



CHAPTER FIVE



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CONFLICTING JUDGMENTS AND CORRUPTION

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The Court of Appeal has been confronted with accusations of handing down conflicting judgments in seemingly straightforward issues. These conflicting judgments result in a miscarriage of justice and loss of public confidence in the judiciary.

Presently the Court has grown to 16 divisions and the headquarters. Plans of expansion are ongoing. On the other hand, there is the concern that in bringing justice nearer, there could be problems as there are sometimes contradictions in the judgment of some divisions. Hon. Justice Umaru Abdullahi addressed the subject thus:

‘The Court is expanding at various levels and though the system is stable, it gives room for a lot of different opinions and sometimes one can say that in the exercise of judicial functions, people see things differently, at different times and probably at different points. So, if an issue arose, say in Abuja division, the judges might look at it from a different point of view and also they rely on the rules of the Court or some other guiding rules that has been provided by the laws of the land. Sometimes the sort of things they rely on might not be all encompassing, because things change differently. No two cases are the same; each case would have to depend on its own merit, on its own set of facts. But there are some levels where you expect that rulings particularly in the Court of Appeal, should be unanimous on some of those issues, but sometimes we do find some daring issues from one division to the other. It depends on the interpretation you place on the provisions you are interpreting or considering.

‘What we tried to do during my time was that as soon as we deliver a ruling on a particular issue that might reoccur in another division or in other divisions, we circulate that ruling because, the decision of the Court in one division is binding on other divisions. To avoid conflict, so as not to confuse the lower Courts as to which judgment to follow, we try to minimize problems by encouraging the division that had handled an issue that might reoccur in other places to quickly send those rulings around, so that other divisions will be abreast with the decision and the provision taken and try to conform with it except where there is reason for them to treat it differently. As earlier said, no case has the same set of facts. There could be circumstances that vary from one case to another, and this might cause the Court to take a different look on the issue at hand, but, we try as much as possible to minimize conflicts, at least to save and stabilize the system.’¹

Hon. Justice Mustapha M. A. Akanbi concurred. He said during the conferences, any judgment written from any division is circulated. Thus if it has been circulated, a judge who was going to write another judgment outside what had been written will be clearly in the wrong as his attention has been called to that case.



Meanwhile, a former CJP, Hon. Justice Mahmud Mohammed, suggests the creation of an internal law report for justices to access either electronically or in print to forestall conflicts in decisions. He drew attention to a suggestion made in 2008 by Hon. Justice Niki Tobi, to the effect that *"immediately a decision is given in one division, it should be sent to the other divisions without delay."* Justice Mohammed who maintained that judges are guardians of the law stressed that justice must not only be just, but also convey certainty.

"It bears reminding that the overriding objective of every legal system in the world is to do justice. However this cannot be achieved where there is confusion as to the state of the law as pronounced by the court. Where an aggrieved person perceives whether rightly or wrongly that they will not receive justice, such a situation can indeed bode ill for the community in which he lives and can lead to acrimony and anarchy. We must not ignore the negative perception that is occasioned by conflicting judgments delivered at various divisions of the Court of Appeal. Such judicial contradictions only result in untold hardship to litigants in their quest for justice. They further cast judges in an unfavourable light and leave the judiciary at the mercy of innuendos, crass publications and editorials."

On his part, another former CJP, the late Hon. Justice Dahiru Musdapher blamed the development on the creation of different divisions of the Court of Appeal.

"We have witnessed a lot of confusion regarding the proper application of the principle of judicial precedent. The creation of several divisions of the Court of Appeal has also led to the unintended problem of conflicting judgments at the appellate court. Such judicial contradictions have a tendency to lead not only to confusion in judicial precedent but could cause untold hardship to litigants in their quest for justice. These conflicting judgments not only confuse counsel but the public as well, further leading to uncertainty regarding the public perception of our ability to guarantee unequivocal justice. This portrays the judicial process as a game of Russian Roulette where any outcome is possible."

However, various factors should be considered before one can accurately say that a court delivered a conflicting judgment. Different lawyers for instance handle similar cases differently. Conflicting judgments may arise as a result of differences in the issues raised. Issues may be same but handled and presented differently by the lawyers involved. That could affect the final outcome and decision of the court. The parties may also affect the outcome of a case. Similarly, the way judges understand and interpret the law may differ and this is not strange because a judge's perception of facts and the law as it applies to these facts could be sometimes subjective.

This point was part of the issues noted while judges that took part in the elections tribunals comprising of High Courts and Court of Appeal Judges conferred for two days (March 16 and 17, 2016) at a workshop on post 2015 elections at the Court of Appeal headquarters in Abuja. Hon. Justice Helen Moronkeji Ogunwumiju then of the Lagos division recalled that prior to the elections, justices at a stakeholders' conference decided that the evidence generated by the card reader must be regarded as electronic evidence to be tendered and admissible only pursuant to Section 84 of the Evidence Act, 2011, but to the surprise of everyone, the legal importance of evidence of the card reader reports generated was given different interpretations by the various justices of the Appeal Court.

Section 84 Evidence Act 2011 provides that:

- (1) *In any proceedings, a statement contained in a document produced by a computer shall be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and the computer in question.*
- (2) *The conditions referred to in subsection (1) of this section are*
 - (a) *that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;*
 - (b) *that over that period, there was regularly supplied to the computer in the ordinary course of those activities, information of that kind contained in the statement or of the kind from which the information so contained is derived;*
 - (c) *that throughout the material part of that period, the computer was operated properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and;*
 - (d) *that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.*
- (3) *Where over a period, the function of storing or processing information for the purposes of any activities regularly carried on over that period, as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether –*
 - (a) *by a combination of computers operating over that period; or*
 - (b) *by different computers operating in succession over that period; or*
 - (c) *by different combinations of computers operating in succession over that period; or*

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate -

(a) identifying the document containing the statement and describing the manner in which it was produced; or

(b) by giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; or

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate, and for the purpose of the subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section

(a) information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities. A document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

For Ogunwumiju, the answer to contradictory judgments and rulings is the need for justices of the Court to have common positions on procedural issues.

"On most procedural issues we have contradictory opinions because we have different ideological bent. I may be a purist and a conservative who believes in the strict letters of the law and strict interpretation of the laws of procedure. The other jurist may be a liberal who sees beyond or

seeks to interpret the spirit rather than the letters of the law. None is superior to the other. What I can advocate is that we have a common approach to the jurisprudence of election petitions and appeals to avoid these complaints..."

On the whole, the jurists at the conference advocated for an internal law report for justices to use either electronically or in print. Also, they called for the building of the capacity Justices of Appeal Court to handle election matters including retraining of judges handling election petitions and appeals, as well as reduce strict adherence to technicalities.

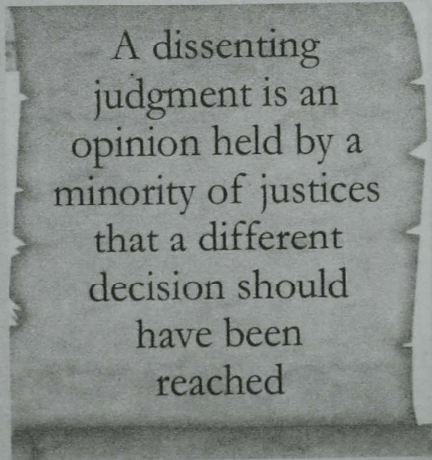
PRIVATE CONFERENCES

Another key challenge to this worrisome problem is the allegation that contrary to practice where Justices are meant to hold conferences, some divisions do not. A Justice is simply assigned to write the leading judgment without the panel umpiring over the matter by sitting together to evaluate evidence together.

The norm is that when a matter is slated for judgment, the Justices hold a private conference during which they vote on how to decide the case. The most senior Justice in the majority, that is the Justice who presided over the matter, could either write the leading judgment or assign it to another on the panel. If he is not in the majority, he decides who will write the majority opinion in the case of a dissent, and who writes the lead dissent to the opinion if more than one person dissents.

The assigned justices then draft opinions outlining their reasoning in reaching their decision and circulate them among themselves.

It is during this time that decisions which had been previously made by the Court or the Supreme Court on same, similar or related issues are examined. It is during this session that the Court scrutinizes its decisions to ensure uniformity in its verdict. This practice, critics claim has been jettisoned by some divisions thereby giving room for conflicting decisions.



A dissenting judgment is an opinion held by a minority of justices that a different decision should have been reached

CORRUPTION IN THE COURT

Allegations of corruption have been made against judges of the Court. Members of the public increasingly criticize them for allegedly playing into the hands of politicians and wealthy/influential members of the society. Though it is essential that these allegations be taken seriously in order to protect the integrity and sanctity of the court, it must be noted that often times, they have been unsubstantiated. Additionally, of the three arms

of government, the judiciary remains the only institution of government that has stood the test of time as it relates to corruption and efficient performance. However as Hon. Justice Alfa Belgore observed whilst addressing the rise in the allegations of corruption against judges, *"It is immaterial whether or not this assessment is fair for Judges, we must be seen to rise above the tide of systemic corruption and other unfortunate afflictions that have become commonplace in Nigeria today."*

Alluding that disgruntled politicians sometimes make these claims to discredit and harass judicial officers, Justice Mahmud Mohammed described the criticisms as "misguided" by adding that: *"The judiciary is duty bound to act in accordance with the dictates of the law as it stands and not as critics would like it to be. In this sense, naive idealism is but a pale limitation of legal certainty..."*²

Overall, justices of the Court have been commended in several quarters for their performance despite the many challenges they face in the exercise of their duties. Mistakes must also not be made about the activities of the non-judicial staff i.e. those at the registry with act of the judges. Indeed what people consider as corruption may not be so; which is why some of these allegations are sometimes unfounded. That said, the court must not only do justice, it must be seen to be done. Fortunately, the National Judicial Council (NJC) reviews the decisions of the courts and where a decision is discovered to be manifestly rooted in corruption, necessary actions are taken which include the dismissal of the erring judge.

NOTES:

1. The statements of Hon. Justices Umaru Abdullahi, Mustapha Akanbi, Dahiru Musdapher and Mahmud Mohammed were obtained in 2008 during the production of the video documentary Court of Appeal, 30 & 2 years, the journey so far.
2. Excerpt from the speech made by a former CJN, Hon. Justice Mahmud Mohammed during the valedictory session held in honour of Hon. Justice Saifullahi Muntaka-Coomassie at the Supreme Court on February 10, 2016.



CHAPTER 5

List of Cases

NIL

Table of Statutes

1. Section 84 of the Evidence Act 2011.

