Do Better to Fix the self-inflicted Damage by NJC, not Aggravate Tensions

On Monday 5th September 2011, Director of Administration of the National Judicial Council Mr Ernest Odukwu issued a Press Release on behalf of the National Judicial Council (NJC) saying it was “constrained to state its position on the issue” and so as to put “the records straight”. In the Statement Mr. Odukwu made references to a number of criticisms which he said had been leveled against the NJC, and responded to them in an effort to show that the criticisms were flawed.

Access to Justice is concerned that the NJC is digging deeper into its isolated position to legitimize its unfortunate decision to suspend Hon. Justice Ayo Salami (OFR) while his lawsuit was pending. The NJC at this time should rather acknowledge its sad errors, and back down from the wanton impunity it showed towards a duly constituted court and the entire Nigerian nation when it took the decision to suspend Hon. Justice Salami.

The NJC joined issues with many of its critics on a number of technical grounds, but deliberately avoided the Main Issue. The core objection to the actions of the NJC is: Why did the Council not await the resolution of the legality of its indictment of Hon. Justice Salami – which was now in court - before proceeding to take the decision which it did to suspend him? On this issue, the NJC's Statement is remarkably quiet and subdued, saying only that: “Council took its decision based on the powers conferred on it by the 1999 Constitution”.

The NJC acted, with due respect to that body, with impunity and suspicious haste on the Hon. Justice Salami case, and it is lame for the Council to say that the Court will decide on the legality of its undue, unruly haste. The NJC should explain the basis of its actions and the rules which support its haste to judgment just like those who criticized its decisions have cited rules and decisions of courts on the basis of which they attack the NJC decision. The NJC should supply now the legal basis of its actions and let the public understand and evaluate it. The NJC's present argument is analogous to a Governor authorizing the execution of a Man while his appeal is pending, and then saying we should await the court's decision of the legality of its actions. It is unfortunate, that the NJC under a new Chairman is still acting with unrepentant disdain for the rule of law, and continuing efforts to consolidate a completely flawed position rather than reverse it. In doing this, Chief Justice Musdapher has faltered and taken an ill-advised first step, and this outburst from the Council will further inflame public tempers than ease it. It is worthy of note that the NJC's position has been lampooned by virtually every constituency in Nigeria, including the Bar Association and it is only the Council that refuses to see the perversity of its actions in this regard.

The NJC says it is constantly being sued by those affected by its decisions. Yet it refuses to cite a single case where, as in Justice Salami's case, an action was pending against whilst it deliberated and took a decision on the subject of the action. On the contrary, the Council had, since its establishment and until this time, [that is, until the Justice Salami case] abided by a respected tradition of not dealing with any matter covered by a pending lawsuit. Yet, Mr. Odukwu's statement made no reference to this in his statement. We can cite at least three instances when the NJC declined to take any action on matters brought before it, including deliberating on those matters because there were lawsuits over their subject-matters. These are, in inverted sequence;

1. 2010: Last year, The Chief Justice of Nigeria (CJN) Hon. Justice Katsina-Alu received petitions by Messrs Yahaya Mahmood and Alfred Agu against the President of the Court of Appeal (PCA) Justice Ayo Salami in his capacity as the Chairman of the NJC, and sent the petitions to the PCA for his response. Although the PCA duly responded to

them, the NJC did not deliberate on the petition because “the matter was sub judice”. In fact, in an affidavit sworn to by the (then) CJN on 7th of March 2011, he, the CJN specifically put it this way:

xix) That when Hon. Justice I.A. Salami sent his response to the Petitions and the allegations against him, the National Judicial Council could not deliberate on same because the matter was sub-judice.”

2. In May 2008, a number of petitions urged the NJC to investigate allegations that Justice Thomas Naron who presided over the Osun State Governorship Election Petition Tribunal was holding inappropriate communication with counsel to a litigant in the tribunal. The NJC refused to undertake the investigations at the time citing the fact that the judgment of the Tribunal was on appeal and that the matter was therefore “sub judice”. That investigation has now commenced three years after, and only after the appeal was concluded.

3. In 2004, the NJC set up a Committee to inquire into allegations made against the Chief Judge of Oyo State Hon. Justice Olakanmi by some Judges in Oyo State. After the NJC learnt that Hon. Justice Olakanmi had gone to court to contest his removal by the Oyo State House of Assembly, the NJC suspended its deliberation on the matter on the grounds that it was sub-judice, even though the NJC specifically held on to the view that the removal of Hon. Justice Olakanmi by the Oyo State Governor was unconstitutional.”

So, with such a rich, longstanding tradition of deference to a court, why did the NJC take a diametrically different course in Hon. Justice Salami's case? Mr. Ndukwu's Statement was completely mute on this.

Finally AJ is concerned that Chief Justice Dahiru Musdapher (CFR) is not putting his best foot forward in relation to the need to resolve the issues concerning Hon. Justice Salami.

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