EXAMINING THE CONCEPT OF JUSTICE AND ITS APPLICABILITY BY THE COURTS IN NIGERIA

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Abstract
The course of justice and its applicability is somewhat cumbersome to understand. Justice itself is fairness but what is fair, just and equitable to a person or a people might be unfair or unjust to others. The meaning and understanding of justice is therefore, a herculean task and those saddled with the responsibility to do justice always do their best no matter whose ox is gored. This article therefore, x-rayed the actually pros and cons of justice, its meaning and its connections with other phenomenon such as morality, customs, its applicability in criminal and civil causes, types, factors militating against the proper achievement or propagation of justice in a society, etc. It was recommended among other things that corrupt judges should be prosecuted and convicted if found wanting in any way; those who undermine the rule of law in any given society should be made to face the wrath of the law; the cost of pursuing justice in courts should be less expensive. In conclusion, this work is of the utmost view that justice must be done at all cause or times and that justice must not only be done but must be seen to be done in order to rekindle the hope of the ordinary man in the society; there must be fairness and the rule of law in the course of justice. This is aching to the fact that if justice is not done in any given society, the rule of law is eroded and this serves as invitation to anarchy.
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Introduction
The course of justice appears elusive. Justice itself is fairness but what is the parameter for measuring or determining fairness since what is fair to 'A' could be unfair to 'B'? The courts apply the concept of justice in the adjudication of cases before them to the best of their abilities. The judges are arbiters or umpires in the temple of justice; they are humans who could be persuaded in one way or the other by sentiment, affinity, love, mistake or error in the course of justice. Justice has no place in darkness and secrecy; when a judge sits on a case, he himself is on trial, if there is any misconduct on his part, any bias or prejudice, there is a reporter to keep an eye on him.[1] It is not an easy task to determine what is just or unjust in the arena of justice. But it must be noted that if murderers belonging to the established church were exempted from capital punishment, if only members of the peerage could sue for libel, if assaults on coloured persons were punished less severely than those on whites, the laws would in most modern communities be condemned as unjust on the footing that *prima facie* human beings should be treated alike and these privileges and immunities rested on no

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[1] Lord Denning (Address Before High Court Journalists Association, 3 December 1964).

relevant ground.[2] It follows that no one should be discriminated upon in the course of justice. As it is applied to the rich the same way it should to the poor. Unfortunately, in some sub-saharan African countries, the reverse seems to be the case because the rich with much impunity seem above the law. In an ideal society, the rule of law is applied to both the poor and the rich applying the law as it is or ought to be; everyone is subject to the rule of law and constitutionalism which restrains both the government and the citizenry.

The principle of justice is to the effect that people should be treated impartially, fairly, properly and reasonably by the law. The judges as arbiters must ensure that no harm befalls another and that where harm is alleged, a remedial action is taken.[3] Again, justice aims at compensating a person who is offended, just as it gives power to judges to do the needful by administering the law and give interpretations to the laws sequel to the canons of interpretation of statutes. In all, a judge who sits to adjudicate does that from his mindset at a particular point in time and his reasoning at any given time may not be palatable and reasonable enough to the general public. That is why it is likely that when a particular facts of a case is given to 10 different judges it is likely that they would come up with 10 different decisions because everyone reasons differently. Justice must therefore, not be done, but must be seen to be done fairly and impartially. When the course of justice is perverted, the society would become ungovernable and acrimonious; lawlessness would be the order of the day and the people would have no respect for the judges and the courts.

Meaning of Justice

This work has stated earlier that the principle or course of justice seem elusive. The implication is that it is not very clear what would amount to justice because a person living in a rural hinterland might not agree with a civilized man on what justice really entails. To some people, it means fairness or impartiality, to others, it might refer to what the judge says it is. Be that as it may, justice could be said to mean "the fair and proper administration of laws."[4] Justiciability is the quality or state of being appropriate or suitable for review by a court.[5]From the foregoing, it is glaring that justice itself goes *pari-pasu* with the law. The law set guidelines for human conducts and justice is the thorough and proper propagation of the law by way of its application. What justice seeks to achieve is that the law should be applied as it ought to be. The arbiter (judge) must observe the rules of natural justice, rule of law and constitutionalism. In the course of justice, judges should endeavor not only to do justice but should ensure that justice is seen to have been done. This is the big role assigned to judges as adjudicators or arbiters in the course of justice. When justice is done or seen to be done, the people rejoices and the society achieves relative peace and growth.

Types of Justice

There are several types of justice such as Cumulative justice, Distributive justice, Jedburgh justice, Justice in rem, Natural justice, Personal justice, popular justice, Positive justice, Social justice, Substantial justice,[6] etc.

i. **Cumulative Justice**-This occurs where there is fairness in contractual dealings between two or more persons especially in regards to exchange of goods and carrying

[2] H.L.A. Hart, The Concept of Law, 2nd edn (Oxford University Press 1961), 162.

[3] Cornell Law School <https://www.law.cornell.edu/wex/justice>accessed 13 February 2023.

[4] B.A Garner, Black's Law Dictionary 7th edn (U.S.A West Group),869.

[5] Ibid.

[6] Ibid..

out contractual obligations. The rule is *Pacta Sunt Servenda* – parties are bound by their agreement. When such parties to an agreement fulfill their obligations, it creates fairness and this amounts to justice.

ii. **Distributive Justice -** When a community or a people living in a given location, fairly shares the burden and gains or advantages accruing to such community, it amounts to justice. Such justice is owned by the community to its descendants or members. It is distributive because it encompasses both the gains and losses of the community. Every member of the community partakes or bears the burden in times of gains and losses in the community.

iii. **Personal Justice -** This is equally known as justice in *personam*. It is that type of justice between parties to a dispute. It stipulates that parties to a dispute should be fairly heard and judgment should be fair to the parties. In adjudicating on a matter between the parties, the principles of natural justice, equity and fairness must be observed.

iv. **Justice in Rem-**This bothers on interest of parties in a specific thing, such as property (rem) which could be safeguarded in court's custody. In this case, the court is interested in the thing being litigated upon, such as preserving a perishable property, goods or any other property.

v. **Popular Justice-**This type of justice is favourable to popular prevailing public views rather than strict laws in a particular case. It tilts toward the opinions of the people as it affects a particular case in point. An example is the killing of a notorious armed robber in a community.

vi. **Natural Justice-**Natural justice is all about fairness, equity and reasonability. It is to ensure that fairness and justice is attained unquestionably.[7] The principles of natural justice include: *Nemo Judex Incausa Sua* (No one should be a judge in his own cause) and *Audi Alteran Partem* (you must hear from parties to a dispute before giving judgment). Natural justice is a principle of common law with its origin in 'Jus Natural' which refers to the law of nature. It could be referred to as what is right or wrong and fairness, reasonableness. Natural justice encompasses the rule of law, constitutionalism and equity. *Lord Esher M.R.* defined natural justice as the natural sense of what is right and wrong[8]. He later defined it as fundamental justice in a subsequent case[9]. The right to be heard; absence of bias on the part of a judge; judgments based on concrete evidence are all part of natural justice. All these constitute fair hearing as embedded in the constitution[10]. A breach of the principles is an affront on a party to a dispute.

vii. **Substantial Justice-**This type of justice administers the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on merits. [11] In, *Madukolu v Nkemdilim*[12]., the Supreme Court of Nigeria

[7] https://bscholarly.com accessed 20 February, 2023.
[8] Voilet v Barret (1885) 55 LJ RB 39.
[9] Hopkins v Sinethwick Local Board of Health (1890) 24 QB 713.
[10] See s. 36 CFRN 1999 (as amended).
[11] https://unilaglawreview.org, accessed 20 February, 2023.

succinctly stated the ingredients that would enable a court assume jurisdiction in a matter as follows:

a) That the court is properly constituted in regards to numbers and qualifications of its members,
b) That the subject matter of the action is within the jurisdiction of the court,
c) That the action is initiated by due process of law,
d) That any condition precedent to the exercise of the jurisdiction is fulfilled.

It follows therefore, that even if a man has committed a heinous offence, he cannot suffer for his misdeeds because the court is not properly constituted; or that the subject matter is not within the jurisdiction of the court. The question is why must a litigant abide by these processes? Why can't a litigant go straight to court and file processes to commence his action without those laid down procedures? The court stated in *Tippi v Notani*[13] that:

> The law has been well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter or cause on which any court tries a case. It is indeed the life blood of all on appeal, without which all such trials are a nullity.

Why will a litigant who has a good case lose such a case just for the reason that he refused or omitted to apply for pre-trial conference before the court can proceed to hear and determine a substantive suit? The court has held that in law both a trial conducted and a judgment entered without jurisdictional competence, not withstanding how well was the proceedings and/or how sound is the resultant judgment, they are all null and void and of no validity whatsoever. [14] Again, rules of court are handmaids of justice geared in its use towards the attainment of substantial justice and thus, should not be allowed to either becloud or stultify the doing of substantial or real justice to the parties.[15] Also, the court has held that it is trite that where a claim is not initiated by due process of law, the claim is incompetent and where all the same the incompetent claim was heard by the court, the proceedings before the court are nullity. [16]
The question is what is due process? Due process may mean using appropriate means of commencing an action. It could be by way of a charge in criminal proceedings or the appropriate means of commencing civil actions such as writ or originating summons. Rules of court always provide for the mode of commencing such actions. And if a litigant fails to commerce an action by the mode as provided by the rules, such action is a nullity. Substantial justice seeks to mitigate the strict adherence to such court rules and advocates fairness rather than technicalities. Thus, in *Akeredolu v Abraham & Ors,*[17] the Supreme Court of Nigeria stated that:

> Technicality in the administration of Justice shuts out justice. A man denied justice on any ground, much less a technical ground, grudges the administration of justice, it is therefore, better to have a case heard and determined on merit than to leave the court with a shield of 'victory' obtained on mere technicalities.

[12] (1962) 2 SCNLR 341.
[13] (2014) vol. 37 WRN 1 – 192 at 154.
[14] Okeke v Yar'Adua (2008) 8 MJSC 636 – 637.
[15] Ogun Sakin v Ajidera (2010) 10 WRN 98; See also Buhari v Obasanjo (2003) 47 WRN 44.
[16] Malukolu v Nkemdilim (2001) 46 WRN 1.
[17] (2018) LPELR – 44067 (SC).

Legal technicalities was expatiated by Niki Tobi in *Yusuf v Adejoke & Anor*[18] in the following words in *Adedeji v The State*[19] to the effect that:

> I realize that courts of law seem to be using the word technicality out of tune or out of turn, vis-à-vis the larger concept of justice. In most cases, it has become a vogue that once a court is inclined in doing substantial justice by deflecting from rules, it quickly draws a distinction between justice and technicality so much so that it has become not only a cliché but an enigma in our jurisprudence…A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case…

However, a litigant who waives his/her right or refuses and neglects to yield or abide by the provisions of the law to fair hearing as contained in the constitution[20] of the Federal Republic of Nigeria 1999 (as amended) cannot complain of a breach of his/her fundamental rights.[21]
It is submitted therefore, that mere irregularities should not defeat the justice of a case. However, where rules of court are provided to guide the courts in the administration of justice, such rules must be obeyed and carried out. But where mere technicalities or irregularities would work hardship or defeat the cause of justice, it should be dispensed with by the courts.

Justice and Morality:
Before delving into justice and morality, it would be pertinent to briefly understand what law itself means. This is sequel to the fact that justice cannot be achieved without law in place. Law refers to:

> The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure backed by force, in such a society.[22]

It is further defined as;

> The aggregate of legislation, judicial precedents and accepted legal principles; the body of authoritative grounds of judicial and administrative action; the set of rules or principles dealing with a specific area of a legal system; the judicial and administrative process…[23]

Justice on the other hand is the applicability of fairness, equity, constitutionalism and rule of law in the adjudication or interpretation of laws. And morality is the "conformity with recognized rules of correct conduct; the character of being virtuous…"[24] Moral law is "a collection of principles defining right or wrong conduct; a standard to which an action must conform to be right or virtuous.[25] Moral obligation is such obligation or duty which if

[18] (2007) LPELR – 3534.
[19] (1992)4 NWLR (Pt. 234) 248 @ 265
[20] S.36. CFRN.
[21] See OgunSeinde Virya Farm Ltd v Societe Generale Bank Ltd & Ors (2018) LPELR – 43710 (Sc).
[22] Black's Law Dictionary, 889.
[23] Ibid.
[24] Ibid, Black's Law Dictionary 1025.
[25] Ibid, 1025.

breached or not carried out, is not enforceable but bothers on the conscience of the person who breached such riht.

Morality is therefore, all about one's conscience regarding to what is wrong or right. But what may be morally wrong in a particular geographical location could be right in another location. A good example is the gay law allowing a man to be married to another man in some advanced countries. This is morally right in such countries but in other countries like Nigeria, it is morally and even legally wrong for a man to be married to another man (same sex marriage). Hart posited that "between law and morality, there is a connection which is in some sense "necessary", and that it is this which deserves to be taken as central, in any attempt to analyze or elucidate the notion of law."[26] Therefore, justice is mainly thought of as maintaining or restoring a balance or proportion, and its leading precept is often formulated as "Treat like cases alike", according to Hart.

Justice and Customary Law:

Customary law is basically any system of law other than a common law enacted by a competent legislature in Nigeria, which is enforced and binding within Nigeria as between parties subject to its way.[27] In order to achieve this, the court needs to listen to the parties and hear them out. Customary law generally means relating to customs or usage of a given community. Sequel to its constant and continuous usage, it attracts sanctions even if it is not written. It was held in *Nwaigwe v Okere*,[28] that custom is the mirror of accepted usage. It is a matter of evidence to prove a custom before a court of law. [29] Where a custom is affirmed or accepted by a people, and it is actually recognized by such people, the court will surely take judicial notice of such custom. It must be stated that no polluted hand shall be allowed to touch the pure fountain of justice; one shall not have a right of action when he/she comes to a court of justice in an unclean manner. Of course, he comes to equity must come with clean hands. Where a custom is not adjudged to be repugnant to natural justice, equity and good conscience, the court must uphold such custom to be the practice of such a people. In *Ibrahim v Osunde*[30], it was held that for the Bini custom of Igiogbe to be a notorious one which must be judicially noticed, some conditions must be met. Thus, Aderemi JSC stated as follows:

> The Bini customary law upon which this assumption was predicted is a notorious one which must be judicially noticed. That, I have no doubt of having regard to the plethora of judicial decisions on this point. But, before the said custom can come into play certain pre-conditions must have taken place. It must be legally established that the ownership in the house which would be inherited by the 2nd respondent as his father's "Igiogbe" was *firma terra*. That the property was legally that of his father…

Again, the constitution of the Federal Republic of Nigeria 1999 (as amended) is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria shall not be governed, nor shall person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the constitution.[31] If any other law is inconsistent with the provisions of the constitution, the

[26] H.L.A Hart, The Concept of Law ( ), 155.

[27] Zaiden v K. Molissen FH (1973).

[28] Nwaigwe v Okere (2008) ALL FWLR (Pt 431) 843 at 870 Para B – D.

[29] Oba Lawal V Chief S. Adeniyi (2002) 78 LRN 1402 @1415.

[30] (2009) Vol. 171 LRCN, 126.

[31] S.F(1) CFRN 1999.

constitution shall prevail and that other law shall to the extent of its inconsistency be void. From the foregoing provisions of the constitution, it is glaring that any custom as practiced by a people in a particular location in Nigeria is subject to the provisions of the constitution.[32] A court can therefore, declare a custom to be null and void where it is unconstitutional or it is repugnant to natural justice, equity and good conscience.[33] Thus, in *Ukeje v Ukeje*[34], the court held that;

> No matter the circumstances of the birth of a female child, such a child is entitled to all inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the constitution (as amended).

Customary law is recognized as law by the members of the ethnic group.[35] The court has held that customary law is "a mirror of accepted usage."[36] Again, Osborne C.J. stated in *Lewis v Bankole*[37]that one of the most striking features of West African native custom… is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character. The truth remains that customary laws are subject of changes from time to time. As the society advances, customs are subjected to changes to meet the reality of life and to conform to the laws of a particular country especially the constitution and best practices. Before now, a man or woman who commits some offences such as adultery and other offences regarded as taboo on the land were banished. Today, the commissions of such customary offences are not as heinous as it were even if such offences are unknown to any written laws of the country.[38] Lord Atkin stated in *Eshugbayi Eleko v Officer Administering the Government of Nigeria*[39] that babarous customs must be rejected on the ground of repugnancy to national justice, equity and good conscience. Such uncivilized and outdated customs must therefore, be stopped otherwise, it would work hardship on the people and contravene the constitution of the land. In *Dawodu v Danmole*[40], the learned judge was of the opinion that the custom stating that the property of the deceased was to be distributed among his children *per stripes* rather than *per capita*[41] was inconsistent with the modern idea of equity among children. The Federal Supreme Court held that the view of the trial court that because a custom did form part of the English doctrines of equity, it was repugnant is unacceptable. And in *Edet v Essien*[42], a man paid the dowry of a girl while he was young. Another man paid her dowry when she got matured. The earlier man claimed the children of the marriage on the ground

[32] See Timothy v Oforka (2008) ALL FWLR (Pt. 413) 1370 at 1381, where it was held that a custom that deprives women and children from the gift of landed properties from their father is unconstitutional and void.

[33]

[34] (2014)38 WRN Vol. 38, 1-174.

[35] See Eshugbayi Eleko v Government of Nigeria (1931) A.C.. 662 at 673.

[36] Owoniyin v Omotosho (1961) I All N.L.R 304 at 309.

[37] (1908) I N.L.R 81 at 100 – 101.

[38] See S. 36(12) CFRN 1999 (as amended).

[39] (1944) A.C. 170.

[40] (1958) 1 W.L.R. 105.

[41] Per Stirpes means that the property should be divided first equally into the number of wives, the share attributed to each wife being then divided equally among her own children. And per capita refers to the property being divided equally among the children of the deceased.

[42] (1932) 11 N.L.R 47

that he paid the dowry earlier. Such custom was held to be repugnant to national justice, equity and good conscience. Again, in *Mariyama v Sadiku Ejio,*[43] it was contended that a child born within ten months of a divorce belongs to the former husband of the child's mother. The held that; "we must not be understood to condemn this native law and custom in its general application. We appreciate that it is basically sound and would in almost every case be fair and just in its results". A custom which is invalid for any particular purpose is invalid for all other purposes.[44]The Federal Supreme Court held in *Cole v Akinyele*[45] that the same Yoruba custom in Nigeria of legitimation by acknowledgement of paternity was void sequel to public interest in its applicability to a child born out of wedlock.

Justice in Civil Causes

Justice in civil matters is determined on the preponderance of the weight of evidence. That is, wherever the weight of evidence tilts toward. Preponderance refers to the evidentiary standard necessary for a victory in a civil case. The burden of proof lies in whoever that asserts or alleges. So, he who alleges or asserts must prove.[46] The standard of proof in civil cases is on the balance of probabilities or preponderance of evidence.[47] A judge therefore, has a duty to put the totality of the evidence adduced by parties or litigants before him in an imaginary scale and determine where such evidence tilts towards.[48] In doing so, the judge must put the following into consideration: whether the evidence adduced is credible; whether the evidence adduced by the parties is relevant; whether such evidence is conclusive; and whether such evidence as adduced is more probable or weightier than the one given by the other party.

Justice in Criminal Causes

In criminal cases, the standard of proof is proof beyond reasonable doubt. Prosecution in adversary system like Nigeria is expected to prove its case beyond reasonable doubt and the defence is under no obligation to assist the prosecution to discharge that onus.[49] The accused or defendant is innocent to allegation leveled against him until the contrary is proven.[50] The court has held that proof beyond reasonable doubt is not proof beyond the shadows of doubt.[51] It must however be noted that proof beyond reasonable doubt cannot only be obtained by the prosecution fielding or calling multiplicity of witnesses to prove its case. In *Itu v The State,*[52] the court held thus:

> …The requirement in effecting such proof is not in the number, but in the credibility of a witness or witnesses. An offence of murder or any offence, for that matter can be proved beyond reasonable doubt (Standard) even through only one credible, honest and untainted witness and not necessarily by calling myriad of witnesses who are not credible or who have interest to serve or who are merely called to tell half-truth.[53]

[43] (1961) N.R.N.L.R. 81.
[44] A.O. Obilade, The Nigerian Legal System (Ibadan: Spectrum Law Publishing, 1979), 103.
[45] (1960) 5 F.S.C. 84.
[46] See, Mrs Betty Darego v A.G. Laventus Ltd (2015) LER CA/L/481/2011
[47] Amokomowo v Andu (1985) LPELR – 469.
[48] See Abisi v Ekwealor (1993) NWLR (Pt. 302) 643.
[49] Odunlami v Nigerian Navy (2013) 43 W.R.N at 26.
[50] See S. 36(5) CFRN 1999 (as amended).
[51] Ibid.
[52] (2016) vol. 260 LRCN.
[53] See also, Nkebisi v State (2010) All FWLR (Pt. 521) 1407.

From the foregoing, it follows that the prosecutions need not call many witnesses to prove its case beyond reasonable doubt but must call necessary witnesses to do so. It is therefore, the duty of the court to do justice both in civil and criminal causes and avoid the miscarriage of justice. Miscarriage in justice is defined as:

> …failure on the part of the court to do justice. It is justice misapplied, misappropriated ... It was also an ill conduct on the part of the court, which amounts to injustice. Miscarriage of justice arises in a decision or outcome of legal proceedings that is prejudicial or inconsistent with substantial right of a party. [54]

The adverse effect of miscarriage of justice is that it deters the people from having that trust and hope accorded the court or judiciary as the last hope of the ordinary man in the society. Justice must not only be done but must be seen to be done. Therefore, it is trite to say that:

> the law will not serve its purpose of protecting the community if it admits fanciful possibilities to deflect the course of justice. Where the evidence is so strong against an accused person as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible but in the least probable" but nothing short of that will suffice."

Justice is widely applied and everyone seek justice. In civil cases, the plaintiff or claimant seeks justice. The defendant also seeks justice. Again, the prosecution and the accused or defendants in criminal cases seek justice too. The court must therefore, ensure that justice is done to everyone involved in a particular. Thus, in *Josiah v The State,*[55] Oputa JSC in his motion of justice stated that "it is not a one way traffic but a three way bestower. According to him:

> Justice for the appellant accused of a heinous crime of murder, justice for the victim, the murdered man…whose blood is crying to heaven for vengeance and justice for the society at large, the society whose norms and values had been desecrated and broken by the criminal act complained of.'

The course of justice must be pursued vigorously and should be achieved so that an innocent man would not suffer for what he knows nothing about. In *Eyonaowa v Commissioner of Police*[56], the court held that;

> In the administration of criminal justice, it must always be borne in mind that 'the two fold aim of criminal justice is that the guilty shall not escape justice or innocence suffer or put differently, by the spirit of the presumption of innocence guaranteed to an accused person under section 36(5) of the 1999 constitution of the Federal Republic of Nigeria, (as amended), the policy of our courts is that it would be better to discharge ten (10) criminals than to convict one (1) innocent person by mistake or error of law… we must be reminded always that 'human justice has to depend on evidence and inferences. Dealing with the irrevocable issues of life and death, she has to tread cautiously lest she sends an innocent man to an early death.'

[54] See, The State v Ajie (2000) FWLR (Pt. 16) 2831 at 2842.

[55] (1985) 16 NSCC (Pt. 1) 132 at 145.

[56] (2014)23 W.R.L.

Delay in cases in the courts derails justice, thus, justice delayed is justice denied. However, when the course of justice is hurriedly carried out, it may occasion miscarriage of justice, thus, justice hurried is justice buried. Justice entails fair hearing and the provisions of the constitution relating to fair hearing and national justice should always be observed in the course of justice.[57]Again, apart from the courts or judges, counsel or lawyers are ministers in the temple of justice must help and abide by the tenets of justice by assisting the courts in the administration of justice. In *Petel v Maiturare*[58], the court held thus:

> Counsel appearing in any case is a minister in the temple of justice and they must know and acknowledge that their duties at all times are first and foremost to the court and they must place their cards on the table for everybody to see instead of trying to hide behind a finger.

It is therefore, incumbent upon lawyers as counsel appearing before a court in a matter to assist the court in doing justice especially in matters which they appear. They must be truthful to the court but never to play to the gallery or play a fast one or hard and sick or be tricky to the court by hiding the truth from the court. A counsel should be able to advice his client in a criminal course to plead guilty or resort to settlement out of court where it is obvious that he has committed such crime. Amicable settlements, arbitration, negotiation and mediation mechanisms are good tools employed by counsel to resolve both civil and criminal matters. If a counsel does not resort to such means of amicable settlement, he must therefore, be ready to assist the court in the course of carrying out substantial justice. However, in carrying out justice, the courts must adhere to the provisions of the law. In *Morakinyo v Governor, Oyo State*,[59] the court held that:

> Justice is rooted in the fundamental principles of law, if we fail to apply the law as it is, greater injustice could occur. This explains why discretion is not tied to a particular decision but to the sacred principles of judicious and judicial elements as exist in the peculiar situation of each set of facts placed before a court at the time in question. To exercise judicial power without deference to the hallowed terms and letters of the relevant law would be to inure chaos into the society. No doubt, the court must always be guarded by the tenets of substantial justice. However, substantial justice can only be attained not by bending the law but by applying it as it is.[60]

It must be noted that miscarriage of justice occurs where the court in presiding over a case fails to do justice to that case.[61] It was held in, *Mustapha Halilu Lamorde v Barr. (Mrs.) Amanda Pam & 2 Ors*[62] that it is not every slip, error or mistake of lower court that will lead to reversal or upturn of decision of trial court unless they constitute grave error bordering on miscarriage of justice. It follows that not every minor mistakes or errors on the part of the lower court that actually constitutes miscarriage of justice even if their Lordships are humans and could be involved in mistakes or minor errors. Except such errors are grievous or serious, it may be dispensed with.

[57] See, generally, S. 36 CFRN (1999) (as amended).
[58] (2014) 33 W.R.N.
[59] (2013) 51 W.R.N.
[60] See FEN v Maiwada (2013) 32 WRN 31.
[61] See Shaku Makeri v The State (2019) 1 AAQR 352.
[62] (2019) 2AAQR 277.

It must be noted that proof beyond reasonable doubt is however, not proof to the hilt… It is not proof beyond all iota of doubt as pronounced by Uwais J.S.C in *Nasiru v The State.*[63] All the prosecution needs to do is to ensure that the essential ingredients of the offence have been satisfactorily established.[64] The burden of proving that any person has been guilty of a crime or wrongful is subject to the Evidence Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the act.[65] The onus is on the prosecution to prove the guilt of the defendant.

In civil cases, the burden of first proving existence and non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.[66] The onus is therefore, on the party who would fail if no evidence is adduced.
The burden then shifts to the other party to rebut the evidence already adduced by the first party. The court has held that the onus of proof shifts to the defendant once the plaintiff in a civil case discharges his burden. Thus, Ogunbiyi (JCA) stated in *Olly v Tunji*,[67] that:

> In our adversarial system of jurisprudence, once the plaintiff has discharged the onus of first proof of a fact which I am of the view that it has been done in this case, the onus then shifted on the defendant to rebut also by credible evidence the fact adduced by the plaintiff.

Again, in *FRN v Wabara*,[68] it was held that:

> … proofs of evidence are summaries of the statements of the witnesses to be called at the trial by the appellant. It is for that reason that the rules require an affirmation from the appellants that the evidence against the respondents as summarized in the proof of evidence prepared by the appellant will be the evidence against the respondents.

From the foregoing, it is crystal clear that the burden of proof placed by the law on a defendant charged with a criminal offence, shall be deemed to be discharged, if the court is satisfied by the evidence given by the prosecution whether on cross-examination or otherwise, that such circumstances in fact exist.[69]

Again, it must be noted that it is not everything that a judge says in the course of judgment or justice that constitutes the *ratio decidendi* (reason for the decision). Some are *obiter dicta* (words just by the way). The *ratio decidendi* constitutes the reason for the decision of the court. In deciding a criminal case, the judge should have recourse of wrong doing on the part of the accused (defendant) which constitutes part of a crime which the defendant has been accused of.
This is opposed to the action or conduct of the defendant – "a mistaken belief in consent meant that the defendant lacked *Mens rea*".[70] *Mens rea* refers to "guilty mind", while *Actus reus* means "guilty act." *Actus reus* simply means the act or omission that comprise the physical elements of a crime as required by statute. The rationale behind *mens rea* and *actus*

[63] (1992) 2 NWLR (Pt. 589) 87 at 98.
[64] See Habibu Musa v State (2013) 53 NSCQR at 98 – 99.
[65] S. 135(2) Evidence Act CAP 112 LFN 2004.
[66] S. 133 Evidence Act.
[67] (2013) 13 WRN 59.
[68] (2013) 24 W.R.N 70.
[69] See for instance, s.139(2) Evidence Act. See also, Al-Mustapha v State (2013) 34 WRN at 128.
[70] http://www.law.cornell.edu, accessed 7 March, 2023.

reus is that it is wrong for the society to punish those who innocently cause harm.[71]These are the basic elements in criminal law that the prosecution needs to prove in order to secure conviction.

A judge or court cannot do justice where the judge or court has no jurisdiction in such matter. And where there is an issue of non-compliance with the condition precedent in initiating an action, the non-compliance is fundamental and it goes to the jurisdiction of the court. It is not a mere irregularity rather, it is an incurable defect.[72]The court has held that there is non-compliance with due process of law when the procedural requirements have not been complied with, or been compiled with. In such a circumstance, the deflect is fatal to the competence of the trial court to entertain the suit. This is because the court will in such a situation not be seized with jurisdiction in respect of the action.[73]

Again, the justice of a case is dependant on the locus of the person who institutes such a case. A litigant must show that he/she has an interest or that the decision of the court would affect him/her one way or the other. This is the principle of *locus Standi.* What *locus standi* entails is the legal capacity of instituting, initiating or commencement of an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from anybody or person whatsoever including the provisions of any existing law.[74] It was further held that:

> It is settled law that the plaintiff will have *locus standi* in a matter only if he has a special right or alternatively if he can show that he has sufficient or special interest in the performance of the duty … to be enforced or where the interest is adversely affected. All these will be subject to the facts of each case whether an interest is worthy of protection is a matter of judicial discretion which often varies according to the remedy asked for.[75]

From the foregoing, it is obvious that the issue of jurisdiction and *locus standi* is very germane in the course of justice. A court that is robbed of jurisdiction cannot do justice to such case otherwise all the court's effort would be like flogging a dead horse. So it is to the issue of *locus standi*. A litigant that does not have *locu standi* in a case he/she presents to court would end up in a futile exercise if he has no such standing to institute such action. The judges or courts must have recourse to the fact that in doing justice, the law is not a respecter of persons. Thus, in *Military Governor of Lagos State v Ojukwu*[76], Oputa (JSC) stated that:

> I can safely say that here in Nigeria, even under a military government, the law is no respecter of persons, principalities, governments or powers and that the courts stand between the citizens and the governments alert to see that the State or government is bound by the law and respects the law.

Factors that Vitiates the Course of Justice

There are so many factors that vitiate the course of justice. They include but not limited to: corruption and lack of trust on the judges on one hand, and the lawyers on the other hand; inadequate funding of the judiciary especially in some Sub-Sahara African Countries where

[71] https://law.jrank.org, accessed 7 March, 2023.

[72] Clerk of the National Assembly v Legal Defence & Assistance Project (GTE) Ltd (2019) 1 AAQR226.

[73] Ibid.

[74] Nyame v FRN (2010) vol. 185 LRCN.

[75] Ibid.

[76] (1986) 1 NWLR (Pt. 18) 621.

the judiciary rely on approval of fund from the executive arm of government. Another factor that vitiates the smooth course of justice is disobedience to court orders, nepotism and impunity among the people in authority, especially the political class. Poverty, poor remuneration of judicial officers and staff, lack of training, lack of technical- know-how, insecurity, excessive workload, high cost of legal actions and conflict of interest, appointment of family members and mediocre to the bench, are other factors militating against the course of justice in Africa and the world over.

Conclusion

This work has stated that the courts are arbiters and umpires in the temple of justice, therefore the courts must as a matter of fact and law ensure that justice is done at all time. It is the last hope of the ordinary man who does not have any connection in the society. The court is therefore, the watchdog of rights and sanctuary of the oppressed. It is the duty of the judges to salvage the judiciary and the society at large by doing justice as the situation demands no matter whose ox is gored. Although, what might seem to be justice to a people living in a particular geographical location may not be the same in other locations, in all, justice must not only be done, but must be seen to be done. When justice is done and seen to be done, the society is free and there would be peace, growth and confidence is restored. This work has x-rayed the pros and cons of justice, its types and its applicability in court. Judges who carry out the administration of justice must have recourse to the fact that where there is a right, there is a remedy – *Ubi jus ibi remedium.* In *Leo Feist v Young*,[77] the court observed that "it is an elementary maxim of the equity of jurisprudence and there is no wrong without a remedy." When the right of a person is trampled upon the courts should be able to address such breach of right and remedy same by compensating or punishing the wrongdoer in both civil and criminal cases. By so doing, the remedy to the breach of a right or commission of a crime is carried out by the courts. The defendant and complainant as the case may be is satisfied that he has been compensated or that the accused/defendant has been punished for the wrongs they committed. When justice is done the society is free and it will act as deterrent to those that would want to commit crimes and those who may wish to do wrong to their neighbours.

Recommendations

Having discussed the tenets of justice above, this article recommends as follows: that corrupt judges must be prosecuted and shown the way out. Again, those in authority who undermined the rule of law and disobey court orders should be prosecuted after they left the offices they occupy. There should be adequate training and reasonable remuneration for judges and other persons who are saddled with the responsibility of doing justice. Also, the cost of filing or commencing court processes should be reduced to the barest minimum so as to enable the less privileged in the society have access to justice. Judges and other persons who are saddled with the responsibility of doing justice, who are arbiters and umpires must ensure that justice is not only done but must be seen to be done at all times bearing in mind that where there is a right, there is a remedy – *Ubi jus ibi remedium.* The executive and the legislative arms of government should and must ensure that they do not interfere with matters pending in any court of justice neither should they obstruct the course of justice in any way. It is hoped that if the above recommendations are implemented or adhered to, the course of justice would improve tremendously in Nigeria and Sub-Sahara Africa and the world at large.

[77] Cited in Arya Mishra, *Ubi jus ibi remedium*< https://blog.ipleaders.in/ubi-jus-ibi-remedium/>, accesd 8 March, 2023.