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Etomi &

Partners

**THE 4TH NATIONAL SUMMIT OF STAKEHOLDERS
IN THE ADMINISTRATION OF JUSTICE - 11th – 12th
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THEME: “JUSTICE DELAYED”

**BEING A PAPER DELIVERED BY: MR. GEORGE ETOMI, CHAIRMAN
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INTRODUCTION:

So much has been said about this subject, what is now left is to find out practical ways of getting ourselves out of this vicious cycle of delayed justice.

Even though I have been asked to look at delay as it pertains to Civil trials, I believe a synopsis of the different factors is necessary to assist a better understanding of how the solutions proffered can work.

A.) APPOINTMENT OF JUDGES

Unfilled Vacancies and Inadequate Judge Strength:

It must be a continuous policy to create new Courts and infrastructure i.e. buildings, equipment, staffing e.t.c. We should aim towards maintaining an acceptable ratio of Judges to cases in a manner that would reduce the average civil trial from start to finish to less than eighteen months (18). The Ministry of Justice must have a department that monitors this target.

B.) MAKING THE RIGHT APPOINTMENTS

The right quality of persons should be appointed to the Bench. One way of getting talented and brilliant people is by giving them the right remuneration and other conditions of service. We note quickly that Lagos State is the trailblazer in this regard, but we are not to rest on our oars as there will always be a relentless demand on the administration of regime.

C.) ENSURING AN INDEPENDENT JUDICIARY

I add my voice to those that have always advocated for a truly independent judiciary. This can be achieved by removing their dependence on other arms of government or statutory bodies with regard to funding and enforcement of their decisions. This in addition to our call for the appointment of competent, qualified, non-partisan and incorruptible Judges will significantly aid the dispensation of justice and reduce the delay in proceedings.

D.) IMPROVING THE QUALITY OF STATE COUNSEL:

I am reliably informed that a large number of the cases in court involve government in one form or another and they in particular should imbibe a lot of the attributes earlier highlighted which should include employing competent State Counsel who can handle matters and not simply rely on the might of government. Amongst others they should;

1. like any of the large law firms, employ modern office gadgets with properly trained staff so that their productivity and readiness to deal with matters expeditiously is enhanced.
2. develop the culture of ensuring that cases go on at all times, or to put it differently, they must depart from the culture of adjournments they readily yield themselves to. This is imperative as government should lead the way in these matters, and nothing should suggest that the quality of personnel and lawyers working for government should be lesser than the industry average.

In time past, the brightest and best lawyers were actually to be found in the Ministry of Justice. But today, it would appear that lawyers go there only as a matter of last resort. I quickly acknowledge the excellent work put by some of our colleagues in the Ministry inspite of the difficult circumstances they work under.

RELATIONSHIP BETWEEN BAR AND BENCH

I was staggered to observe at a recent Bar/Bench forum, that there exists a frosty relationship between the Bar and Bench in Lagos State. A good number of Judges at that forum expressed their frustrations about the output from the Bar which often made them wonder if they themselves were products of the same Bar.

On the flip side, some of the lawyers complained about the high handedness of some Judges which very often, conveys the impression that they are looking down as it were, on the Bar.

Recent events, widely reported on this relationship, led to the committal for contempt against a member of the Bar which elicited a boycott of the Courts by lawyers. This is a most unfortunate development in the relationship between the Bar and the Bench.

I submit that if both Bench and Bar do not develop respect for one another and appreciate each other's opinions, it will be difficult to develop the goodwill and cooperation necessary to discharge their functions as equal partners in the administration of justice.

I would like to make the following suggestions to improve on this relationship:

- lawyers should seek adjournments for the right reasons. It is impolite to give a judge the wrong reasons for seeking an adjournment or a stand down.
- judges should inform lawyers well in advance if they know they would not be sitting on a particular day.
- judges and lawyers alike should be punctual to Court. Perhaps the time has come for times to be allotted for hearing cases as obtains in many other jurisdictions.
- lawyers, no matter how senior, must exhibit etiquette in Court. For example I have never taken a fancy to lawyers placing their feet on the bench because it could easily be interpreted to mean stepping on the Bench!
- Bar and Bench must school themselves in the use of language such that they come across as maintaining decorum at all times. A judge should not exhibit a tempestuous disposition on account of a disagreeable conduct on the part of a lawyer.
- humour is well recommended and comes in handy to douse tense situations.

PREPARING FOR CASES

It is also obvious that when lawyers do not prepare sufficiently for a case and Judges themselves do not research, then they would clutch at anything to prevent a matter from going on. I believe that Judges should be able to rule on very simple applications straight away; and adjournments should be reserved for relatively complex applications. I am aware that Judges have suffered the indignity of being queried by the National Judicial Commission (NJC) based at times on frivolous petitions written by lawyers suggesting that a Judge who hurries his ruling may have an interest in the case. It is premised on the above that Judges adjourn to give the impression that a particular ruling has been considered whether or not it may have been possible to deliver same immediately. What this means is that the NJC itself should be more discerning before exercising this right of supervision over judges because the time spent by judges to answer queries from the NJC could perhaps be better spent going on with their cases.

DELAY BY APPELLATE COURTS

This would be dealt with fully by subsequent discussants, but the point must be made that one of the major reasons for delay is the phenomenal increase in needless appeals by lawyers for a variety of reasons. From incompetence to lack of adequate preparation and now the search for Silk, there are no limits to time wasting techniques by lawyers. For as long as the appeal Courts are themselves slowed down by this process, so also will the lower Courts experience similar delays. I will suggest the following;

- Severe penalties be imposed on lawyers notorious for employing delaying tactics. Fines could be an option
- Time limits should be set on matters generally and whatever antics are employed must be done within this limit otherwise Counsel should risk fatal blows being dealt to their cases.
- There should be practice directions about what constitutes unacceptable delay tactics and this should be strictly enforced. This way Counsel have no option but to play within the rules.
- The criteria for giving Silk must be reviewed such that Counsel noted for making frivolous appeals are generally not considered for the honour.

CONTINUING LEGAL EDUCATION

In our experience, one of the reasons for delays is when Judges are required to deal with areas of law they are not familiar with either because they are new growth areas or they lack the requisite mechanism for continuous update of their knowledge in already existing areas of law.

Consequently, the judiciary should be autonomous enough to provide continuing legal education for its personnel at all levels beginning with the Judges down to the registrars and so forth especially in the use of modern techniques like computers, e-law, video conferencing etc.

It would be prudent for the NBA and the NJC to collaborate actively in a continuous education scheme for law personnel.

The Section on Business Law (SBL) of the Nigerian Bar Association which I chair is determined to improve on the quality of business law practice in Nigeria and work closely with the judiciary to achieve this.

USE OF ADR

The SBL just finished a 2-day workshop on ADR titled “**ADR as an expeditious and cost effective means of dispute resolution**”. It is my view that everyone here present should begin to recognize the importance of ADR and its role in helping to decongest our Courts.

I must commend in this regard the Lagos State Government in setting up the Multi Door Court House. What is now required is for partnerships to be built around this initiative by various organizations to ensure that we have an active ADR regime. Judges should be encouraged to take courses on mediation as it is itself becoming a structured method for settling disputes.

The SBL on its part will work with the Chattered Institute of Arbitration to ensure that we make Nigeria a regional hub for ADR.

Even a lot of government disputes with its citizens can be referred to ADR; the same enforcement mechanism advocated in the case of Court decisions should also attend findings of ADR.

ENFORCEMENT OF JUDGMENT

This is a major cause of delay in our Courts.

One of the most frustrating causes of delay is enforcement of decisions of court. A situation where it takes litigants years to get benefit of a judgment, or where they have to employ extra-ordinary means to do so, can only lead to loss of faith in the whole administration of justice system. Government must lead the way in ensuring that the enforcement of Court decisions are accorded the highest priority.

To put it in perspective, if a directive of a State Governor is wantonly disregarded, we know that the offending party can suffer severe sanctions which in the military era, could even mean denial of freedom. A Court Order should be accorded the same, if not a higher degree of reverence.

Thus even in cases where the government is itself a judgment debtor, they must lead the way by ensuring that they comply with the judgment and do so in time.

If they lead the way in this manner, I do not believe that there is a citizen, corporate or otherwise that would have any reason to disregard our Courts.

Ideally, the Courts should be equipped to enforce their own judgments. However, until we get to that stage, a lot can be achieved by the government according the judiciary proper respect by ensuring that Court Orders are obeyed.

A system where bailiffs are molested in the course of their duty to enforce judgments is to say the least, most despicable. A lot of hue and cry must be made against persons and

organizations that engage in this condemnable act and not only should they be made to comply forthwith, their act of obstruction must be summarily dealt with and widely publicized.

Finally, I would like to thank the Ministry of Justice for this initiative and it behoves each of us to play our part in ensuring that justice is administered in record time so we do not continue to fall victim to the well worn phrase that justice delayed is justice denied or to put it differently justice is denied when delayed.

12th July, 2006
LAGOS, NIGERIA