

**THE RULE OF LAW AND REALITIES OF THE LAW IN
NIGERIA: RETHINKING THE 21ST CENTURY ROADMAP
FOR LIBERTY AND JUSTICE IN AFRICA**

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Abstract

As aptly submitted by Kofi Bentil, the concept of Rule of Law is the principle that governments must be governed by well-defined set of laws that binds all within a particular jurisdiction. Rule of Law among others, entails fairness, equality before the law, respect for human rights, life and personal properties, just and equitable treatment of all as opposed to the arbitrary treatment of the masses by the leaders, government and government officials. To this end, respect for the rule of law is key to the overall development and stability of every African nation at large and Nigeria in particular. Nigeria, being the giant of Africa would have been expected to set developmental tune and pace for other African countries. Its population, man power/human resource, natural resources, level of exposure and civilization of her citizens among others should have ordinarily been to her great advantage. Unfortunately, the reverse is her case. There is no doubt that the surest way to redefine the roadmap for justice and liberty in Africa at large is by re-examining the application of the rule vis-a-vis the realities of Law on the continent. This paper

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201 *The Rule of Law and Realities of the Law in Nigeria: Rethinking the 21st... therefore seeks to examine the concept of rule of law in Africa, from the Nigerian perspective. It is the position of the paper that liberty and justice can only be assured in Africa through effective promotion of the rule of Law.*

Key Words: Rule of Law, Nigeria, Liberty, Justice in Africa.

Introduction

Unlike *law* that defies a generally acceptable definition, the *rule of law* is never faced with problems of definition. As far back as the 16th century, all kinds of definitions given to the concept have the same string of idea but explained in different dimensions. The meaning or content of the concept of the rule of law vary from place to place, and from earlier times.¹To Aristotle, the “rule of law is preferable to that of any individual”, while Bracton, writing in the 13th century adopted the theory generally held in the middle ages that the world was governed by laws, human or divine and that the king himself ought not to be subject to man, but subject to God and to the law, because the law makes him king. Anthony Mathew (1988: 219) summarized the doctrine of the rule of law as:

- a) That the law touching on the basic rights of citizens shall be narrowly and precisely drafted so as to constitute a clear guide to official actions and citizens’ conduct; and
- b) That the application and interpretation of such laws shall be under the control of impartial courts operating according to fair procedures.²

¹ M.M. Akanbi, A.T. Shehu, ‘Rule of Law in Nigeria’ [2012] (3) *Journal of Law, Policy and Globalization*, 1.

² *Ibid.*

The rule of law is *defined* in the Oxford English Dictionary as:

...the authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; hence, the principle where by all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.³

From another perspective, rule of law is captured in the explanation that every person is subject to the law including people, who are lawmakers, law enforcement officials and judges,⁴ thus the supremacy of the law as opposed to the rule of men or rule of discretion. Cooper, John et al. maintains that:

where the law is subject to some other authority and has none of its own, the collapse of the state is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy the blessings, that the gods shower on a state...⁵

Rule of law means that every citizen shall not be exposed to the arbitrary desire of the ruler and that the exercise of the powers of government shall be conditioned by law. No one can be lawfully restrained or punished except for a definite breach of law

³ I. McLean and A. McMillan *Oxford Concise Dictionary of Politics* (OUP, 2003) 387.

⁴ Hobson, Charles, *The Great Chief Justice: John Marshall and the Rule of Law*, (University Press of Kansas, 1996) 57.

⁵ Cooper, John et al., *Complete Works by Plato* (Hackett Publishing, 1997) 1402.

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established before the courts in ordinary legal manner. In fact, the Holy Book also succinctly captures what rule of law is in the following words:

You shall do no iniquity in judgment. You shall not favour the wretched and you shall not defer to the rich. In righteousness, you are to judge your fellow.⁶

Rule of law is grounded in the principles of supremacy of law, equality before the law, protection of fundamental human rights, and fairness in the application of the law and separation of powers. Without doubt, true adherence to the rule of law will produce a better society with justice as its hallmark and foster development. Without rule of Law, justice and liberty is meaningless especially in Africa and Nigeria in particular!

Evolution of the Concept of Rule of Law

In so far as human beings continue to crave for justice, and rule of law is unarguably a cogent route to achieving justice, the concept of rule of law will always remain relevant in the world over. The concept is as old as human existence. Rule of law as it is of today was made popular by A.V. Dicey. The Rule of law as formulated by Dicey has three basic interpretations:⁷

1. There is the *absolute supremacy* of regular laws as opposed to the influence of arbitrary power. That means, a man may be tried and punished for a breach of the law, but he cannot for anything else;

⁶ Leviticus 19:15.

⁷ Francis Wormuth, *The Origins of Modern Constitutionalism* (Benworth, 1949) 28.

2. The rule of law clearly stipulates common *equality* before the law of the land administered by the ordinary law courts. That can be interpreted to mean that no man, irrespective of his social or official position, is above the law. Everyone is duty-bound to obey the same law;
3. The rule of law holds that the legal rights of the subjects are *secured* not by guaranteed rights proclaimed in a formal code but by the operation of the ordinary remedies of private law available against those who unlawfully interfere with his liberty of action, whether they are private or official citizens.⁸

The key idea of the rule of law is that the law should apply equally to all that is; the governors and the governed alike. Thus, in the words of A.V. Dicey, the rule of law ensures a ‘government of law and not a government of men’. The alternative to the rule of law is nothing but arbitrariness, lawlessness, insecurity and lack of order.⁹ The rule of law establishes and binds the relationship between government and the people. As John Locke puts it, ‘whenever law ends, tyranny begins.’ For a law to be respected and obeyed, it must reflect the spirit of the people, just as submitted by Von Savigny. The rule of law must protect the fundamental rights of the people it governs and be able to meet their changing needs. The rule of law promotes democracy, judicial independence, peace,

⁸ Thomas Bingham, *Rule of Law* (Penguin, 2010) 3.

⁹ *Ibid.*

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security, orderliness, liberty and good governance to mention but a few.¹⁰

In *Omatseye v FRN*,¹¹ the court observed that the Rule of law is a concept that has been with the world for well over twenty-five Centuries, when it was first propounded by the great philosopher and thinker Aristotle. However, in modern contemporary jurisprudence, it is described as the condition in which all members of the society including the rulers and the led accept the authority of the law. Under it no man or woman is liable to be punished, except for a breach or infraction of law committed and established before the Courts. It is a concept in which the citizen is entitled to the observance of the principles of natural justice in the determination of any question involving his rights and obligations under the law.¹² The concept of rule of law finds easy expression in the term "justice", which must not only be done at all times but must be seen as having been done. It abhors injustice to anyone. It is thus a recipe for justice for all. It propagates the notion of equality of all before the law without regards to social status, official position, education or wealth.¹³

The Nigerian Stint of the Rule of Law

In the unforgettable words of Dwight D. Eisenhower, wherein he observes that, "...the world no longer has a choice between force and law, if civilization is to survive, it must choose rule of law". Just

¹⁰ *Ibid.*

¹¹ (2017) LPELR-42719 (CA), at 65.

¹² See *Garba and Ors. v University of Maidaguri* (1986) 1 NWLR (Pt.18) 550.

¹³ *Ibid.*

like every other African country, there is no doubt that the rule of law is unambiguously enshrined in the Nigerian Constitution. The only surprising thing to any competent individual is the blatant disrespect shown to the constitutional provision by Nigeria rulers who had openly sworn to uphold it. From the backdrop of several cases of unjustifiable arrests, unfair trials, executive lawlessness, suppression of free speech and undue domination of minorities, can it be boldly said that the reality of the rule of law is palatable in Nigeria?

Nigerian government claims to be a democratic government under the rule of law. In principle, Nigeria subscribes to several international instruments aimed at promoting respect for the rule of law, but with little or no intervention in their application. Going by the concept of the rule of law, the courts are expected to play vital roles in applying the law without respect for persons. Accordingly, judges are expected to be courageous, impartial, independent, just and be respecters of no persons no matter how highly exalted their positions in the society may be.¹⁴In practice however, the reverse is the case. The major issue here is that without an independent judiciary with incorruptible judges, the rule of law cannot be sustained. By the demands of the rule of law, the government and its officials are duty-bound to respect and obey the law in all its actions. This means every government must endeavor to minimize arbitrariness in its policies and use of power. Thus, government must be guided by the rule of law in the exercise of its powers. But in Nigeria, the rule of law is more or less an absurd concept.¹⁵

¹⁴ J. Omoregbe, *Socio-Political Philosophy and International Relations* (Lagos, Joja Educational Research and Publishers, 2007) 109.

¹⁵ O. J. Elijah, 'The Rule of Law in Nigeria; Myth or Reality' [2011] (4) (1) *Journal of Politics and Law* 212.

Nigerian leaders are in most cases, unable to obey set down rules and operate within the norms of a given establishment. In this case, obedience to court orders is a paramount measuring index of compliance with the rules of law in any society.

Often times, public servants in Nigeria, especially chief executives and high ranking political office holders acts as if they are above the law or are not subject to any authority. These happened in Nigeria and some African countries like Zimbabwe and Liberia during the military regimes and unfortunately even still persists under civilian/democratic regimes. Military regime itself is naturally an aberration of the rule of law, because of its outright rejection of the rule of law. Civilian regimes in Nigeria have also not fared better with respect to the rule of law. In fact, civilian administrators seem to surpass the military in their open disrespect to the rule of law. Obasanjo's era for instance, was reported to be full of exhibition of executive lawlessness in Nigeria.¹⁶ The feuds between the Lagos State Government and the Federal Government over the failure to remit funds allocation meant for Local Government Councils in Lagos was a typical example of executive lawlessness during his tenure in office. According to Mbaba, despite the judgment of the Supreme Court on the matter, the defaulting party, and in this case, Federal Government was still defiant, looking for reasons to justify its position going back to court, as if to seek permission to continue in the disobedience.¹⁷

In many cases, a Nigerian ruler in brazen show of dictatorship, tries to use the vehicle of the law to advance his purpose and so enacts laws to silent everybody from criticizing him, or opposing his

¹⁶ *Ibid.*

¹⁷ *Ibid.*

oppressive policies. Such laws even oust the jurisdiction of courts so that nobody, not even the court can question the ruler. See for example Section 3(3) of the Public Officers (Special Provisions) Act which provides that;

No civil proceeding shall lie or be instituted in any court for or on account of, or in respect of any act, matter or thing done or purported to be done by any person under this Act and if any such proceedings have been or are instituted before, on or after the making of this Act, the proceedings shall abate, be discharged and made void.¹⁸

The foregoing, to this paper, is faulty and needs to be urgently amended. Apart from the fact that the Act itself is very old and archaic, the provision could be used to perpetuate injustice. Meanwhile, nobody according to A.V. Dicey is above or expected to be above the law. Just recently, on the 23rd September 2019, when Nigeria's Chief Justice, Hon. Justice Tanko Muhammad was called to give a speech at the special session which marked the beginning of the 2019-2020 legal year in Abuja, his words fired the audience into an enthusiastic euphoria of change. He said: "The rule of law must be observed in all levels to actively toe the path. The rights of every citizen against any form of oppression and impunity must be jealously guarded and protected with the legal tools".¹⁹

His most charismatic words:

All binding court orders must be obeyed. Nobody, irrespective of his or her position, will be allowed to

¹⁸ LFN 2000 Cap. 379.

¹⁹ This Day Newspaper, September 29, 2019.

toy with court judgments...as we know flagrant disobedience of court orders or non-compliance with judicial orders is a direct invitation to anarchy in the society.²⁰

Little would the CJN have known that in less than 24hours, in the same city where he made the proclamation, his words would be put to test by those whose expertise rely only in disobeying court orders. A Federal High Court in Abuja ordered the immediate release of Omoyele Sowore from DSS facilities on 24th September, 2019. Three days after, the DSS was yet to obey the order of the Court for the immediate release.

The obligation to uphold the rule of law is an integral part of the overall commitment to governance and democracy by African heads of state and government, as expressed in the AU Constitutive Act during the period of transformation of the Organization of African Unity (OAU) into the AU. The statutory responsibilities and related assurances to abide by the rule of law are part of wider AU efforts to counter the threats to peace and security, particularly those arising from armed conflicts associated with electoral processes and political level transitions. The duty to uphold the rule of law is furthermore embedded in the African Charter on Human and Peoples' Rights (the Banjul Charter) and the African Charter on Democracy, Elections and Governance (ACDEG)²¹.

²⁰ *Ibid.*

²¹ International Institute for Democracy and Electoral Assistance, 'Challenges to the Rule of Law in Africa' (Workshop Report 12-13 April 2016, Pretoria, South Africa) 9.

Stimulating further action to consolidate democratic gains is central to achieving the articulated aspiration in the Agenda 2063 strategy of the AU which provides that one of the key continental dreams is an ‘Africa that has implemented good governance, democracy, respect for human rights, justice and the rule of law’. To achieve this, the 2063 strategic document reflects on the role and mandate of regional organizations and the importance of improving governance, establishing strong institutions, having a developmental orientation and visionary leadership. Generally, in Africa, there has always been a question whether the rule of law is a myth or reality. Africa is proud of democratic states, governed by laws and the rule of law as well enshrined in their various Constitutions, however, in practice, the rule of law is not without some challenges and problems on the continent. Some of which includes;

i. Poverty, Illiteracy and Ignorance

Illiteracy and Ignorance are some of the impediments to the reality of the rule of law in Africa generally. This directly relates to the masses who are the usual victims of human right abuses and abuse of power in the continent. When people are ignorant of their rights or do not have a clear understanding of their rights, it becomes almost impossible for them to get justice because they do not even know when the right is violated. This ignorance allows the perpetrators of human right abuses to get away. It should be remembered that the protection of fundamental human rights is an important element of the rule of law anywhere. Thomas Jefferson once said that an ignorant people can never remain free.

Relatively close to illiteracy and ignorance is, poverty, sometimes, the latter is always as a result of the former. To ensure that the rule of law is protected, the independence and neutrality of the judiciary is sacrosanct. The question now is how you get the intervention of the courts when you cannot afford legal representation. In the African Union discourse on the Challenges of Rule of Law in Africa in the year 2016, it was highlighted that close to 70 percent of Africans cannot with ease afford the services of a good lawyer.²² The technicality of the law necessitates legal representation which is not affordable.

ii. Inefficient Justice and Policing System

The judicial system in Nigeria, like many African countries has always been a subject of criticism. The judiciary especially in the sub-Saharan region of Africa has been reported not to have discharged its duties without fear or favor.²³ The judiciary is popularly referred to as the last hope of the common man, but the judiciary is now crippled with bulk of cases without being decided for many years. For instance, there is a plethora of Nigerian cases that have lasted in court for over ten years such as; *Ariori v Elemo*²⁴ which lasted for about 22 years in court. The case was instituted at the high court of Lagos state on the 15th of October 1960, went to the Court of Appeal after which it proceeded to the Supreme Court, and was not finally determined until Friday, 21st day of January 1983. *Ndili v Akinsunmade*²⁵ which lasted for 13 years, *Owners of M/V Gongola Hope & Anor v Smurfit Cases (Nig) Ltd &*

²² *Ibid* 23.

²³ <<https://infoguidenigeria.com/problems-rule-law-inigeria/>> accessed 9 October, 2019.

²⁴ (1983) 1 SC 13.

²⁵ (2000) FWLR (pt 5), 750.

*Anor*²⁶ which lasted in court for 17 years, *Odu'a Investment Company Limited v Joseph Taiwo Talabi*²⁷ which lasted for 21 years and *African Petroleum v Owodunni*,²⁸ which was in court for almost ten years, *Oni & Ors v Governor of Ekiti State & Anor*²⁹ which lasted in court for 9 years, *Ayanru (Rtd) v Mandilas Limited*³⁰ which was in court for about twenty seven years, to mention but a few.

The judiciary unfortunately in Nigeria still records proceedings manually (long hand), with no sufficient manpower/judges/magistrates as the case may be and as such, the system of judicial administration has not promoted quick dispensation of justice. Justice delayed is justice denied, no doubt. Conversely, it is trite that the Police Force has a crucial role to play in the enforcement of the rule of law the world over. The role however must be discharged judiciously. In establishing the foregoing, it was held in *Ohanedum & anor. v C.O.P (Imo State) & ors*³¹ that of course, the duty of the Police under the Police Act, or under the Nigerian Constitution, are circumscribed by the law, and must be performed, lawfully. The Police cannot act at large, aligning with mischief makers and criminal elements to become a terror to the citizens and subject law-abiding citizens to harassment, intimidation and fear.

²⁶(2007) LPELR-2849(SC)

²⁷ (1997) 10 NWLR (pt 523) 1.

²⁸ (1991) 8 NWLR (pt. 210), 391.

²⁹ (2019) LPELR-46413(SC).

³⁰ (2007) 10 NWLR (pt.1043), 462.

³¹ (2015) LPELR-24318(CA).

Conversely, according to a report by the ‘Network’ on Police Reform in Africa, most police forces in Africa are over centralized, under-resourced, ill-equipped, and suffers from political interference.³² This paper agrees with the foregoing position and is of the view that these various challenges amongst others are the bedrock of police brutality, recklessness, corruption, low morale, and lack of professionalism by police officers in Nigeria and most African Countries. Unfortunately, the masses are at the receiving end. Police officers, who are expected to be the promoters and enforcers of the rule of law, are now notoriously abusing same. Officers who were employed and trained to protect the lives and properties of citizens are now threats to the masses at large! Wither bound Africa?

iii. Corruption

This has practically become endemic in Africa. It has permeated every bit of governance and administration. Justice is not left out. There are cases of bribery and intimidation by the powers that be, right from the street to judges. This has not allowed the rule of law to fully manifest in Africa.

iv. No True Separation of Powers

Separation of power is a doctrine of the law that is designed to incontrovertibly promote the rule of law. In *Chevron (Nig) Ltd v Imo State House of Assembly and ors*³³ the court noted that it is also a truism as submitted by the Learned Senior Counsel for Appellant and on the authorities of *A-G, of Abia State v A-G*,

³² *Ibid* (n.15).

³³ (2016) LPELR – 41563 (CA).

*Federation*³⁴ and *A-G. Federation v Guardian Newspaper Ltd*³⁵. per Karibi-Whyte, JSC, that Nigeria runs a Federal system where (as I had said earlier) there is separation of powers between the three arms of Government namely: the Executive; the Legislature and the Judiciary with each arm having exclusive control over its sphere of influence. Thus, Karibi-Whyte, JSC reviewing the purport of the doctrine while interpreting the provision of the 1979 Constitution which is in *parimateria* with our current 1999 Constitution on the subject, rightly posited that: "implicit in the power so vested, the one was not to interfere with the exercise of the powers of the other, except to the extent to which the Constitution confers such powers of interference. This is that hallowed principle of separation of powers first formulated by Montesquieu and now nearly perfected in the Constitution. As a general rule therefore, except otherwise expressly provided or incidental to the powers conferred, the Legislature cannot exercise either executive or judicial powers".

Separation of power entails little or no influence and interference between the three arms of government. The principle in true sense also promotes checks and balances to ensure that one arm of government do not act in excess of its constitutional powers. In Africa however, there is substantial amount of interference and influence and especially between the Judiciary and the Executive.³⁶This, if not addressed, will continue to affect the reality of the rule of law in Africa, and the roadmap for liberty and justice on the continent will continue to remain clogged.

³⁴ (2006) 16 NWLR (Pt. 1005) 265 at 353-354 paras .F-H.

³⁵ (1999) 9 NWLR (Pt. 618) 187 at 308-309.

³⁶ *Ibid* (n.16).

v. Political interference:

Nowadays, the law is being employed to settle political scores. In examining the fight against corruption for instance; it will be observed that the quantum of political interference is making a whole mess of the whole process. In Nigeria for instance, an average Nigerian unfortunately believe that the present-day government is fighting its political enemies while the perpetrators of corruption and reckless looting walk around as free men. This is highly condemnable and the paradigm really needs to shift for good.

vi. Immunity

Being the foundation of good governance, the rule of law is expected to be allowed to operate as the guiding principle of leadership and governance in every society. The experience in Nigeria is to the contrary as successive administration in the country often violates the concept with carelessness and recklessness.³⁷ A major ingredient of the Rule of Law is equality before the law. This connotes that irrespective of status, rank, and position; everyone must obey and be subject to the law of the land. In reality however, the concept of equality has been quite bogus and non realistic especially in Nigeria. The President and Governors in Nigeria for instance enjoys constitutional immunity from criminal cases during their term of office under the constitution.³⁸This, to this paper, is a serious limitation to the principle of rule of law. It in a way promotes injustice thereby undermining the liberty, rights and justice within the country. The current situation can therefore be likened to the situation in Animal

³⁷ *Ibid.*

³⁸ Section 308 CFRN, 1999 (as amended).

Farm³⁹ where it was observed that *all animals are equal, but some are more equal than others*. This is highly condemnable and calls for urgent attention. The rule of law must be allowed to thrive in Nigeria in particular and Africa at large.

vii. Defiance to Court Orders

The rulings of the court when not appealed are expected to be final and are meant to be adhered to by parties to a dispute. When the decisions of the courts are not adhered to, there can be no rule of law. The issue of El-Zakzaky and Sowore is apt in this regard wherein the Court ordered the release of the accused from custody and same was not religiously obeyed by the DSS.

viii. Tribalism:

It is unfortunate that in Nigeria today, tribalism has been elevated to dominate national discourse. It controls how people think and talk, and determines what they oppose or support. It is promoted by the political elites, embraced by the young and the old, passed from generation to generation, and even has base in the constitution. This explains the assumption that conflicts in Nigeria is motivated by ethnic competition⁴⁰. Notwithstanding the fact that Nigeria is a multi-ethnic nation, the rule of law is expected to operate irrespective of who is involved; however, multi-ethnic conflicts have not allowed the full manifestation of the rule of law in the country. Tribalism breeds preference and inequality which is not good for justice.⁴¹ Before anything, Nigerians and indeed,

³⁹ By Chinua Achebe.

⁴⁰ C. G. Adeyanju, Politics of Ethnicity in Nigeria: The Way Forward <<https://www.foresightfordevelopment.org/featured/ethnicity-tribalism>> accessed 15 August 2020.

⁴¹ *Ibid.*

Africans are human first. Hence, tribalism should never be allowed to clog respect for the rule of law.

Rethinking the Realities

Role of the Bench

A judge that pays lip services to the rule of law will discover sooner than later that he has no profession to practice. The rule of law demands equality before the law; therefore there should not be *Kabiyesi* syndrome on the bench. The law is no respecter of anyone or institution. The rule of law also connotes that things should be done in accordance with the law, not on the whims and caprices of any person.

Our judges have the bounden duty to help uphold this tenet of the rule of law. The rule of law also means that no one will be damned without a hearing nor will one person be a judge in his cause. Partiality, favoritism and sentiment should have no place in the judiciary of the new era. Judge should scrupulously insist that Court orders should be obeyed and sanctified by all. Selective justice is no justice. There should be harmony between law and justice. Justice should be done in accordance with the law. The application and interpretation of law should be even handed as between the powerful and the powerless, the rich and the poor, the affluent and the humble. The power to grant *ex-parte* orders should be watched and exercised with circumspection.⁴²

Role of Lawyers

The first duty of a lawyer is to defend the tenets of the rule of law in its pristine nature. The survival of a democratic polity depends

⁴² C. A. Oputa, 'Modern Bar Advocacy', *Justice Watch*, Mabushi Abuja: (2014) 14.

on the state of the law of the law. Any society in which the rule of the law is stifled, so also is the profession of law.⁴³ It is therefore instructive for a legal practitioner to know that his livelihood depends on the virility of the rule of law. It is not only unethical but self-destructive for a lawyer to support any arrangement that stifle the rule of law. Certainly, the law does not benefit from the rule of force. The sustenance of the rule of law equals the sustenance of the legal profession. The lawyer much kick against retroactive laws, must speak against extra judicial punishment, must be an advocate of the observance of due process at all times, he must fight against corruption in the judicial process and should stand up against tyranny.

A lawyer should not see himself as the mouthpiece of his client to say only the things he wants to hear. No, he should stand on the side of justice and fair play. The Court of Appeal Kaduna Division made these points poignantly in the case of *Ibrahim v Emien*⁴⁴ where Muhammad JSC states thus:

I am of the firm view that for a nation such as ours, to have stability and respect for democracy, obviously rule of law must be allowed to follow its normal course unencumbered. If for any reason, the Executive arm of the government refuses to comply with court orders, I am afraid that arm is promoting anarchy and executive indiscipline capable of wrecking the organic framework of the society. The corporate existence of Nigeria, it must be admitted

⁴³ Q.O. Ajibade, *The Titans of the Golden Era in the Supreme Court of Nigeria*, (OAU, 2017) 211.

⁴⁴ (1988) 7 SCNJ (pt. II) 226 at 223-234.

postulates the principle of cooperation between the three arms of government (Executive, Legislature and Judiciary). Where these works together in the same framework, then the rule of law shall prevail in that society. But where each select to work in isolation and/or in utter disdain of the other, then havoc wrecks the society. Thus, by this unique position each knowing the limits of its powers and not to attempt to enter brusquely into the preserve of the other or ride rough shod of the powers of the other, and then the rule of law has achieved its purpose, which is ensuring for the law. It is only then that government or authority by whatever name called shall rule by the pronouncements of the courts. I must not drop my pen without deprecating the behavior of the Niger State Attorney General, Chief Law Officer, and Commissioner for Justice. He should not have forgotten his primary responsibility to the court, as by his calling, he is an officer of the court. As a Commissioner of a State, the Niger State Attorney General, under Section 174 of the 1979 Constitution is bound to advise the Military Administrator generally in the discharge of his executive functions other than those functions with respect to which the Military Administrator is required by the Constitution to seek the advice or act on the recommendation of any other person or body. It is inconceivable to say for instance that a Governor or a Military Administrator of a state will refer a Court's ruling or status for advice or interpretation to the Commissioner of Finance, as

interpretation of officering legal advice are not synonymous with liquidity of cash. It must be referred to its rightful place and that is the Ministry of Justice. A legally qualified person holding the esteemed office of Attorney General cannot allow himself to be psychopathic. His own responsibility is to offer his candid advice according to how he understands the issue involved uninfluenced by any consideration. That will not in anyway, shake the integrity, confidence and professional dexterity of the Attorney General. And I think it is more honorable always in a situation where you cannot beat them, they you better bulge out instead of following them. I am not in any way impressed by the role of played by the Niger State Attorney General.⁴⁵

What is said above was true when it was said, as it is a true today. The professional should have a scheme to bring its erring members especially those who are serving in political positions to book for the infraction of the inviolate rules of the rule of law.⁴⁶ The recent steps taken by the Nigerian Bar Association (NBA) in enhancing rule of law, justice and liberty is quite commendable. The NBA earlier this year launched Police Duty Solicitors Scheme (PDSS)⁴⁷ in order to be able to reach accused persons who are unable to afford legal service and to educate the public on their

⁴⁵ *Ibid.*

⁴⁶ Obilade A.O., *Nigerian Legal System* (Spectrum Law Publishing, 1999) 17 – 18.

⁴⁷ This was launched in Epe, Lagos on the 11th of May, 2019 by the NBA Epe Branch.

fundamental human rights and steps to take in a situation where such is violated.

Role of the Police

When law enforcement officials themselves flaunt the law, there can be little hope for society to function under the rule of law; rather, it will most likely function under fear, violence and oppression. If the police refuse to file a complaint due to bribes, if they fabricate charges against someone for personal motives or if they threaten the life and liberty of those who are willing to fight for justice, they are not only violating individual human rights, but are giving lie to the justice system that is meant to protect citizen's rights. Any erring police officer should be made to dance to the tune of law. The tenets of the rule of law will continue to suffer if some individuals are protected due to their position every time.

Role of the Public

Viewed from any perspective, achieving true justice and liberty is never the job of a single strata or institution of the society. All institutions, individuals, political personal, non-lawyers, workers, traders, they all have to take it as a responsibility the society has placed on them to achieve the ends of rule of law. We must also be law abiding. The entire public terrain is thereby encouraged not to be in a sit-down-look mode and believe the current realities in our rule of law will take quick positive shift.

Conclusion

There is no doubt that the rule of law is key to achieving justice and liberty the world over. However, when the rule of law has been overwhelmed by the rule of men and rules of discretion, the end result, no doubt, is a society of untrue liberty and bogus justice. It

has been submitted by a school of thought that rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated and consistent with international human rights principles. For freedom and liberty to thrive and survive in Nigeria, these elements should at least be present in her democracy. The courts play an integral role in maintaining the rule of law, particularly when they hear the grievances voiced by minority groups or by those who may hold minority opinions hence, the urgent need for active, judicious and independent judiciary in Nigeria. Access to justice in Nigeria should be ensured and equally assured for all.

It is worthy of mention that the constitution, in any country, has a major impact on the judicial system and the rule of Law. It is therefore submitted that the 1999 constitution of the federal republic of Nigeria be sincerely amended to reflect the spirit of the people and respect for the rights of the people it seeks to serve. Chapter II of the Constitution should also be made to become enforceable particularly against the State. Law enforcement agents and agencies also have very important roles to play in Nigeria towards sanitizing, ensuring and upholding her rules of Law. The masses at election should vote wisely and elect selfless leaders that would lead in accordance with the tune and dictates of the law. Nigerian youths should become more active in governance and decision making, while on the other hand, elder state men should encourage and give way to more participation of youths in governance. Organizing relevant educational workshops and seminars is very important, and the media has a very great role to play as most Nigerians and Africans do not know their rights let

alone, knowing how to fight and stand for same. But with the aid of more constant relevant programs on the media, a larger and greater part of the people would be well informed and enlightened. It is no more news that Africa is blessed and rich. Given the fact that the rule of Law is the foundation and bedrock of true democracy and socio-economic stability the world over, it then becomes very necessary for African States and Nigeria in particular to look inwards to redefine and restructure their goals, parastatals, agencies, leaders and mode of leadership selection in whole. The clarion call is upon all; therefore, Africans at large must all see it as a duty to promote the practice of rule of law to its letters in the interest of justice and in the bid to assure the liberty of all within the continent. Every African State must make a deliberate attempt to redefine her priorities in the interest of the masses! The change that Africa needs must really start from within and it is a task for all!