

Insecurity in Contemporary Nigeria: Useful Lessons of Judicial Administration in the Old Ondo Province as a Panacea

AFE, Adedayo Emmanuel Ph.D
Department of History and International Studies
Adekunle Ajasin University
Akungba-Akoko, Ondo State, Nigeria
E-mail: adedayoafe@yahoo.com

ABSTRACT

The people of Old Ondo Province have for long appreciated the role of stable life as indispensable to the overall growth of the society. To maintain this, the people resorted to modern judicial administration, taking redress in court of justice instead of taking law into their hands. This paper, therefore, examines how judicial administration was a panacea for insecurity in the Old Ondo Province, 1914-1954. The judicial system curtailed gradation of courts which encouraged effective litigation and appeal process. The thesis of this paper is imperative since peace is the bedrock of the survival and development of any nation. This form of judicial process, if applied in contemporary life, would provide the impetus needed to mitigate prevailing security challenges. Primary and secondary sources were used. This paper concludes that the law of any nation that will develop should be humane, supreme and obeyed.

Keywords: justice, judicial system, law, court and insecurity.

This paper was presented at the 50th Anniversary Special Conference, organized by the Department of History, Obafemi Awolowo University, Ile Ife, in collaboration with Network of Nigerian Historians (NNH), held at Obafemi Awolowo University, Ile-Ife, Nigeria, between 28th - 31st October, 2012.

Introduction

The issue of insecurity in Nigeria has attained a dangerous dimension where issues that can be settled amicably now resulted into national insecurity. Recourse to courts for redress is no longer desired by many people. People no longer have respect for human lives, and laws of the land are disobeyed with impunity. This has adversely affected Nigerian image globally. Redress in the law courts was a common denominator in Old Ondo Province since the introduction of British judicial system in the area, although this was not alien since they had gradation of courts in traditional system and this was part of the ingredients used in reducing the challenge of insecurity. This paper opines that redress in law courts can be used as a panacea for insecurity in Nigeria. The 1914 judicial reforms brought about the establishment of native courts in the Province, while the 1954 reforms led to the establishment of four grades of native courts.

Specifically, this paper examines judicial system as a panacea to insecurity in Old Ondo Province, 1914-1954. It is necessary to mention that upon the arrival of the British in Nigeria, one of their first actions was the introduction of the English law. They established for the colony the British type of legislature and court system.¹ This conferred on the British Crown the power to constitute courts and officers for the peace, order and good governance of her Majesty's subjects.² Thus, the Courts of Equity were the first judicial innovations devised to cater for the commercial interest of European traders in the South eastern Coast of the Niger.³ When British rule gradually extended to other kingdoms around Lagos, the jurisdiction of the courts was equally extended to those areas.⁴ By 1876, the Supreme Court Ordinance established a Supreme Court with extensive powers in civil and criminal matters. The proclamation of the year 1900 set up the Protectorate of Southern Nigeria and established certain courts, for example, the Supreme Court of Southern Nigeria, the Commissioner's Court and the Native Courts. The British authorities set up in addition, Supreme, Provincial, and Cantonment Courts.⁵

Judicial system in Nigeria before 1954 could be regarded as unified from the legal point of view. There was, until 1952, only one Legislature; all Nigeria's statutes, whether they applied throughout the country or to any part of

it, were enacted by the body. Similarly, while there were a number of separate courts of varying levels of authority, together they constituted a single, integrated system. An appeal could be made to the Judicial Committee of the Privy Council, though from 1930 only after the case had first gone to the West African Court of Appeal.⁶

The year 1933 witnessed the modification of the Judicial System introduced in 1914. The principal changes included the restriction of the territorial jurisdiction of the Supreme Court, the creation of High Court and Magistrate Court for the Protectorate, recognition of the Native Courts and the creation of the West African Court of Appeal. The newly created West Africa Court of Appeal then became the highest appellate court in the land through which further appeals went to the Privy Council in London. The Provincial Courts were abolished and replaced with High Courts and a number of Magistrate Courts in the Protectorate. Further reforms of the Judicial System were carried out in the country between 1943 and 1960.⁷

The Independence Constitution of 1960 empowered the Federal Parliament and Regional Houses of Assembly to make laws for order and good governance in the entire country and the regions respectively. But after the military took over the government on January 15, 1966, the Federal Military Government Decree No 1 of 1966 suspended some and modified other provisions of the Constitution. The Decree invested the Federal Military Government with the power to make laws by decrees for peace, order and good governance of Nigeria. The Decree also conferred on the State Governors, power to make laws within the limit of the Constitution, by means of edicts.⁸ Decrees 42 and 43 of August, 1976 established the Federal Court of Appeal. In 1973, the Federal Revenue Court was set up by Decree 13; it had jurisdiction over all revenue matters. This court metamorphosed into the Federal High Court.

Against this background, contemporary quandary and necessity have led to widespread changes in the judicial system, in the organisation of the legal profession, and the procedures adopted by courts and their staff. New Courts have been established.⁹ A body of administrative justice has developed, leading to the determination of many squabbles between state and individual tribunals and inquiries rather than the Courts themselves. Old procedures of adjudication were developed and refined to meet modern needs.¹⁰ The changes were aimed at re-organising the entire judicial system. In the advanced countries of the world, the study of the judiciary is treated as an important and fundamental part of government. However, the study of the judiciary in the Old Ondo Province and Nigeria in general has been given little or no attention.¹¹

The court system in the Old Ondo Province, like other parts of Nigeria, originated from the British tradition, as a purely legal institution with little overt role in the political system. The administration of justice in traditional society did not involve the *Oba* alone; it was based on the combination of the family where everybody belonged to an *ebi*. Each lineage was made up of the descendants of a common predecessor and had its own corporate organisation with *Olori-ebi* (compound head), who was usually the oldest male member of the lineage (at the head). If there were disputes, the family first heard all cases, as the senior member of the family exerted himself to negotiate and ensure peaceful settlement of any quarrel arising. He, with other members of the family, listened to and reconciled the disputing parties. Rarely did cases by-pass him to higher authorities. It was when he failed to reconcile the disputing parties that they referred the case to the quarter head or village head. Generally, the head of the family held meetings to discuss matters affecting the family or its members, or to settle disputes among its constituent members. Now effort is made to review some selected cases that were appealed against.

Appeal Cases

Since the introduction of the British judicial system in Nigeria, nay the Old Ondo Province, there had been avenue for appeal against any judgement that the parties were not satisfied with. In most cases the conduct of court officials constituted part of the problem which militated against smooth operation of the court. It is important to note that Native Court Ordinance of 1914 provided for the keeping of proper records of the Native Courts activities. The 1933 and 1957 Reforms retained the provision. During these periods, different grades of Native Courts scattered all over the Old Ondo Province. The need to keep record of the proceedings in the Native Courts in English and to maintain order in the court necessitated the appointment of court clerks and court messengers.¹²

The structure of the Court gave room for corruption among the clerks, messengers and chiefs. For instance, in the Old Ondo Province in 1960, a President of Grade B Customary Court earned £621 per annum, while a member received £240 per annum¹³. In most cases, the salaries were not paid as and when due.¹⁴

The corrupt nature of the court officials affected their judgements. Most of the disgruntled parties' cases flooded the office of the Assistant District Officer (A.D.O) and District Officer (D.O) in the Old Ondo Province with petitions showing their dissatisfaction with the decision of the courts. The Native Courts Ordinance of 1914 provided that the D.O. could review sentences if an aggrieved party asked for it. An appeal could also be sent to Customary Court of Appeal.

For instance in *D. A. Adesuyi v Esther Olakunle*,¹⁵ the case was first tried before Akure Native Court No 1 in April 1958 and verdict was measured: a fine of £50 was awarded and divorce granted. The defendant appealed to the Appellate Native Court where the lower court judgement was upheld. The Appellant went further still to the Local Government Adviser. The case was overtaken by the introduction of the Customary Court Law of 1958 and it was sent to the Magistrate Court Akure from where it was transferred to the Customary Appeal Court.¹⁶

The plaintiff's claim was for divorce and refund of £197.10.6 dowry. The plaintiff gave evidence of a total of £136.4 and a sewing machine being what he expended on the defendant. The parties were husband and wife for over twelve years and it was admitted in the Appeal Court that the husband lived those twelve years under the roof of the appellant. The plaintiff in his evidence in the court claimed that he desired no dowry but free divorce. The judgement of the lower court that awarded £50 for the plaintiff was set aside by the Appeal Court.¹⁷

A consideration of another case of appeal, *Felicia Aina v William Odiase*,¹⁸ will prove the competence of the judges of the Customary Court of Appeal. The plaintiff, Felicia Aina's claim against the defendant, William Odiase in Igbara-Oke Customary Court, was for an injunction to restrain the defendant and his agents from trespassing on the plaintiff's father's cocoa farms situated at Aye farm settlement in Igbara-Oke. It was observed from the outset that the claim of trespass could not stand as the plaintiff had never been in possession of the land, but the defendant had always been in possession. The dispute was over the estate of one John Odiase, who died in 1957 at Igbara-Oke. His only son died shortly after his death. His next of kin were, therefore, the plaintiff and defendant who were his paternal and maternal nephew and niece respectively. The deceased also owned a house at Itaogbolu and four cocoa farmlands around which fierce battle raged between the plaintiff and the defendant.

Outstanding money belonging to the estate was collected to the tune of £323:71- and paid to court, after funeral and sundry expenses were deducted. The amount was distributed thus: the plaintiff- £133:8:7d, the defendant- £133:8:7d, John Osei, the caretaker of the cocoa farm estate, £36:9:1c, compensation to defendant for his management and labour on the cocoa farm estate, £20. In the course of cross-examination, it was discovered that the defendant collected his money with good intention, because he made a disclosure of several items that were unknown to the plaintiff.

The judge ruled that out of the four cocoa farms, the plaintiff should take the two middle-sized farms at Aye, Igbara-Oke named after her father, Adanri while the defendant was to take the larger and the smaller farms. The deceased's house at Itaogbolu was declared a family property. The judgement of the lower court was reversed without order as to cost.¹⁹

Also in *Ojuolape v Olubaka*,²⁰ the case was first brought before the Akungba Native Court. There, the plaintiff claimed that for three years, the defendant, her husband abandoned her with two children. In the course of living together, the defendant was in the habit of beating her to a state of coma and also that he was not taking care of her and the children. The plaintiff claimed that all entreaties made by her mother and other relatives to the defendant for change of attitude, were rebuffed by him. The plaintiff's claim was corroborated by her mother's testimony in the court. So, the plaintiff sought divorce and refund of dowry of £10 to the defendant. In his response, the defendant (husband of six wives) appealed to the court not to grant the plea of the plaintiff because she was carrying his three-month pregnancy and that he had expended a lot on her. In the judgement delivered by *Alale* and nine others on October 9, 1950, the court rejected the divorce and returned the plaintiff to the defendant.

Not satisfied with the judgement of Akungba Native Court, the plaintiff appealed against the judgement in the District Court of Akoko²¹ held at Irun-Akoko, before the *Olomuo* of Omuo as President with thirteen other judges. Plaintiff Ojuolape stated that she was not satisfied with the judgement of the lower court as the defendant actually deserted her and was the one who gave her all her property and asked her to go. After listening to the plaintiff/appellant, the court ruled that there was strong evidence in the lower court in her favour: since the defendant/respondent did not produce any evidence to refute the allegations against him. The court was, therefore, satisfied that the plaintiff/appellant's claim was proved beyond a reasonable doubt and therefore granted divorce on refund of dowry.²²

In *Marian Omosunlola v Julius Ojo* suit, on August 14, 1950, at Akoko District Court of Appeal, Isua,²³ presided over by M. I. Agoi Akala and 23 other judges, the claim in the Ikaram Native Court was that divorce be granted in payment of £15 returned dowry and two sheep with their calves to the defendant/respondent. Hence, the plaintiff/appellant was not satisfied with the judgement of the court because she did not owe the defendant/respondent more than £5 dowry he paid on her. She denied the allegation of stealing levied against her, and that of money allegedly paid to a native doctor for her healing. She claimed that the £5 paid on her as dowry was refunded to him through the Ikaram Native Court. This was confirmed by the defendant/respondent, but he claimed that the remaining £10 was the money given to her and the one she stole from him. On February 20, 1951, the court dismissed the appeal and the Ikaram Native Court's judgment upheld.²⁴

The cases that went on appeal in the Old Ondo Province took almost the same pattern; most of them were civil cases that bordered on land disputes, matrimony and property of the deceased. Most of the cases took a long time to the extent that hope might have been lost before judgments were delivered.

Also, the venues of the appeal court in the same case were far away from where the litigants lived; this was stressful to the litigants and it was one of the reasons why the indigenes preferred review of their cases to appeal, because review was cheaper, quicker and better than appeal, no matter how ineffective. An appeal entailed the payment of fees, production of copies of proceeding of cases and the hearing by the D.O. or Resident was considerably more formal and it took more time than review.²⁵

Equally, review had other edge over appeal: one, reviews had a greater enlightening worth because it was being carried out in the full glare of court members who could be consulted on matters relating to custom and procedure. Hence, review provided the missing link between the administrative officers and the judges. Also, litigants were always of the opinion that they were most likely to get favourable judgement under review. However, review mechanisms were not yielding the expected result because of the attitude of the administrative officers who were too inclined to exercising their power of reviewing. Also, many of the reviews granted concerned mostly cases of a frivolous nature. By implication, therefore, the habit of making recourse to review made some administrative officers to spend more time which could have been employed on administrative duties.²⁶

However, the quality of judgement delivered at various Courts of Appeal after the reform of 1954, which empowered the President of the Court to be headed by a lawyer and supported by at least two assessors were high, compared to when members of the Appeal Court were between fifteen and twenty as the case might be.

These tables below show the number of cases appealed against between January 1949 and September 1949 in Akure Division.

Table 1: Number of Appeal Cases

No	Month	From Native Courts to Appeal Court	From Appeal Court to D.O's Court
1	January 1949	6	1
2	February 1949	7	—
3	March 1949	11	—
4	April	3	1
5	May	11	—
6	June	17	2
7	July	13	—
8	August	3	1
9	September	14	—
	Total	95	5

Source: Letter written by G.I. Adigun of Akure Appeal Court to District Officer Ondo Division. Ref. No A.K.N.A 46/66 of Oct. 13, 1947.

Table 2: Appeal Cases Okitipupa Division

Year	Appeal from Native Court to Magistrate Grade 1	Cases on Appeal from Native to D.O's Court
1954	117	23
1955	44	31

Source: N.A.I. Divisional Adviser Appellate Jurisdiction. Ref. 168/434 of January 16, 1956. Letter from D.O's office Okitipupa to the Provincial Adviser, Ondo Province, Akure.

Table 3: Native Court Statistics in the Old Ondo Province

Year	Total cases tried	Total cases reviewed	Total cases heard on appeal	% of total cases reviewed	Total cases which were modified or annulled on review or appeal
1943	15,972	469	428	5.62	2.34
1944	17,321	572	458	5.94	2.42
1946	19,024	514	671	6.22	3.16
1947	19,738	559	598	5.86	2.62

Source: N.A.I. File No 265a, Native Court Reform; Ondo Province, p.8.

From a cursory look at the three tables above, it can be deduced that the number of cases that got to the appeal level were very insignificant, most especially the cases that got to the D.O's Court. This does not imply that the appellants or defendants were satisfied or not satisfied with judgements delivered. For instance, table 3 shows the number of cases heard at the Appeal Court, the highest was less than 7% of the total cases heard at the court of first instance, let alone the cases that got to the D.O's Court. It would be argued from this point that one, the cost of appeal might be out of the reach of the litigants. We must bear it in mind that courts were used as a means of generating fund by the British before Nigeria's independence in 1960. Also, in addition to paying for the appeal litigant bore the cost of transportation of the bailiff, not to mention inducement which was prevalent then. Regardless of the cost the people still preferred redress than taking law into their hands.

Two, the volume of cases heard at the court of first instance were many in number; for instance, in the whole of Akoko District, only one District Appeal Court was approved. Although it was mobile in its sittings, this single court was not enough to handle appeal cases from the Native Courts in Akungba, Oba, Oke-Agbe, Erusu, Ogbagi, Ikaramu, Ifira, Ishua, Arigidi, Oka, Ikare and Omuo. There is no gainsaying that appeal cases delayed beyond reasonable period.

Three, it could be argued that the few number of appeal cases might be as a result of the fact that at a period before the reform of 1954, some judges of the lower court also doubled as judges in the District Appeal Court. So litigants might have viewed appealing as a mere waste of time and resources because they were of the opinion that the judgement at the Appeal Court might not be different from that of the lower court. So, they might have avoided embarking on a fruitless appeal.

Four, the scanty appeals at the D.O.'s Court might be as a result of the time and procedure. For instance, all appeals in Ekiti Division were expected to be handled by the D.O. stationed in Ado-Ekiti. The time of appeal could be imagined due to the workload of the D.O.'s. Their major duty was to perform administrative function; judicial function was secondary.

Conclusion

From the cases that were taken to courts of first instance and the judgement that later got to the appeal courts, it is crystal clear that the people of the Old Ondo Province long time ago appreciated the rule of law and used every available opportunity to make sure that they sought redress from court of justice available to them, regardless of the time constraints. Even when judgements were not favourable at the lower courts they preferred taking their cases to higher court for better adjudication; and this was a panacea for insecurity in the Province. This contrasts with contemporary experience where people are not ready to go to court to seek redress. This may be as a result of the comatose state of justice systems, people lost confidence in it and preferred to take law into their hands. In view of the preceding point, a court must ensure quick justice delivery since judiciary is believed to be the last hope of not only the common man/woman, but the bedrock of fairness and equity, and this will serve as panacea for insecurity. This is more so since force can only protect in emergency, while only justice, fairness, consideration and cooperation would finally lead men to enjoy the desired enduring peace. This submits, paper therefore, that redress in law courts is the bedrock of the survival of any people all over the world, particularly on the socio-political dispensation of such a people.

Notes and References

- A. E. Afe, *The Growth of the Judicial System in the Old Ondo Province, 1915-1976*, Ph.D Thesis, Department of History and International Studies, Ekiti State University, Ado Ekiti, 2012.
- Appeal Court Ruling Vide Suit No A8/60 in D.A. Adesuyi v Esther Olakunle.
- Appeal Court Ruling Vide Suit No 68/50 in Marian Omosunlola v Julius Ojo.
- Appeal Court Ruling Vide Suit No 78/50 in District Court of Akoko held at Irun-Akoko on Tuesday 21st of November, 1950, in Ojuolape v Olubaka.
- J.O. Asein, *Introduction to Nigerian Legal System*, (Ibadan: San Bookman Publishers, 1998), p.150.
- Judgement delivered by R.A. Fawehinmi on 5th May, 1960 at Appeal Grade B Customary Court, Akure.
- Judgement delivered in this Appeal case No A115/59 on Friday 10th June, 1960 by S.A Fawehinmi.
- Mojeed Olujimi A. Alabi. *The Supreme Court in the Nigerian Political System, 1963-1997*, (Lagos; Demyaxs Press, 2002), p.4.
- N. A. I. MLG (W) 3, 199, Appeal in Native Court Cases, Secretary,
- N. A. I. No 979/1 Vol. 2, Owo Div. 1/1. *Proceeding in Native Court Akoko District*. p.156.
- N. A. I. Oyo Proof 2/2, 1269, New Native Court Ordinances, 1933.
- N. A.[Akure]. AKLG 1/16164, Letter of appointment, Ref.CCS. 244/2a to Mr Theophilus Ajayi Fayose as a member of the Akure Grade B Customary Court on August 17, 1966.
- N.A.[Ibadan] Appeal Court Ruling Vide Suit No A115/59 on Felicia Aina v William Odiase.
- Nigeria Year Book, 1977*, (Lagos: Daily Times, 1977), pp.55-58.

One of these cases is that of the Chief Kole Oluwatuyi, the *Olisa* of Akure who wrote to A.D.O's Office, that his January and February 1966 salaries were yet to be paid in May, 1966.

Obi Okoye, *The Development of Judicial Trial in Nigeria*, (Onitsha: Africian-Fep Publishers, 1988), p.1.

O. N. Ogbu, *Modern Nigerian Legal System*, (Enugu; Cidjap Publishers, 2002), p.179.

O.N. Ogbu, *Modern Nigerian Legal System*, p.181.

R.J. Walker and Richard Ward, *Walkers and Walker's English Legal System*, (London; Butterworths, 1994), p.3.

R.J. Walker and R. Ward, *Walkers and Walker's English Legal System*. p.3.

This case was heard and judgement delivered on Thursday 5th May, 1960 by S.A. Fawehinmi, Ondo Divisional Court, Appeal Grade B Customary Court, Appeal Record Book Vol.1 Akure.

The judgement was presided over by Olomuo as the President and supported by nine other judges.

The Native Court of Akungba Ruling Vide Suit 20 in civil case No 62/52, October 1950 in Ojuolape vs Olubaka.

"The Supreme Court of Nigeria: A History" in *The Guardian Sunday*, June 24, 2007, p. 16.

W. Park, *The Sources of Nigerian Law*, p.2.

W. Park, *The Sources of Nigerian Law*, (Lagos: African Universities, 1963), p. 1.