

# LEGAL ISSUE BRIEF

---

Issue 1, No. 1, June 2019

## **Controversies Surrounding the Jurisdiction of Code of Conduct Tribunal (CCT) and National Judicial Council (NJC) on Discipline of Judicial Officers.**

**Usman Ibrahim, LL.B, LLM, BL**  
**Legislative Support Service Department**

### **Introduction**

This article discusses the jurisdictions of Code of Conduct Tribunal (CCT) and National Judicial Council (NJC) in the discipline of a judicial officers who contravenes the 5th schedule to the Constitution of the Federal Republic of Nigeria (FRN) 1999 as amended. Specifically, because of the debate on the competence of the CCT on trial of the suspended CJN, attention was paid on the powers of the NJC and CCT on criminal matters that relates to contravention of Code of Conduct. cursory study of the Constitution of the FRN and the decisions of the Court of Appeal and indeed the Supreme Court, shows that there is no ambiguity between the powers of the CCB and CCT as well as that of NJC in the discipline of judicial officers who contravene Code of Conduct of the FRN. While the powers of the NJC is limited to the discipline of Judicial Officers in the matters that are not criminal, the CCT enjoys exclusive jurisdiction to discipline not only judicial officers but all the public officers that contravenes the Code of Conduct of the FRN.

### **Background to Justice Walter Onnoghen CCT Trial and Conviction**

Justice Walter Onnoghen's trials started when a petition was filed by Anti-Corruption and Research-Based Data Initiative (ARDI) (a civil rights group) at the Code of Conduct Bureau (CCB) dated 11/01/19 alleging that Justice Walter Onnoghen owns, sundry accounts primarily funded through cash deposits made by himself up to 10<sup>th</sup> August 2016. The deposits appear to have been run in a manner inconsistent with financial transparency and the code of conduct for public officials. The allegations were centered on \$3million lodged in the domiciliary and Naira accounts in the Standard Chartered Bank account No. 870001062650; Euro account No. 93001062686; Pound Sterling A/C No. 285001062679; e-Saver Savings (Naira)

**National Institute for Legislative and Democratic Studies  
National Assembly**

Account No. 5001062693; and a Naira A/C No. 010001062667<sup>1</sup>.

Justice Onnoghen made five cash deposits of \$10,000 each on March 8, 2011 into Standard Chartered Bank Account 1062650; two separate cash deposits of \$5000 each and four deposits of \$10,000 each on June 7, 2011. Five similar cash deposits of \$10,000 followed on June 27, 2011, and another four deposits of \$10,000 each the following day. Onnoghen, according to the petition, failed to declare his assets immediately after taking office, contrary to section 15 (1) of Code of Conduct Bureau and Tribunal Act; and that he did not comply with the constitutional requirement for public servants to declare their assets after every four years during their career<sup>2</sup>.

The scenario moved in quick succession with the Federal Government filing a six-count charge against him for alleged failure to declare some of his assets. The charge sheet was dated January 10 and was filed on January 11<sup>3</sup>. The trial commenced January 14, 2019 at CCT. The accused person, initially, refused to appear before the CCT, relying on the preliminary objection filed at the CCT, until when CCT issued a bench warrant against him.

Within the periods of the refusal of the accused person to appear before the CCT, President of the Federal Republic of Nigeria,

Alhaji Muhammadu Buhari on 26<sup>th</sup> January, in a nationwide broadcast, suspended Justice Onnoghen from office and appointed Justice Tanko Ibrahim, being the most senior Justice of the Supreme Court, as acting Chief Justice of Nigeria<sup>4</sup>. The office of Justice Onnoghen was thereafter sealed by the police<sup>5</sup>.

The suspension and the trial of Justice Walter Onnoghen at CCT caused a lot of uproar from political stakeholders, lawyers<sup>6</sup> and even gained international prominence from International bodies.

On the basis of the above, controversies arose from many public analysts and members of legal profession on whether the CCT has jurisdiction for trial of judicial officers, including the CJN. They further argued that it is only the NJC that is competent to discipline Judicial Officers including the allegations against the suspended CJN.

In an attempt to stop the CCT from the trial of the former CJN, the Counsel to the Defendants rushed to the National Industrial Court of Nigeria and Federal High Court, where they obtained orders stopping the CCT from the trial of the CJN. However, the CCT set aside subsisting orders of a Federal High Court and the National Industrial Court (NIC) restraining it from proceeding with the case between the Federal Government of Nigeria (FGN) and the former CJN over

---

<sup>1</sup> <https://oak.tv/newstrack/onnoghens-trouble-started/> accessed on 2/3/2019

<sup>2</sup> Ibid.

<sup>3</sup> Note 1.

<sup>4</sup> "President Buhari suspended embattled Chief Justice of Nigeria". Oak TV Newstrack. 26 January 2019. Retrieved 29 January 2019.

<sup>5</sup> "Breaking: Police seals Onnoghen's Office". Oak TV Newstrack. 28 January 2019. Retrieved 29 January 2019.

<sup>6</sup> Breaking: Protest at NBA Secretariat over Onnoghen, Tanko Mohammed". Oak TV Newstrack. 28 January 2019. Retrieved 29 January 2019

fraudulent declaration of assets<sup>7</sup>. The three-member panel chaired by Justice Danladi Umar ruled that the order issued by the two courts directing the tribunal to discontinue the case are not binding on the tribunal. It declared the orders null and void. Danladi held that the tribunal was established by the constitution and could not be stopped by orders of the two courts<sup>8</sup>.

The CCT on Thursday 18<sup>th</sup> day of April 2019 delivered its Judgment against the Defendant and ordered the forfeiture of five bank accounts belonging to the Defendant, after finding him guilty of false asset declaration. The CCT announced the forfeiture as part of other punishments it imposed on Defendant. In a ruling delivered by the Chairman of CCT, Danladi Umar, the CCT said the submissions of Mr Onnoghen that he forgot to include some details of his asset in his form was enough evidence to convict him of the charge against him<sup>9</sup>.

Against this background, this brief has formulated one basic issue for determination which is ‘whether the jurisdiction of CCT ranks before the NJC when there is violation of the Code of Conduct by a Judicial Officer? On the basis of the above, this brief examines:

- a) Constitutional provisions regarding CCT and on who does the provisions applies to?

- b) Whether the CJN is a public officer?
- c) Disciplinary powers of NJC and CCB.
- d) In the event of violation of Code of Conduct by CJN between CCB/CCT and NJC which one ranks first?

***What are the Constitutional provisions regarding CCT and on who does the provisions applies to?***

Section 172 of the Constitution<sup>10</sup> provides that, “A person in the public service of the Federation shall observe and conform to the Code of Conduct”.

The constitution provides amongst others, subject to the provisions of the Constitution, every public officer shall within three months after the coming into force of this Code of Conduct or immediately after taking office and thereafter -(a) at the end of every four years; and (b) at the end of his term of office, submit to the Code of Conduct Bureau a written declaration of all his properties, assets, and liabilities and those of his

<sup>7</sup> <http://saharareporters.com/2019/01/22/breaking-cct-rejects-nic-high-court-orders-decides-continue-onnoghens-trial> accessed on 22/01/2019.

<sup>8</sup> Ibid

<sup>9</sup>

<https://www.premiumtimesng.com/news/headlines>

</326014-updated-cct-convicts-former-cjn-onnoghen.html> accessed on 18/04/19

<sup>10</sup> Constitution of the Federal Republic of Nigeria 1999 as amended. See also Section 3 of the Code of Conduct Bureau and Tribunal Act Cap C15 LFN 2004 which provides for the functions of the CCB and Section 23 which provides for the powers of the CCT.

unmarried children under the age of eighteen years<sup>11</sup>.

Any statement in such declaration that is found to be false by any authority or person authorized in that behalf to verify it shall be deemed to be a breach of this Code. Any property or assets acquired by a public officer after any declaration required under this Constitution and which is not fairly attributable to income, gift, or loan approved by this Code shall be deemed to have been acquired in breach of this Code unless the contrary is proved<sup>12</sup>.

Any allegation that a public officer has committed a breach or has not complied with the provisions of this Code shall be made to the Code of Conduct Bureau. A public officer who does any act prohibited by this Code through a nominee, trustee, or other agent shall be deemed ipso facto to have committed a breach of this Code.<sup>13</sup>

Having examined the provisions that dealt with CCB, the brief now examines the jurisdiction of the CCT under the fifth schedule to the Constitution.

Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of the Code it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of paragraph 18 and such other punishment as may be prescribed by an Act of National Assembly. The punishment which the Code of Conduct Tribunal may impose shall

include - (a) vacation of office or seat in any legislative house, as the case may be; (b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.<sup>14</sup>

Paragraph 12 Part I of the 5th schedule of the Constitution<sup>15</sup> provides:

Any allegation that a public officer has committed a breach of or has not complied with the provisions of this Code shall be made to the Code of Conduct Bureau

The Supreme Court, has interpreted the word “shall” to mean mandatory. For instance, in the case of *Bamaiyi v. A-G, Federation & Ors*<sup>16</sup>. The word “shall” in statutory interpretation generally connotes a mandatory order or command. Karibi-Whyte, clearly expressed the meaning of the word “shall” as connoting a “command ... which must be given a compulsory meaning”. He added that, “It has a peremptory meaning which is generally imperative and mandatory. It has the significance of excluding the idea of discretion to impose a duty”.

#### ***Whether the CJN is a public officer?***

The next question for examination is whether the CJN is a public officer? To answer this question, reference is made to the Constitution of the Federal Republic of

---

<sup>11</sup> Part 1, Fifth Schedule, section 11 of the Constitution of the Federal Republic of Nigeria 1999, as amended.

<sup>12</sup> Note 8, sub-paragraph (2).

<sup>13</sup> *ibid*, paragraphs 12-13

<sup>14</sup> *ibid*, paragraph 18.

<sup>15</sup> *ibid*

<sup>16</sup> (2001) 7 NSCQR. 598, 617

Nigeria. Public officer<sup>17</sup> for the purpose of the Code of Conduct includes: Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law.

### ***Disciplinary powers of NJC and CCT/CCB***

In discussing disciplinary powers of NJC and CCT/CCB; attention is paid to the disciplinary powers of the NJC having discussed the powers and jurisdiction of CCB and CCT under the fifth schedule to the Constitution. Third Schedule, Section 21 Paragraph I, to the Constitution of the Federal Republic of Nigeria which dealt with the powers of the National Judicial Council provides that:

The NJC shall have power to amongst others:

1. Recommend to the President the removal from office of the judicial officers specified in third schedule to the CFRN sub-paragraph (a) and to exercise disciplinary control over such officers.
2. Recommend to the Governors the removal from the office of the judicial officers as specified under the schedule and to exercise disciplinary control over such officers.
3. Appoint, dismiss and exercise disciplinary control over members of staff of the Council.

A cursory study of the above reveals that the powers of the NJC to discipline Judicial Officers does not extend to offences of theft, fraud, murder, manslaughter, arson and the likes. Because they are crimes committed outside the scope of the performance of their official functions. A judicial officer that is alleged to have committed these types of offences, may be arrested, interrogated and prosecuted accordingly by the State directly without recourse to the NJC.

On the other hand, the Constitution of the FRN, specifically the fifth schedule gave CCT exclusive jurisdiction on violation of the Code of Conduct. The exclusive nature of the jurisdiction of CCT on Code of Conduct was affirmed the Supreme Court in *Ahmed & Ors. v. Ahmed & Ors.*<sup>18</sup> With reference to Paragraph 12 of the Fifth Schedule to the CFRN 1999 as altered.

This provision has expressly ousted the powers of regular courts in respect of such violation. To penalize any violations of the Code Conduct, the process shall commenced from CCT, if dissatisfied with the decision of CCT, aggrieved party may appeal to the Court of Appeal and to the Supreme Court, as the case may be. The Constitution gave the CCB powers to receive complaints about non-compliance with or breach of the Code of Conduct and where the Bureau considers it necessary to do so, shall refer such complaints to the Code of Conduct Tribunal.

In *Nganjiwa v. FRN*<sup>19</sup> (CA) the ratio decidendi of this case were captured by the Court itself in the following words:

---

<sup>17</sup> Op Cit. Part II Fifth Schedule to the CFRN paragraph 5

<sup>18</sup> (2013) LPELR 21143 (SC)

<sup>19</sup> (2017) LPELR 43391

It must be expressly stated that if a judicial officer commits theft, fraud, murder or manslaughter, arson and the like, which are crimes committed outside the scope of the performance of his official functions, the Judicial Officer may be arrested, interrogated and prosecuted accordingly by the State directly without recourse to the NJC.

These classes of criminal acts are not envisaged and captured by the provisions of Paragraph 21, Part 1 of the Third Schedule to the CFRN. On the other hand, if any judicial officer commits a professional misconduct within the scope of his duty and is investigated, arrested and subsequently prosecuted by security agents without a formal complaint/report to the NJC, it will be a usurpation of the latter's constitutionally guaranteed powers under section 153 and Third Schedule to the CFRN which dealt with independence of certain bodies.

Failure to declare personal assets as statutorily required is a wrongful act. The wrongful act was and remains a criminal offence for which the apparatus of state must act. The NJC has no role in dealing with that. Those who contend that the Code of Conduct Tribunal's jurisdiction is deferred till after a determination by the NJC.

From the foregoing, it is clear from the provisions of law, there is no controversy regarding the jurisdiction of CCT on trial of Judicial Officers including the CJN that violates Code of Conduct. It is be absurd to interpret the constitutional provisions to mean that their implication is to make recommendation to the NJC a condition

precedent to going to the CCB. On the contrary, this is placing the cart before the horse and a proper interpretation of the constitutional provisions would show that the reverse is the case.

Where a judicial officer has been taken before the CCT, the NJC may proceed, based on the determination of the CCT, to exercise disciplinary control over the erring judicial officer. But where the NJC becomes aware of the allegation against the judicial officer before he is formally arraigned before the CCT, the NJC may proceed against the concerned judicial officer and take required disciplinary measures against the Judicial Officer.

From the above discussion, judicial decisions that purports to give NJC precedence over CCT in the matters of violation of Code of Conduct may lead to miscarriage of justice. For instance in Nganjiwa's case,<sup>20</sup> the powers of the NJC to discipline its staff does not extend to offences of theft, fraud, murder, manslaughter, arson and the likes. Because they are crimes committed outside the scope of the performance of their official functions. A judicial officer that is alleged to have committed these types of offences, may be arrested, interrogated and prosecuted accordingly by the State directly without recourse to the NJC.

### **Conclusion**

From the above analysis of the provisions of the Constitution and the decisions of the Court of Appeal and indeed the Supreme Court. It is clear that there is no ambiguity

---

<sup>20</sup> Supra

**National Institute for Legislative and Democratic Studies  
National Assembly**

between the powers of the CCB and CCT as well as that of NJC in the discipline of Judicial officers. While the powers of the NJC is limited to the discipline of its staff in the matters that are not criminal the CCT

enjoys exclusive jurisdiction to discipline not only judicial officers but all the public officers that contravenes the Code of Conduct.