

29th August 2011

The Chairman, National Judicial Council,
NJC Building, Supreme Court Complex,
Three Arms Zone, Abuja

Dear Hon. Justice Dahiru Musdapher (CON)

Letter of Congratulations and Petition to Convene Urgent Session of the National Judicial Council to Review and Rescind Decision taken to Suspend Hon. Justice Ayo Salami (OFR) as President of Court of Appeal

Congratulations on your appointment as Chief Justice of Nigeria, and, all things equal, we see that you will become confirmed in this appointment shortly. We wish you a very fruitful and peaceful tenure marked by many landmarks of achievement. We are confident that you will bring the experience and sagacity you have accumulated over the course of several years serving the justice needs of the Nigerian people to bear in this new office.

Please permit us to raise with you a pressing, or rather burning issue, and this is the need to calm raging public tensions over some of the decisions the National Judicial Council (NJC) which you chair took of late. More specifically, the decision to suspend another member of the Council, Hon. Justice Ayo Salami (OFR), from office as President of the Court of Appeal. You are quite conversant with the convoluted line of events which brought about that outcome and there is no need to replay them to you again.

Your Lordship is aware, no doubt, of the wide public resentment and angry, impassioned outbursts over the NJC's handling of its investigations into allegations leveled against the erstwhile Chief Justice of Nigeria, Hon. Justice Katsina-Alu (GCON) and Hon. Justice Ayo Salami. There is a widespread perception that the NJC acted rashly and unfairly in rushing to condemn Hon. Justice Salami when there was a pending lawsuit instituted by him challenging the decision of the NJC to indict him for misconduct. It is this implacable, perhaps unruly haste with which the NJC has acted, and not the merits of the lawsuit filed against it that has sparked most of the outrage against the Council. There is huge disappointment that the NJC would take the law into its hands, when in a fairly long line of decided cases, Nigerian Judges have ruled to mandate restraint on actions capable of undermining the authority of courts and the integrity of the judicial process by persons sued. Why then would a distinguished body such as the NJC - an institution that is composed mostly of serving and retired judges – take actions that are inconsistent with these decisions and undermine public faith in the rule of law?

The public expects the NJC to not just act completely within the law, but to model the kind of behaviour it expects others to follow when sued. In the case under reference, the NJC actions were not only disappointing, but deviated sharply from the norm obeyed by nearly everyone else, and reversed years of progress made in outlawing extrajudicial conduct. The decision further poses a grave threat to the sustainable enforcement of generally applicable rules of law on government and citizens alike. This is the reason for our intervention, and the requests we have fully articulated below is predicated on these premises. We take no sides with any of the major protagonists in the unfortunate

developments both within and outside the NJC. In fact, Your Lordship will recall that in February 2011 Access to Justice, in conjunction with a number of civil society groups wrote petitions to the NJC against the erstwhile Chief Justice of Nigeria, as well as the suspended President of the Court of Appeal asking for full investigations into allegations of misconduct made against both officers. Our objective is solely to defend values of integrity and independence in the administration of justice in Nigeria.

Coming back to the Council's decision to suspend Justice Salami while a lawsuit challenging its powers to do so was pending, we can further point out that the NJC's actions were in fact, also, unprincipled, given the Council's well-documented history of not meddling into cases being litigated in courts, thereby igniting genuine fears that the NJC has have been blindly vindictive or else politically-motivated in taking that decision. In a letter we wrote to your immediate predecessor, Hon. Justice Katsina-Alu, we cited a few instances where the NJC resisted pressures to deliberate on certain cases or take decisions on them because issues relating to them were already in court. Please permit me to quote from that letter, thus:

“We can reference at least three instances when the NJC pulled back from taking 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 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.”

Your Lordship will see therefore, that public perceptions that the NJC has acted with ulterior motive in this case is a perception that the NJC has itself, through its actions, wrought and fostered. Fortunately, it is not late to reverse the NJC's decision on Justice Salami. President Goodluck Jonathan himself, to whom the NJC wrote recommending

Justice Salami's retirement, realizing that the NJC's decision is arguably impeachable has chosen to only appoint an acting President of the Court of Appeal pursuant to section 238(4) of the Constitution who would hold office for not more than three months, "pending when all issues relating to the office of President of the Court of Appeal are resolved." There is, as far as we know, no motion pending before the Senate for the removal of Justice Salami pursuant to section 292 of the Constitution, and the current status quo is that Justice Salami's suspension can be withdrawn.

There is room therefore to back-track, and rescind the decision on Justice Salami; now is the time too to pull the Country back from the edge of the precipice where the Council's actions have led it, and commence a confidence-building and reform process that will win back badly dented public faith and confidence in the Council, and indeed justice institutions overall. Afterwards, Your Lordship would need to undertake a number of reforms that have the potential to guarantee much greater independence and integrity in the NJC and the Judiciary as a whole. This is the "felt necessity" of this time, accompanied by a great opportunity to act in pursuance of the goal. It is also the most logical thing to do at this time and its achievement can be defining of the success of your tenure. We urge Your Lordship to consult with the Bar, civil society organizations, international organizations and retired Judges and Justices to begin a critical process of re-building which the Judiciary direly needs. A forum of stakeholders for this purpose might be a helpful idea.

Thank you for your consideration, and wish you again, a very successful tenure as Chief Justice of Nigeria.

Sincerely,

Joseph Otteh, Director,
Access to Justice.

About Access to Justice

Access to Justice (AJ) is a non-profit, independent and impartial justice advocacy organization based in Nigeria whose work seeks to defend rights of equal and non-discriminatory access to justice, defend the rule of law and the rights of people and communities to dignity. AJ also seeks to promote integrity, autonomy, accountability and transparency in justice and legal institutions. AJ is the recipient of the first-ever Nigerian Bar Association Chief Gani Fawehinmi Award for Human Rights and Social Justice (2010) and the MacArthur Foundation Award for Creative and Effective Institutions (2009) among other recognitions.