

THE NIGERIAN LEGAL AID COUNCIL: A KEY TO EXPEDITED JUSTICE AND LEGAL ACCESSIBILITY

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Abstract

Various Nigerian constitutions have guaranteed citizens' right to access to justice over time. When taken literally, access to justice refers to a person's ability to go to a court of law to air his grievances against another person or the government. Access to justice encompasses more than just access to a court of law; it also includes citizens' equitable access to political order and available resources in a particular community. Despite the constitution's provision for citizens' access to justice, a number of factors conspire to prevent this from happening in Nigeria. The Legal aid council is a body responsible for guaranteeing access to justice and quick dispensation of justice especially for the poor and other indigent citizens. The objective of this paper is to review the impacts of the legal aid council on access to justice in Nigeria. The paper commenced with reviewing the relevant key terms. The paper adopted a doctrinal research method. It was revealed among others that inequality in the distribution of the nation's wealth coupled with the poor structure of the legal aid council and other justice administration agencies over the years contributed to delays in access to justice in Nigeria. It was based on the foregoing that recommendations were made.

Keywords: 'Access to Justice', 'Legal aid' 'Legal Aid Council', 'Quick dispensation of justice', 'Justice in Nigeria'

1. Introduction

The fundamental objectives and directive principles of State Policy in Nigeria include among others the provide for freedom, equality and justice, which should be accessible to all the citizens. Access to justice means more than the opportunity granted to citizens to ventilate their grievances in the court of law if there are infraction on their rights by fellow citizen or government but encompasses the opportunity to access the economic system that guarantees reasonable standard of living in a society. In Nigeria, the economic system is operated in such a manner that permitted the concentration of wealth and the means of production and exchange in the hands of few individuals especially the political class contrary to the constitutional provisions that wealth should be distributed equally that:

The state shall, within the context of the ideas and objective for which provision are made.

Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self reliant economy for every citizens on the basis of social justice and equality of status. That the material resources of the nation are harness and distributed as best as possible to serve the common good.

It is in the open knowledge that cases, civil or criminal, take forever before they are ever concluded either at the trial or appellate courts.

Access to justice in any society is fundamental towards safe guiding the rights of the citizens. The hallmark of a civilized society should be to guarantee legal rights. Ladan posits that the term 'access to justice' means that people in need of legal help, can find solution through accessible, affordable, speedy dispensation of justice fairly, and essentially the poor people without discrimination, fear or favor. The justice system is important for improving the lives of citizens under its jurisdiction, by ensuring everybody has access to the system which dispenses justice fairly, speedily and without discrimination. It is only when individuals have access to courts that their fundamental rights can be enforced.

Legal aid Council is one of the institutions for the Administration of Justice which aids access to justice in Nigeria. Statutorily, the Legal Aid is provided for by the Legal Aid Act Cap L9, Laws of Federation of Nigeria, 2004. However, to give it more encompassing outlook to meet up the exigencies of the present time and Democratic Standard, the legal Aid Act, 2011 was passed which replaced the former Act by the National Assembly of the Federal Republic of Nigeria.

This paper is set to discussing the impacts of the Nigerian legal aid council on accessibility and quick dispensation of justice in Nigeria. For this purpose, the paper shall examine the key words in the topic under discourse to wit: Legal aid, Nigerian legal council, access to justice, quick dispensation of justice and the impact of Nigerian legal aid council on access and dispensation of justice in Nigeria among others. Based on the findings of this study, recommendations towards enhancing to access to and quick dispensation to justice in Nigeria.

2. Conceptual Review

2.1 Access to Justice

According to Oputa C A, Access to justice can be looked at from two main perspectives: the narrow and the wider senses. In the narrow sense of the term, it can be said to be co-extensive with access to law court while in the wider connotation it embraces access to political order and the benefits accruing from the social and economic development in the state.

The narrow view of access to justice is difficult to actualize in the absence of the opportunity to access the benefits flowing from the social, political and economic development of the State. According to Wahab Shittu, access to justice will not mean just access to lawyers and courts. It is much broader than this as it encompasses a recognition that everyone is entitled to the protection of the law and that whatever rights we seek to protect are meaningless unless those rights can be enforced with minimal constraints to the aggrieved persons and under circumstances ensuring that all manner of people are treated fairly according to the law and are able to get appropriate redress in circumstances when they are treated unfairly. In *Idris v. Agumga*¹¹, the Court of Appeal Abuja Division held that access to justice implies approach or means of approach to court without constraint. From the above judicial dictum, access to justice is not only opportunity granted to citizens to approach court of law but includes availability of the resources to approach court without restraint. Access to justice cannot be achieved when the citizens cannot afford the cost or is dragged for so long in court of law. It is in this wise in the cause of Elabanjo

& anor v Dawodu & ors that it was held that the essence of justice is to make access to justice as cheap and quick as possible.

2.1.2 Legal Aid

Legal Aid is a constitutional right guaranteed by Constitution of the Federal Republic of Nigeria 1999 that, in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. In the administration of Criminal Justice, the citizens or accused has the right to legal representation or free legal representation by the Legal Aid Council of which its essence is to ensure that citizen are given fair hearing which is the pivot of access to Justice. In Nigeria, the statutory body that is charged with providing legal assistance is the Legal Aid Council. A lack of access to reliable legal advice can be a contributing factor in creating and maintaining social exclusion. Poor access to advice has meant that many people have suffered because they have been unable to enforce their legal rights. Legal Assistance in United States was enhanced through statutory bodies such as Legal Services Corporation. Individuals can pay and hire their services which is intended to provide revenue in return to the government. In Nigeria, the statutory body that is charged with providing legal assistance in civil cases in Nigeria is the Legal Aid Council. A lack of access to reliable legal advice can be a contributing factor in creating and maintaining social exclusion. Poor access to advice has meant that many people have suffered because they have been unable to enforce their legal rights.

2.1.3 Legal Aid Advice and Access to Justice

The Legal aid advice is provided for in Part II of the Legal Aid Act, accordingly it provides that the grant of Legal Aid and access to justice shall be provided by the council in 3 broad areas, namely: Criminal Defense Service, Advice and assistance in civil matters including legal representation in court and community legal service subject to merit and indigence test for the parties.

- (1) The council shall establish, maintain and develop a service known as the Criminal Defense Service for assisting indigent person's involvement in criminal investigation or proceeding.
- (2) The council shall establish and maintain a service to be known as the civil litigation service for assisting indigent persons.
- (3) Legal Aid shall also be granted in respect of any breach or denial of any such right, obligation, duty, privilege or service.

- (4) Legal Aid shall consist, on terms provided by this act of:

The assistance of a legal practitioner, representation by a legal practitioner, additional aid and provision to the effect that persons shall not be given legal aid unless certified by the Director General.

- (5) The council shall establish, maintain and develop a service known as Community Legal Service for the purpose of promoting individual service.

(6) Every person authorized by the council to exercise the function relating to community legal services shall do so in such a manner as to:

- a) Promote improvement in the quality of services provided for the benefit of those who need them.
- b) Ensure that the services provided in relation to any matter are appropriate having regard to its nature and importance; and
- c) Achieve a swift resolution in order to avoid the necessity of a protracted court proceeding.

One of the major areas the legal aid counsel has made remarkable progress is the Criminal Defense for assisting indigent persons.

The Legal Aid Council has actually ensured access to justice to the poor indigent citizen and invariably reduced the number of awaiting trials in the prisons. The pro bono service rendered by the Legal Aid Counsel has helped in no small measure in ensuring that access to court and justice of citizen were not denied on ground of poverty or cost of litigation.

However, the impact of the legal aid council in other jurisdiction especially accessing justice in civil litigation, Community Legal Services are yet to see the light of the day in practice in our legal system. The vast population in Nigeria who are rural community dwellers are in dire need of access to justice both in criminal and civil matters hardly know if there is anything like the Legal Aid Council to serve as succor in their access to justice predicaments arising from their indigent.

The reason for this is not farfetched; the legal aid offices are located mostly in state capitals and not rural communities.

The implication is that the legal aid service is made available to few urban dwellers rather than the rural dwellers thereby falling short of the Constitution of Federal Republic of Nigeria, which envisages citizens to have fundamental human right to access to justice no matter the person's status in the society and/or equality before the law.

By some provisions of the Legal Act 2011, the rural community who earn less or not even on minimum wage ought to be the major beneficiaries by virtue of Section 10 of the Act. It is therefore my view that if the legal aid will make any impact for which it is intended with regard to access to justice delivery, then its offices should be extended to the rural communities at least the Local Government headquarters.

Legal Aid is a constitutional right guaranteed by our Constitution in Chapter IV, Section 36 of the Constitution of the Federal Republic of Nigeria. In the administration of Criminal Justice, the citizens or accused has the right to legal representation or free legal representation by the Legal Aid Council. The essence of the above is to ensure that citizens are given fair hearing which is the fulcrum of access to Justice.

2.1.4 The Legal Aid Council

The Legal Aid Council was established as a national agency in Nigeria and expected to maintain offices in all the states of the federation. Statutorily, the Legal Aid is provided for by the Legal Aid Act Cap L9, Laws of Federation

of Nigeria, 2004. The council shall have the responsibility for the provision in accordance with this act, of Legal Aid, advice, access to justice in respect of persons concerned. In order to effectively discharge its functions, the legal council has been divided into three major departments such as Finance , Administration and Litigation.

2.1.5 Quick Dispensation of Justice

Quick dispensation of justice entails the speedy delivery of the justice system in criminal or civil cases. The section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended in a bid to ensure access to justice does not only facilitate access to justice but the intendment is equally to ensure speedy dispensation of justice delivery within a reasonable time by an impartial judge and or court. In the case of R. Ariori & Ors v. Muriant Elemo & Ors, Obaseki JSC defined “reasonable time” to mean the period of time while in the search for justice, does not wear out parties and their witness and which is required to ensure that justice is not only done but appears to reasonable person to have been done.

2.1.6 Obstacles to access to and speedy dispensation of justice

There are many factors that lead to delay in the quick dispensation of justice. Amadi outlined some of those factors when he stated that obstacles to access to justice in Nigeria civil justice system are challenging’. These obstacles include delays, cost of litigation, complex legal rules and procedures, lack of awareness and legal knowledge. Some of factors are discussed below:

2.1.7 Delay

The average duration of a trial from the issue of survivors to the point in time when judgment is delivered by the court is eight years. In many instances, beyond ten years with the possibility of litigation cost exceeding the value of the subject matter. The problem of delay is a major challenge in both criminal and civil justice system. Almost all proceedings are subject to delays at all stages due to procedural rules exploited by parties in court proceedings. The cost of accessing the justice system is prohibitive to most Litigants. There is a possibility of the litigation cost exceeding the value of the subject matter of litigation.

There are a lot of cases being listed for same day in spite of impracticality of their proceeding. Lawyers capitalizing on scheduling too many cases for same days knowing that they will not go on so they do not prepare. Not using cogent parts of the rules of procedure available to narrow down the issues like admissions, settlement of issues, discovery etc. and some cumbersome rules left room for delay.

2.1.8 Lawyers

Lawyers are sometimes causes of delay in trials or dispensation of justice. Most times lawyers write letters to court for adjournment of their case with flimsy excuses. Thus, in absence of a lawyer in court especially where his presence is required like cross-examining a witness the matter cannot go on. Furthermore, some lawyers adopt the approach of bringing unnecessary interlocutory applications which tends to delay a matter.

2.1.9 Litigants

In some cases, litigants are the cause of delay in dispensation of justice. Some litigants abandon a matter after filing without prosecuting. On the whole, each step taken by such litigant will result in delay in the matter and increase cost.

3. Inadequate Training of Magistrates and Judges

Magistrates and judges play vital roles in dispensation and justice delivery. However, it is unfortunate that most magistrates and judges were not properly equipped or trained for the job. For instance, some legal practitioners who employed as magistrates have little or no experience in legal practice. This lack of experience inevitably makes them prone to mistakes. The effect is that they may likely take longer time to deliver interlocutory rulings or judgment.

3.1 Rules of Court

Some rules of court lead to the delay of delivery of justice in our legal system. Generally, courts are there to do justice for all parties. Unfortunately, some of the rules provide loopholes for delay in trials. For instance, the principles of court rule with regard to amendment of process are too relaxed and permissive. It provides that parties are entitled to amendment at any stage of the proceeding before judgment in interlocutory application. The rules of civil procedure provided liberty for litigants to make all sorts of interlocutory applications, some of them may be time consuming but the court cannot gloss over it in the interest of equity, fair play and fair hearing. Sometime, these rules of court are abused by making application for unnecessary adjournments, interlocutory injunctions and objections. In as much as the court rules allows the parties, they are entitled to it but the overall effect is that it affects adversely quick justice delivery.

3.1.2 Transfer of Magistrate/Judges

The transfer of magistrate and judges is another major cause of delay. Magistrates and judges are usually transferred periodically. Anytime there is such transfer, cases especially part heard has to start “Denovo” i.e., afresh such Denovo trials mostly had caused delay in trials. One can imagine a situation where a matter must have taken up to 3-4 years and has partly been heard only for the matter to start Denovo as a result of transfer of a magistrate or judge. It is usually the administrative duty of the Chief Judge of a State to reassign matters or case. Sometime it took some period of months before the suit will be reassigned to another judge and the matter could precede denovo. It must be noted that during such transfers, some judges Suo Motu transfer case files from their former station to their new division with a view of completing the trial. However, experience has shown that some of those cases ended up been delayed by such judges as in the case of SGBN (Nig) Ltd v AINA. where a case filed in 1999 was SuoMotu transferred by a judge to his new station. Ruling of High Court was delivered on 3rd April 1996.

An was heard by the court of Appeal and judgment delivered on 8th July, 1999 saying declaring the High Court ruling of 1996 as Null and Void and of no effect and that the proceedings were a mockery of justice and the suit

was remitted back for reassignment. In the circumstance of this case, the judge has caused the delay of the case for about 8 years while the case was before him up to the time it held that it be reassigned. It is this awkward scenario that Justice P.O. Aderemu (JCA) as he then condemned when he said:

Again the transfer of a judge from one judicial Division of a State is a product of exercise of the administrative power of the Chief Judge who is the administrative head of the judiciary, unless there is administrative directive from the Chief Judge, a judge who is asked to proceed on transfer from one court to the other even within the same Judicial Division must not take along with him any case file, be it part heard or yet to be heard. To do so will expose such a judge to suspicion. Such an act by (him) judge is objectionable by reason of incompatibility with the position of an unbiased adjudicator

It is suggested that while the view of the learned judge in the above comment is commendable, part heard matters up to defence stage provided it has the directive of the Chief Judge may be carried along by a transferred judge to his new division.

This will save the time of the matter being started denovo before it will get to defence stage again thereby occasioning more delay in justice delivery of the matter.

3.1.3 Political Meddlesomeness into Judicial Appointments

One of the major causes of delay in access to and delivery of justice recently is political meddlesomeness into the judiciary. The National Judicial Council (NJC) is the apex judicial body saddled with the responsibility of appointment and discipline of Judges ranging from the Supreme Court Judges to the state High Courts.

The appointment of a person to the office of the Chief Justice of Supreme Court shall be made by the President on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the senate.²⁶

3.1.4 Lack of Modern Equipment and Tools

Delay in delivery of Justice in Nigeria is accentuated by lack of Modern equipment that will facilitate speed. For instance, most the judges in Nigeria still use long hands, the filing of papers is still done manually. When courts rooms are not well equipped with adequate facilities, real justice is not also served. Facilitates of courts should be upgraded to accord with the modern-day technology. E-filing, E-service are already in vogue in many jurisdictions.

3.1.5 Challenges of Access to Justice

The objective to ensure proper administration and efficient management of justice is to realize quick dispensation of justice and protect the society from crime as well as the rights and interests of the suspects, defendants and the victim. On the contrary, the institutions required to dispense this duty such as the police, the various judiciaries (Federal and States), the Offices of Attorney General Federal and State, the Correctional Centres, the Legal Aid Council, the Bar, and to some degrees the Ministries of Health in the State are considerably inactive, are in the state of malfunction and this in part is traceable to faulty institutional structures.

As important as these institutions are, most especially the legal aid council, they are improperly coordinated. There seem to be lack of committed efforts, proper planning, and adequate control and budgeting from both the federal and states government. The calls for reform of these institutions most times fall on deaf ears. Efficiency is unlikely to be attained even in State as some of these institutions are outside the States direct control. Aside, these institutions are inherently resistant to pressure for change or reform. It is necessary to reveal that those at the receiving end bear the brunt of these institutions as they lack the wherewithal to exert the required change. These have occasioned grave consequences in justice administration system.

3.1.6 Challenges Facing the Legal Aid Council

The legal aid council is faced with so many challenges, some of which are: Inadequate funding, Lack of passionate personnel, Lack of independence of the council, Lack of publicity and inadequate information on access to justice, Language barriers, Linguistic challenges, Delay in treating case files by the Director of Public Prosecution (DPP), Delay in investigating crimes by the Police etc.

3.1.7 Conclusion and Recommendation

One of the critical enhancements accomplished generally by the legal aid council is that mindful endeavors has been made to sustain the benefits of the disputants and lessen delays in the justice administration system. Given the current financing requirement and inadequate structure of justice administration institutions such as the legal aid council previously adduced, which militates against the speedy dispensation of justice and access to it, it is imperative and exceptionally earnest that for progress to be made with execution of the legal aid act as provided in the constitution; generous speculation and budgetary arrangements should be made in both human and material assets by the administrative and state governments. Legal Aid should be made a basic fundamental human right in the constitution of the Federal Republic of Nigeria which will ensure fair hearing and fair trial in the dispensation of justice for indigent citizens. Finally to ensure speedy dispensation of justice, legal aid council should be well funded and independent without relying on government or ministry of justice to release fund before it can function on its mandate.

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