

Crisis in the Rivers State Judiciary Continues

Since January 2013 the Rivers State Judiciary has been embroiled in one form or another of crisis which till this day has not been resolved. It all started when the former Chief Judge of the state Justice Iche Ndu sent the names of Justice Peter Agumagu, the President of the Customary Court of Appeal and Justice Daisy Okocha as the two most senior judges in the state to the Rivers State Judicial Service Commission for their consideration and recommendation to the National Judicial Council (NJC). The National Judicial Council I must add was created by virtue of Section 153 of the 1999 Constitution in order to insulate the Judiciary from the whims and caprices of the Executive arm of the government. The NJC therefore is vested with enormous powers and functions, paragraph 21(c) of Part 1 of the Third Schedule of the 1999 Constitution of the Federal Republic of Nigeria in particular states that "The National Judicial Council shall recommend to the Governor from among the list of persons submitted to it by the State Judicial Service Commission persons for appointments to the offices of the Chief Judges of High Courts of the States."

The NJC in this instance recommended Justice Okocha for appointment as the Chief Judge of Rivers State. However, Governor Rotimi Amaechi declined the NJC's recommendation and appointed Justice Agumagu as the acting Chief Judge of Rivers State instead. One thing that cannot be ignored is that our laws are riddled with loopholes allowing for manipulation if and when so desired. Interestingly enough the constitution uses the word 'recommend' which literally means suggestion or proposal as to the best course of action. The issue here is does the governor have to accept the NJC's recommendation?

As expected the governor's action sent Rivers judicial system into a state of utter pandemonium. Since then all hell broke loose with cases being filed back and forth against the Attorney-General of Rivers State and the Attorney-General of the Federation, seeking a declaration among others that the appointment of Justice Agumagu as the acting Chief Judge of Rivers State, was unconstitutional, null and void.

Similarly, the Rivers State government along with the State Judicial Service Commission sued the NJC and Justice Okocha, asking the court to nullify the NJC's recommendation of Justice Okocha for appointment as the Chief Judge of the state. Justice Lambo Akanbi of the Federal High Court in Port Harcourt, in his judgment nullified the recommendation of Justice Daisy Okocha as the Chief Judge of Rivers State. Subsequently, Governor Rotimi Amaechi swore in Justice Agumagu as the substantive Chief Judge of Rivers State. Notably, the NJC at its emergency meeting suspended Justice Agumagu and asked him within four days to answer a query for allowing himself to be sworn in as the Chief Judge of Rivers State when he had not been so recommended by the NJC. Thereafter, Justice Agumagu sued the NJC and purported members of the NJC committee at a Federal High Court in Abuja seeking an order to set aside the query and his suspension by the NJC. Following the suspension of Justice Agumagu, the NJC at its 67th meeting directed the most senior judges in the High Court and the Customary Court of Appeal to carry out the duty of assigning cases in their respective courts but the immediate, contrary reactions of the state Judicial Service Commission, pro Amaechi legislators and other judicial workers (unevitably caught in the middle of the political maelstrom) led to the gridlock in the judiciary that endures till date.

Sadly, this impasse between the NJC and the Rivers State Government had a devastating effect on the entire judicial system of the state. The question therefore is where then lies the concept of separation of powers and the independence of the judiciary? Now the chickens have come home to roost and the question of who will swear in the governor-elect Nyesom Wike is now an issue to contend with. So true to type in this country matters of grave importance are left to fester to the detriment of its citizens and a last minute solution is whipped out to avoid a constitutional crisis. For expediency sake it was reported last week that the Attorney-General of the Federation Mohammed Adoke directed the Chief Judge of Bayelsa State to swear-in Nyesom Wike as the Governor of Rivers State. The Attorney-General explained that this will avert a constitutional crisis in Rivers State and that his action was backed by the constitution. He stated that "It will be recalled that Chief Barr:

Nyesom Ezenwo Wike (CON) was declared the Governor-Elect of Rivers State following the Gubernatorial and Houses of Assembly Elections conducted by the Independent National Electoral Commission (INEC) on 11th April 2015. It is therefore expected that he will be sworn into office on 29th May 2015 in accordance with the provisions of section 185(1) of the Constitution of the Federal Republic of Nigeria 1999. It is however pertinent to draw public attention to the existing vacuum in the Office of the Chief Judge of Rivers State as well as the Office of the President of the Customary Court of Appeal, Rivers State, which has made strict compliance with the requirements of Section 185(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, virtually impossible. In order to avert a likely constitutional crisis in Rivers State on 29th May 2015 when the Governor-Elect is expected to be sworn as Governor of Rivers State, I have requested the Chief Judge of Bayelsa State to administer the Oath of Allegiance and Oath of Office on the Governor-Elect of Rivers State in accordance with Section 185(2) of the Constitution of the Federal Republic of Nigeria, 1999, which provides as follows: "The Oath of Allegiance and the Oath of Office shall be administered by the Chief Judge of the State or Grand Khadi of the Sharia Court of Appeal of the State, if any, or President of the Customary Court of Appeal of the State, if any, or the person for the time being respectively appointed to exercise the functions of any of those offices in any State." Adoke further stated that: "The general public, particularly the government and people of Rivers State, are hereby invited to take note of this development and appreciate the fact that the invitation extended to the Chief Judge of Bayelsa State to administer the Oath of Allegiance and Oath of Office on the Governor-Elect of Rivers State on 29th of May 2015 is in accordance with the Constitution and should therefore be respected by all and sundry."

The directive has engendered serious debate among concerned members of the legal profession. Some maintain that the direction is valid as the phrase "or the person for the time being respectively appointed to exercise the functions of any of those offices in any State" stipulated under section 185 (2) gives room for persons occupying similar offices in



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other states of the Federation to administer the oath of office in another state. Others however have described the directive as an affront to the system of federalism because the states are intended to be independent from the centre and inviting the chief judge of one state to swear-in the governor-elect of another state was not contemplated by the drafters of the constitution. In addition some have contended that the office of a chief judge is confined to a jurisdiction so a chief judge from one state cannot perform his functions in another state.

As a panacea to this impasse which will affect the swearing-in of the governor-elect, some have advised that the NJC should lift the suspension of Peter Agumagu to enable him carry-out the functions of the Chief Judge or alternatively, the swearing-in ceremony could be performed by Justice Daisy Okocha who was appointed by the NJC as Administrative Judge in June 2014. Whichever way you slice it this entire Rivers State judicial crisis has been handled disgracefully and has shown a complete disregard for the very Constitution we swear by daily. It needed the swearing in of the governor elect for the powers that be to realise that there are indeed legal issues that have arisen from the Rivers State judicial crisis.

This entire brouhaha boils down to the dire need to amend the Constitution with emphasis on the separation of powers and most importantly ensuring the independence of the Judiciary given the priority it deserves and that we all expect.

