

## ADMINISTRATION OF JUSTICE IN NIGERIA: A CASE FOR ALLOWING FORMER JUDICIAL OFFICERS TO RETURN TO FULL LEGAL PRACTICE<sup>1</sup>

### **Abstract**

*Judicial officers are judges of the superior courts in Nigeria. This class of judges is constitutionally, by the Rules of Professional Conduct in the Legal Profession (RPC) and other statutory provisions barred from returning to full legal practice upon their exit from judicial office for whatever reason. This restriction we believe has negative effects upon the administration of justice. Such negative effects in our opinion include but are not limited to timidity and inefficiency. One finds it difficult to fathom not to talk of rationalizing the reason(s) (aside from a mere convention of the English legal system) behind this restriction. Thus, it is the aim of this paper to make a case for the amendment of the Constitution and other relevant statutes as regards these restrictive provisions so that any time a judicial officer feels he can no longer continue or has to discontinue the task(s) of judgeship, he should be free to resume full fledged legal practice if he so desires.*

**Keywords:** *Administration of Justice, Former Judicial Officers, Legal Practice, Advocacy, Nigeria*

### **1. Introduction**

To cross the Rubicon or cast the Dice is to make an irrevocable move.<sup>2</sup> This is the position judicial officers find themselves in Nigeria once they accept appointment to judicial office. Such judicial officers are not allowed to go back to full fledged legal practice upon their resignation, retrenchment, retirement or even dismissal from the bench.<sup>3</sup> The gravamen of this paper is to canvass the point that this Constitutional blockade in itself engenders timidity, corruption, inefficiency, and decline in the quality of judgments among other undesirable attitudes on the part of judicial officers since they know they cannot revert to *status quo*. These in our opinion, have in no small measure negatively affected the administration of justice in Nigeria even though Judges, like Caesar's wife, are expected to be above board. It is also the aim of this paper to make a case for the amendment of the Constitution and other relevant statutes to abrogate or repeal these restrictive provisions so that anytime a judicial officer feels he can no longer continue the task(s) of judgeship, he should be free to resume full fledged legal practice if he so desires.

‘In 1970 the legal profession in England expressed something akin to horror at the resignation of Sir Henry Fisher from the High Court Bench to take an appointment in the city. The Solicitors’ Journal reported it as causing ‘a shock.’<sup>4</sup> The New Law Journal<sup>5</sup> took a much less stringent view of the situation. It says:

Judges are men and men change their careers for many reasons. Prominent among those reasons is the realization that the career they are in is not really for them – the belief that they would be happier and more effective elsewhere. If a High Court Judge feels that he is unsuited to the judicial way of life, surely it is better for the administration of

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<sup>2</sup> Standard International Media Holdings *The New International Webster's Comprehensive Dictionary of the English Language*, (U.S.A Standard International Media Holdings, 2013 edition) 1099; *The Oxford Advanced Learner's Dictionary*, (Oxford Oxford University Press 6th Edition 2000) 322.

<sup>3</sup> Constitution of the Federal Republic of Nigeria 1999 s 292(2)

<sup>4</sup>Dame Roma Mitchell, *The Appointment of judges and their Return to the Bar*, Address to the second Biennial Conference of the Australian Bar Association < [www.austlii.edu.au/au/journals/NSW Bar Association News](http://www.austlii.edu.au/au/journals/NSW_Bar_Association_News)> accessed on 19<sup>th</sup> May 2017 at 15:30 pm

<sup>5</sup>Dame Roma Mitchell (n 4) 5

justice, as well as for the individual concerned that he go...A judge is entitled, like anyone else, to make his life where he honestly believes he can best be himself. The judicial oath is not an irrevocable vow.

The mode of discourse would be by way of stating relevant constitutional and statutory provisions to the theme of this paper and thereafter cite instances where judicial officers have been relieved of their positions or had been forced to resign their appointment unceremoniously under both military and civilian administrations in Nigeria. The effect the above has had on the administration of justice and necessary suggestions would then (respectively) be examined and proffered.

## 2. Relevant Constitutional and Statutory Provisions

The Constitution of the Federal Republic of Nigeria (the Constitution) forbids any person who has held office as a judicial officer on quitting that office for any reason whatsoever from appearing or acting as a legal practitioner before any court of law or tribunal in Nigeria.<sup>6</sup> For avoidance of doubt, it interprets 'Judicial Office' to mean the office of Chief Justice of Nigeria or a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the office of the Chief Judge or a Judge of the Federal High Court, the office the Chief Judge or Judge of the High Court of the Federal Capital Territory, Abuja, the office of the Chief Judge of a State and Judge of the High Court of a State, a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, a President or Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja, a Grand Kadi or Kadi of the Sharia Court of Appeal of a State, or President or a Judge of the Customary Court of Appeal of a State; and states that a reference to a 'Judicial Officer' is a reference to the holder of any such office.<sup>7</sup> The Rules of Professional Conduct in the Legal Profession (RPC), 2007 provides that a lawyer shall not accept employment as an advocate in any matter upon the merits of which he had previously acted in a judicial capacity.<sup>8</sup> Likewise, it states that a lawyer, having once held public office or having been in the public employment, shall not after his retirement accept employment in connection with a matter in respect of which he had previously acted in a judicial capacity or on the merit of which he had advised or dealt with in such office or employment.<sup>9</sup> It also provides that a judicial officer who has retired shall not practice as an advocate in any court of law or judicial tribunal in Nigeria.<sup>10</sup> It also prohibits a judicial officer who has retired from signing any pleadings in any court.<sup>11</sup> However, it allows a judicial officer who has retired to continue using the word 'Justice' as part of his name.<sup>12</sup> Furthermore, it interprets the word 'Judge' to include any officer carrying out judicial functions in a court and 'Lawyer' as a legal practitioner as defined by the Legal Practitioners Act.<sup>13</sup> The Legal Practitioners Act (LPA) on its part interprets 'legal practitioner' to mean a person entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings and 'public service of the federation' to have the same meaning as in the Constitution of the Federal Republic of Nigeria, 1999.<sup>14</sup>

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<sup>6</sup> Constitution of the Federal Republic of Nigeria 1999 s 292 (2)

<sup>7</sup> Constitution of the Federal Republic of Nigeria 1999 s 318

<sup>8</sup> RPC 2007 r 6 sr (1)

<sup>9</sup> RPC 2007 r 6 sr (2)

<sup>10</sup> RPC 2007 r 6 sr (3)

<sup>11</sup> RPC 2007 r 6 sr (4)

<sup>12</sup> RPC 2007 r 6 sr (5)

<sup>13</sup> RPC 2007 r 56

<sup>14</sup> This is defined in the Constitution of the Federal Republic of Nigeria 1999, s 318 and it means being in the service of the Federal Government of Nigeria in any capacity which includes but is not limited to the various capacities enumerated in the section.

### 3. Instances Where Judicial Officers had been relieved or had to relieve themselves of their Positions abruptly

Akinnola<sup>15</sup> gives the instance of Justice Yaya Jinadu as follows:

This is the story of a man, whose calling was to dispense justice without fear or favour, affection or ill-will. This man, Justice Yaya Abiodun Olatunde Jinadu discharged his duties impeccably, courageously and fearlessly for good ten years on the Bench between 1974 and 1984. However, feathers of trouble began to fly in his tenth year on the Bench when the Federal Government flouted his order seven times in a contempt of court motion. Rather than show solidarity with the embattled Judge, the Advisory Judicial Committee (AJC) (as then constituted in 1984) that has the Chief Justice of Nigeria as its Chairman, asked the Judge to apologise to the Government for the way he handled the case. As the purveyor of justice, Justice Jinadu felt that the day a Judge apologizes to the executive over an action he has taken in the course of his judicial functions that would be the day the judiciary would be interned. Rather than be a party to the humiliation of the judiciary, Justice Jinadu tendered his resignation. He preferred justice and honour to obsequious, sycophantic and groveling obeisance to powers that be.<sup>16</sup>

Justice Akinola Aguda, a onetime Chief Judge of the old Ondo State of Nigeria retired in similar circumstances as Justice Jinadu. He says: ‘When a judge has reached the stage that he can no longer function properly under a particular regime, the honourable thing for him to do is to resign his appointment’.<sup>17</sup> In the case of Justice Olu Ayoola, his lordship was compulsorily retired from the Bench without cogent reasons. The retired jurist reminisces thus:

The treatment personally made me curse the day I accepted the offer of coming to the Nigerian Bench, more so leaving a successful legal practice. And as if the injury was not enough, a Decree was also passed forbidding any of the Judges so retired to go back to full legal practice, even though their judicial careers had been aborted without reasons being given to them or to the nation nor being afforded opportunity to defend their names, honour and future against the reasons before they were damnified and summarily retired with loss of name, career, and pension rights. Some were also given 21 days to vacate official quarters. The procedure adopted was blatantly unjust so much so that some of the judges so treated have since died prematurely, of being unable to bear the injustice. That was briefly how the 1975 judicial purge was carried out.<sup>18</sup>

The point that judicial officers have died in the course of trying to salvage their careers is illustrated in *Manuwa v N.J.C*<sup>19</sup>, where the Court of Appeal Lagos Division held that by the provisions of section 15

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<sup>15</sup> Richard Akinnola, *Salute to Courage: The story of Justice Yaya Jinadu* (Lagos Nigerian Law Publications Limited, 1989) viii

<sup>16</sup> Richard Akinnola (n 15) viii

<sup>17</sup> Akinola Aguda, *Flashback* (Ibadan Spectrum 1989) 114.

<sup>18</sup> Olu Ayoola, *Fifty Years in the Law (1946-1996) A Memoir of the forensic Experiences and Techniques of a successful jurist* (Ibadan Ayoola Law Centre Publications 1996) 87.

<sup>19</sup> (2012) All FWLR (pt.612) 1805 at 1814-1815. The plaintiff was a High Court Judge in Lagos State. He was dismissed by the Lagos State Government on the advice of the National Judicial Council. Aggrieved, he filed an action in the Federal High Court, Lagos praying for declaratory reliefs to the effect; that upon the proper construction of relevant constitutional provisions regulating his tenure, he cannot be compelled to cease to hold office until he attains the age of 65, unless he is properly removed from office by the governor acting on a proper recommendation by the National Judicial Council; that the recommendation made by the National Judicial Council

of the Administration of Estates Law, a cause of action survives a deceased person either for or against him for the benefit of his estate excepting where the cause of action is for defamation, seduction, or inducing one spouse to leave or remain apart from the other or to claim for damages on the ground of adultery. In the instant case, where the cause of action commenced by the deceased did not fall into any of the exceptions mentioned above, the application for substitution is granted. Our research into the possible reason(s) for this restriction from full legal practice reveals that it was a tradition of the English legal system that was codified by a Decree in Nigeria and later on metamorphosed into a Constitutional provision. In this connection, Justice Olu Ayoola states that:

At the time of my retirement from the High Court Bench, there was no law which expressly forbade retired High Court Judges from returning to practice at the Bar. There was however a tradition in England, whose legal system Nigeria largely copied, which forbade retired High Court Judges to return to practice at the Bar. In any case, shortly after my retirement, a Decree was passed which expressly forbade full return to the Bar. It was as if the Decree was made *ad hominem*. However, even if there were no such Decree, I had intended to respect the convention by not returning fully to the Bar to practise. The Decree permitted limited practice since it forbade appearance before any court of Law or Tribunal.<sup>20</sup>

Justice M.A. Begho also corroborates the above thus:

I moved out of Government quarters in the G.R.A unprepared and could not easily make up my mind what I was going to do. I was told by the Advisory Judicial Committee that convention was against my setting up practice or opening chambers for solicitor's work; I could not train young lawyers to go to court for me but I could go into business or accept directorship of any company. This was why I had to move to Lagos to eke out a living. It was not easy at the start. I joined a friend to import canned beer before it was banned and I personally did the distribution. I later went into land development which I found profitable.<sup>21</sup>

A cursory reader may say that all the instances cited above happened during the military era but same had also occurred under the current civilian dispensation. In *Justice Elelu-habeeb V A-G Federation & Ors*<sup>22</sup>, the Supreme Court held per Mohammed JSC that:

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to the governor for his dismissal from office having been caused to be issued before and without prior receipt of a first recommendation made to it by Lagos State Judicial Commission is *ultra vires* the power of the National Judicial Council and null and void. In the alternative, a declaration that the National Judicial Council failed to observe fair hearing in its recommendation and it was therefore unconstitutional, null and void. He further prayed for an order of *certiorari* directing all proceedings leading to the recommendation to be removed to the Federal High Court to be quashed, a declaration that he was unlawfully dismissed and an order of injunction compelling the governor to reinstate him as High Court Judge. The defendants filed preliminary objections challenging the action. The trial court upheld the objection and struck out the suit. Aggrieved, the plaintiff appealed to the Court of Appeal and subsequently died. The executors of the estate filed the present application seeking to be substituted with the deceased.

<sup>20</sup> Olu Ayoola (n 18) 136.

<sup>21</sup> M.A. Begho, *The Dog-bite Magistrate: His struggles* (Daily Times Lagos 1986) 174

<sup>22</sup> (2012) All FWLR (pt.629)1011 at 1065, the 1<sup>st</sup> appellant was appointed Chief Judge of Kwara State on 28<sup>th</sup> March, 2008. On 30<sup>th</sup> April, 2009, the Governor of Kwara State forwarded an address to the House of Assembly of Kwara State, wherein allegations were made against the chief judge and her removal was recommended, on the grounds of inability to discharge the functions of her office and acts of misconduct which contravened the code of conduct for the chief judicial officer of a state. The Kwara State House of Assembly invited the chief judge to appear before it with a view to exercising disciplinary control over her. However, without giving the judge an opportunity to defend herself, the House of Assembly found the allegations made against her as established and

It is for the foregoing reasons that I hold the view that in the resolution of the issue at hand, the entire provisions of the Constitution of the Federal Republic of Nigeria, 1999 in sections 153(1)(i)(2), 27(1), 292(1)(a)(ii) and paragraph 21 of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999, dealing with the appointments, removal and exercise of disciplinary control over judicial officers, must be read, interpreted and applied together in resolving the issue of whether or not the Governor of a State and the House of Assembly of a State can remove a Chief Judge of a State in Nigeria without any input of the National Judicial Council. This is because the combined effect of these provisions of the Constitution has revealed very clear intention of the framers of the Constitution to give the National Judicial Council a vital role to play in the appointment and removal of judicial officers by the Governors and Houses of Assembly of the State. In the result, I entirely agree with the two courts below that having regard to these relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Governor of Kwara State and the House of Assembly of the State cannot remove the Chief Judge of Kwara State from Office without the participation of the National Judicial Council in the exercise.

The fact that the law allows former judicial officers to practice as solicitors or legal consultants does not ameliorate the condition foisted on them. Ekong Sampson says on the Late Justice Chike Idigbe in relation to this point that:

During the war, the office of the Chief Judge of Mid-Western State was filled. By Decree No.38 of 1969, the Nigerian government declared Idigbe's seat as Chief Judge vacated...With the prospect of returning to the Bench foreclosed, Idigbe returned to Lagos in March, 1972, to take up appointment as a Senior Partner in the law firm of Irving and Bonnar...*For a mind ever so active, the restrictions on a solicitor or legal consultant would not be totally satisfying, no matter the dynamic working environment.* But in his vicissitudes Chike Idigbe was saved by his life. It was one that neither worshipped position nor wealth. Instead it created ample space, in spirit and thought, for inner peace and self-contentment.<sup>23</sup>

(Italics ours for emphasis only)

It should however be noted that a former judicial officer is only barred from representing a client in court. He is allowed to conduct in person a case in which he is a party. In *Hon. Justice Atake V Afejuku*,<sup>24</sup> the Supreme Court held that Section 256(2) of the 1979 Constitution (now section 292(2) of the 1999

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took steps to remove her as the head of the judiciary of Kwara State in her absence. The notice of her removal as chief judge was also not communicated to her subsequently.

<sup>23</sup> Ekong Sampson, *The Path of Justice Chike Idigbe* (Lagos Distinct Universal Limited 1999) 83 and 87.

<sup>24</sup> (1994) 12 SCNJ 1 at 11. The complainant, a legal practitioner, was a Judge of the High Court of Bendel State until 1977 when he retired from the bench. In 1990 he commenced at the Lagos High Court a private prosecution against the defendant upon five charges of publication of defamatory matters contrary to section 375 of Criminal Code of Lagos State. Before hearing, the defendant raised a preliminary objection on the ground that the complainant did not have *locus standi* to institute criminal proceedings against the defendant by way of private prosecution. The trial judge *suo motu* raised the issue whether the complainant being a retired judicial officer was competent to conduct the prosecution of the case personally. After hearing arguments on the two issues from both the counsel for the defence and the complainant, the judge dismissed the objection by the defence but held that section 256(2) of the Constitution of the Federal Republic of Nigeria 1979 bars the complainant from prosecuting the case in person and then proceeded to strike the case out on this ground.

Constitution) does not bar a judicial officer who has ceased to be one from appearing before a court or tribunal to conduct in person a case in which he is a party or complainant in a criminal case.

#### 4. The Effects of the Restriction on the Administration of Justice

Apart from the negative effects stated in the introduction arising from the stoppage of former judicial officers from returning fully to legal practice, it also discourages competent lawyers from accepting appointment to the Bench.

Afe Babalola says:

Surprisingly, a year after my refusal to go to the Bench, Muritala Mohammed came in a military putsch of 1976 and wrecked his havoc. The Chief Justice of the Federation, Dr Taslim Olawale Elias, was removed on radio on ground of ill-health. The same man was later found strong enough to become the President of World Court at the Hague. Similarly, the Chief Judge, Oyemade, Adewale Thompson and Justice Olu Ayoola, my senior, were all equally removed because the government of the day considered their decisions and judgments to be too anti-government. Without any contradiction, these three great dispensers of justice knew their onions and their removal was not on account of inefficiency, corrupt practices, misconduct or any other human frailties. This singular action by the Muritala administration marked the beginning of the decline in the number of competent lawyers going to the bench. The tragedy of our collective experience is that because good and experienced senior lawyers have refused to go to the Bench, the quality of judgments has also been adversely affected. It certainly was the wish of many successful lawyers to one day rise to the bench and avail the administration of justice with their wealth of experience. But who would leave his lucrative practice for a bench when by military fiat he could be unceremoniously removed from office for the wrong reasons or even for no reason at all.<sup>25</sup>

Likewise, Chief ‘Folake Solanke, SAN says:

Prior to my experience on the Justice Bello Tribunal, I was not attracted to judicial office because I was so enamoured of advocacy. In the course of my law practice, I had been approached by very senior members of the Bar and the bench on behalf of Lagos, Ogun and Oyo States, to ask if I would like to be appointed a High Court judge. At that time, although I was delighted with the offers of such elevation, I had no inclination for it. However, after the tribunal, I became somewhat attracted to judicial office. Eventually, in 1987, I had a definite offer of an appointment to the Court of Appeal. After prayerful consideration of the offer, I did not feel a divine direction that the bench was the best choice for me at that time.<sup>26</sup>

It would appear that there is no longer anything sacrosanct or awesome in being a Judicial Officer. Judicial Officers of the highest echelon are now unprecedentedly, at least to our knowledge, being accused and tried for various offences while still in office.<sup>27</sup> Hence, relevant Constitutional and statutory provisions should be amended to allow former judicial officers return fully to legal practice if they so desire. Also, the position of a Judicial Officer should be limited by tenure. A hint may be taken in this regard from the International Court of Justice at The Hague. This has the double advantage of firstly,

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<sup>25</sup> Afe Babalola, SAN, *Impossibility made possible* (Ibadan Afe Babalola 2008) 92-93

<sup>26</sup> Olufolake Solanke, SAN, *Reaching for the Stars: the autobiography of ‘Folake Solanke, SAN* (Ibadan Book Builders 2007) 363 – 364.

<sup>27</sup> Ade Adesomoju, ‘FG charges Supreme Court Justice with money laundering, age falsification’ *The Punch Newspaper* (Lagos, 9 November 2016) 2

giving the appointing authority the latitude (subject to Constitutional checks and balances) of not renewing the term of an occupant of judicial office who had not lived up to expectation in any way but with Constitutional immunity similar to that of the President and the Governors with their deputies while in office. Secondly, it would likely serve as an attraction to experienced hands to contribute to the administration of justice as judicial officers bearing in mind that such “call to duty” is only for a term. This second point is illustrated by Ajose-Adeogun, Justice J.I.C Taylor’s biographer thus:

John Taylor’s keen sense of public duty and social conscience was amply demonstrated in 1947 when, owing to the congestion in the magistrates’ courts, five lawyers were appointed temporary magistrates by Sir John Verity, the Chief Justice of Nigeria, in an effort to clear the backlog of cases. These were Olajide Alakija, John Taylor, Oladipo Moore, Prince Adeleke Adedoyin and Chief Rotimi Williams. According to the late Mr. Olajide Alakija, whilst he was still busy debating whether to accept the assignment, he discovered that John Taylor had already taken up his appointment in Shagamu. This move involved a measure of self-sacrifice on his part, but the greater need of the country at the time compelled him to accept this temporary appointment.<sup>28</sup>

The rule forbidding retired judicial officers from going back to full private legal practice has been successfully challenged in Ireland.

Mary Carolan<sup>29</sup> reports that:

Retired High Court judge Barry White can return to practice as a criminal defence barrister, the High Court has ruled after finding a Ministerial decision stopping him doing so breached his right to earn a livelihood. Mr White(71), a father of four, argued that he needs to work because his £78,000 annual pension was not ‘adequate’ for his family’s needs but was being unlawfully prevented from doing so by decisions of the Bar Council and Minister for Justice...The judge agreed with a 1988 article by constitutional law expert Dr. Gerald Hogan (now a Court of Appeal Judge) stating that the Bar Council rule was a ‘convention’ or ‘tradition’, not a rule of law. That convention was based on a decision of the chief justice in the 1930 O’Connor case which permitted a former judge resume practice as a solicitor but stated there was ‘good and powerful’ reason why judges, after throwing off their ‘scared office’, should not compete for the ‘feed business of the court’ where they might perhaps challenge their own decisions...The Minister’s refusal to sanction his inclusion on the panel was bad in law, unreasonable and disproportionate and breached his constitutional rights to work and earn a livelihood, he held. While the Minister argued that Mr. White could earn a livelihood from work other than his specialist area of criminal aid, the notion that he could re-train himself in his 70s for a new line of work was a ‘theoretical possibility’ but a ‘practical nonsense’.

However, the above decision has generated a lot of differing views. For instance it was reported that:

Being a judge for a few years may now just become part of a barrister’s career path. I wish Barry white well in recommencing his career as a barrister. He fought and won the case that challenged the prohibition of him to practice. However, the principle he

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<sup>28</sup> Akin Ajose-Adeogun, *Mr. Justice J.I.C Taylor, A Passion for Justice and Fair Play* (Lagos Lagos State Ministry of Justice Law Review Series 2005) 43.

<sup>29</sup> Mary Carolan, ‘Retired judge wins case to practice as barrister’ < [www.irishtimes.com/news/crime-and-law](http://www.irishtimes.com/news/crime-and-law)> accessed on 19th May 2017 at 15:21pm.

has established could give rise to concerns in other situations, and there are valid policy reasons why in the future the State should seek commitments from new judges that they will not return to private practice in their own or lower courts after retirement. First, if judges know they can return to private practice after retirement there is nothing to stop them taking early retirement after a short number of years on the bench. Part of the reasons why judges see out their full term is that they know they do not have the option of going back into private practice. As a result of the recent judgment, that has changed. Judges will now be able to retire after five or ten years on the bench in the knowledge that they can re-enter private practice in the courts where they sat. Consequently, people may now opt to become judges not because they want to commit themselves to a full career on the bench but because they wish to improve their employability or earning capacity as a lawyer. Certain lawyers may now calculate that their careers as lawyers will be advanced by spending five years on the bench, in an area where their ambition lies, in the knowledge that their chances of securing work in private practice will be improved after a short number of years as a judge. This would have a very damaging impact on the judiciary as it would facilitate short-term appointments to the bench as a means of improving employability and earning capacity in private practice... If judges plan to return to practice early they will need to start their career planning while in their final years on the bench. Such judges may wish to curry favour with clients or solicitors for whom they would hope to work after their retirement as judges. If judges have one eye on their return to private practice this may impinge upon, or be seen to impinge upon, how they decide cases and treat certain solicitors or clients for whom they are hopeful of working on their return to practice. Fourth, at present judges do not hear cases in which they were in any way involved as a practicing lawyer. Will such a similar prohibition exist for former judges who return to practice and who are asked to become lawyers in cases in which they have decided some preliminary applications? How would a litigant on the other side feel if he saw a judge who had decided some of the preliminary points in that case against him now turn up as one of the lawyers on the opposing side? The perception of judicial impartiality would be seriously corroded by such a development. Consequently, there are dangers in judges returning to private practice in courts where they sat. Since people are now very active and alert in their 70s it may be worthwhile looking again at the retirement age of superior court judges so that they could remain as judges beyond the age of 70. Previously it was 72.

Thirdly, provision could be made for part time judicial officers. 'It must be remembered that England used and still uses to some extent the Recorder as a part time judicial officer and so the roles of barrister and judge may be played by one person, though not at the same time but certainly throughout the same year'<sup>30</sup> An example of this in Nigeria is that of practicing lawyers that preside over Rent Tribunals on part time basis in some states of the Federation.

## 5. Conclusion

Conclusively, despite the differing opinions expressed and quoted in this paper, one still finds it difficult to agree to the barring of former judicial officers from returning to full legal practice at least in Nigeria. This is because whatever may be the reason(s) for preventing them from doing so, applies with equal force to former Magistrates, Area, Shariah and Customary Courts' Judges. Yet, they are free to return

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<sup>30</sup> Dame Roma Mitchell (n 4) 6

to full legal practice after their years of service. It may also help the cause of this paper, if it is remembered that the pension rights of judicial officers is subject to the number of years they served in that capacity before they left or had to leave.<sup>31</sup> Although it has been said that ‘the fact that non – contributory pensions are paid to judges upon retirement after a stated number of years of service seems to provide a good reason for discouraging judges from returning to the Bar as it would not add to the prestige of the profession if it became common for a judge to serve ten years (which is the statutory time after which some judges receive pensions) then retire and resume a lucrative practice at the Bar.’<sup>32</sup> A review of the extant position of the law in regard to the theme of this paper would in our opinion enhance the administration of justice in Nigeria. For, the court in which justice is administered is a temple and ‘the advocate at the Bar, as well as the Judge upon the Bench are equally ministers in that Temple. The object of all equally should be the attainment of justice, slow and laborious and perplexed and doubtful in its issue the pursuit often proves but we are all Judges, Advocates and Attorneys together concerned in this search for truth. The pursuit is a noble one, and those are honoured who are instruments engaged in it.’<sup>33</sup>

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<sup>31</sup> Constitution of the Federal Republic of Nigeria 1999 s 291

<sup>32</sup> Dame Roma Mitchell (n 4) 8

<sup>33</sup> Per Crapton J in *R v O’Connell* (1844) 7 IRLR 261 at 312-313