

AN EXPOSITION TO THE 2014 REVISED GUIDELINES FOR THE APPOINTMENT OF JUDICIAL OFFICERS IN NIGERIA: ISSUES AND CHALLENGES

By

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ABSTRACT

The 1999 Constitution is the supreme law in Nigeria. The law has provided mechanism for the appointment of judicial officers that is not exhaustive. The constitution saddled National Judicial Council with the responsibility of recommending credible persons for appointment to the judicial offices. The recommendations are being submitted to the President and the Governor for the appointment of suitable candidates. If the appointment was for heads of court, the Senate and State House of Assembly must ratify the appointment. These steps cannot be taken without aspirants having obtained qualifications stipulated in the constitution. The National Judicial Council in order to have effective mechanism to enable it make informed recommendations issued revised guidelines to complement constitutional provisions for the appointment of the judicial officers. The thesis in this study is that the Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria is not without shortcomings. Part of the guidelines is contrary to the constitution (as amended). The guidelines have procedural lacunae in vital areas in the process for the appointment of the judicial officers in Nigeria. The scope of this paper is limited to the analysis of the revised guidelines, in doing so; the paper has briefly examined constitutional mechanism for the appointment of judicial officers in Nigeria.

1.1 Introduction

The 1999 Constitution (As Amended) has lists judicial offices it regards persons occupying the offices as Judicial Officers.¹ The constitution has prescribes qualifications persons aspiring to become the judicial officers must obtained. The President and Governors are the appointing authorities while legislature is the confirmation institution in the appointment of heads of federal and state courts. The National Judicial Council, Judicial Service Commissions/Committee serves as advising and recommending bodies. There is no detailed procedure in the constitution on how the authorities are to exercise their powers. The National Judicial Council in its attempt to complement constitutional

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¹ Section 318 of the 1999 Constitution (As Amended)., See *Atake v Afejuku* (1994) 9 NWLR (Pt.368) 379

provisions issued the Revised N.J.C Guidelines & Procedural Rules, 2004. The guidelines provide rules Judicial Service Commissions/Committee to use in their advice, nominations or recommendations of suitable candidates as Judicial Officers for the High Courts, Sharia Courts of Appeal and Customary Courts of Appeal. Criticisms followed after the enactment of the guidelines from members of the legal profession. The criticisms led to the National Judicial Council in 2014 to revise the 2004 guidelines by prescribing improved guidelines in the appointment of judicial officers.² The revised guidelines try to fill in the lacunae in the former rules. The new guidelines ended up creating new problems, among which is contravening part of the constitution. This paper in an attempt to explore the topic in this study, is going to define relevant key terms in focus, the paper will consider the meaning of the judicial officer. It is part of the scope of this paper to highlight qualifications for judicial officers and the constitutional processes leading to their appointment. The National Judicial Council's regulatory guidelines will be analysed in doing that, defects in the 2014 revised guidelines will be discussed. The paper will conclude by making suggestions for effective guidelines mechanisms.

1.2 Definition of Terms

To properly appreciate this topic, there is need to define key terms in the study. The meanings of the terms to be considered are: Guidelines, Mechanism, Appointment and Judicial Officers.

Guidelines are information intended to advise people on how something should be done.³ According to Merriam-Webster Dictionary, guideline simply means a rule or instruction that shows or tells how something should be done.⁴

Mechanism has been defined as a routine methods or procedures;⁵ a way of doing something that is planned or part of a system.⁶

Appointment is an act of giving a particular job or position to some one: the act of appointing someone.⁷ Appointment has also been defined as designation of person for a job or duty especially the naming of someone to non-elected public office.⁸

There is no precise definition of the phrase judicial officer, but it is synonymous with the word judge. Judge is a public officer chosen or elected to preside over and to administer the law in a court of justice. A Judge is someone who controls proceedings in a courtroom and decides questions of law or discretion.⁹

² Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria 3rd November, 2014.

³ Cambridge Dictionary, <http://www.dictionary.cambridge.org> (accessed on 25th November, 2016)

⁴ Merriam-Webster Dictionary, <http://www.merriam-webster.com> (accessed on 25th November, 2016)

⁵ <http://www.dictionary.com> (accessed on 25th November, 2016)

⁶ <http://www.dictionary.cambridge.org> (accessed on 25th November, 2016)

⁷ <http://www.merriam-webster.com> (accessed on 25th November, 2016)

⁸ Garner, B.A, "Black's Law Dictionary," 9th edition" (U.S.A. West Publishing Co.,2009): 116; Ngun v. Mobil Producing Nigeria Limited (2013) LPELR (CA) pp 39-40, paras G-A per Tur JCA

⁹ <http://www.legal-dictionary.thefreedictionary.com> (accessed on 26th November, 2016)

1.3 Who are Judicial Officers in Nigeria?

The 1999 Constitution (As Amended) has also not defined the phrase judicial officer. But the constitution has made reference to judicial offices to mean offices of the: Justices of the Supreme Court, Justices of the Court of Appeal, Judges of the Federal High Court, Judges of the National Industrial Court, Judges of the High Court of the Federal Capital Territory, Abuja, Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja, Judges of the High Court of a State, Kadis of the Sharia Court of Appeal of a State and Judges of the Customary Court of Appeal of a State.¹⁰ Judges of other Courts not mentioned in the 1999 Constitution are not regarded as judicial officers. Their appointment is not governed by the constitution.¹¹

1.4.1 Qualifications for the Appointment of Judicial Officers that are Legal Practitioners

Legal practitioners, who aspire to become judicial officers in courts where only legal practitioners are eligible to occupy the offices, must satisfy constitutional requirements. The requirements are that the legal practitioners must have been so qualified to practice in Nigeria for a period of not less than: 15 years for Justices of the Supreme Court, 12 years for Court of Appeal Justices, 10 years for Judges of the High Courts and Judges of the National Industrial Court.¹² Those Legal practitioners need not to have practical experience in active legal practice before applying for the appointment. Thus constitutionally it is possible for a legal practitioner that is not in active legal practice to be appointed judicial officer.

But as for the appointment to the office of Judge of the National Industrial Court, the legal practitioner aspiring for the office, in addition to the 10 years post call qualification, he must have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.¹³

For legal practitioners to be appointed Kadis of the Sharia Courts of Appeal of a State and Federal Capital Territory, Abuja, they must have been so qualified to practice as legal practitioners in Nigeria for a period of not less than 10 years; in addition to that, the legal practitioners must have obtained recognized qualification in Islamic law from an institution acceptable to the National Judicial Council.¹⁴

¹⁰ Section 318 of the Constitution (As Amended); due to third amendment to the Constitution, Judge of National Industrial Court is deemed to be a judicial officer by virtue of sections 316 and 318 of the Constitution (As Amended).

¹¹ Magistrates, Sharia and Customary Court Judges are not Judicial Officers. Even Chairman of Code of Conduct Tribunal is not considered as Judicial Officer despite the fact the judicial tribunal is on the same pedestal with High Courts, Sharia Courts of Appeal and Customary Courts of Appeal. See the Supreme Court's decision in *Saraki v. Federal Republic of Nigeria (2016) LPELR-40013 (SC)*. The Tribunal is a recognized judicial body in paragraph 15 of part I of Fifth Schedule to the Constitution (As Amended) and the Chairman of the Tribunal is mentioned in paragraph 17 of the same part and schedule.

¹² Sections 231, 238, 250, 254B, 256 and 271 of the 1999 Constitution (As Amended)

¹³ Section 254B (3) and (4), *Ibid*

¹⁴ Section 261 (3)(a) and 276 (3)(a), *Ibid*

However, legal practitioners aspiring to become Judges of the Customary Courts of Appeal, like in the case of the Sharia Court of Appeal, before the appointment, they must have also being so qualified to practice as legal practitioners in Nigeria for a period of not less than 10 years; and in the opinion of the National Judicial Council they have considerable knowledge and experience in the practice of Customary law.¹⁵

1.4.2 Qualifications for the Appointment of Judicial Officers that are not Legal Practitioners

The constitution allows appointment of non legal practitioners as Grand Kadis and Kadis of the Sharia Courts of Appeal of a State and the Federal Capital Territory, Abuja. The non lawyers' aspirants must satisfied requirements mentioned in the constitution before they can secure the appointment. The requirements are that they must have attended and obtained a recognized qualification in Islamic law from an institution approved by the National Judicial Council. The qualification must have been held by the aspirants for a period of not less than twelve years¹⁶ or ten years¹⁷. In addition to that, the aspirants must either have considerable experience in the practice of Islamic law or they are distinguished scholars of Islamic law.¹⁸

As for the non legal practitioners' candidates for the offices of the Judges of Customary Courts of Appeal of a State and Federal Capital Territory, Abuja, there is no requirement for them to have formal qualification. They are competent to be appointed to the offices, once in the opinion of the National Judicial Council, they have considerable knowledge and experience in the practice of Customary law.¹⁹

1.5 Constitutional Mechanism for the Appointment of Judicial Officers.

The 1999 Constitution has prescribed the processes to be followed in the appointment of judicial officers. Judicial officers are classified into two: Federal and State Judicial Officers. The processes for the appointment of the judicial officers can be divided into three – appointment of substantive heads of court,²⁰ and Justices of the Supreme Court, appointment of acting heads of court and appointment of other judicial officers.

Heads of Court are judicial officers that are first among equals. They are leaders of the courts, they assigned and transfer cases to judges and panel of judges and justices of the courts they are heading. The substantive heads of the court are appointed by the President (for Federal heads of court²¹) and Governor of a State (with regards to State heads of

¹⁵ Section 266(3)(a) and 281(3)(a), Ibid

¹⁶ Section 261(3)(b), Ibid

¹⁷ See section 276(3)(b), Ibid. The requirement here is for Grand Kadi and Kadi of the Sharia Court of Appeal of a State.

¹⁸ Sections 261 & 276 (3)(b)(i) & (ii), Ibid

¹⁹ Section 266 and 281(3)(b) of the 1999, Ibid

²⁰ They are Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, President of the National Industrial Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Federal Capital Territory, Abuja, President of the Customary Court of Appeal of the Federal Capital Territory, Abuja, Chief Judge a State, Kadi of the Sharia Court of Appeal of a State and President of the Customary Court of Appeal of a State.

²¹ Federal Heads of Court are Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, President of the National Industrial Court, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President of the Customary Court of Appeal of the Federal Capital Territory, Abuja.

court²²). The appointments are made on the recommendation of the National Judicial Council. The appointments must be confirmed by the Senate²³ and the State House of Assembly²⁴ for Federal and State heads of court respectively. The same procedure applies to the appointment of Justices of the Supreme Court. The apex court's justices are appointed by the President on the recommendation of the National Judicial Council with the Senate's confirmation.²⁵

Constitution like nature abhors vacuum. Whenever, the office of the substantive head of any of the federal or state courts is vacant or the person holding the office is for any reason unable to perform the functions of the office, then until the new head has been appointed or the substantive head has resumed office to perform the functions, the President or Governor (as the case may be) shall appoint the most senior Judicial Officer²⁶ of that court to perform functions of the office. The acting head of the court shall hold the office for a period of three months only, except on the recommendation of the National Judicial Council, the President or Governor shall not re-appoint a person whose appointment has lapsed²⁷.

The appointments of other judicial officers are made by the President for federal judicial officers and State Governor with respect to the state judicial officers. It is National Judicial Council that has power to recommend suitable persons to the President and Governor for such appointments. In making the appointments, there is no requirement for legislative confirmation.²⁸

1.6 Regulatory Mechanism for the Appointment of Judicial Officers in Nigeria

The constitution did not prescribe detailed step by step procedure to be followed in making judicial officers' appointment. The National Judicial Council in exercise of its constitutional powers had issued step by step guidelines to be used as mechanism in selection of candidates suitable for recommendation to the executive for the judicial appointment. This has been done to complement the 1999 Constitution (As Amended).²⁹

1.6.1 NJC Guidelines and Procedural Rules, 2003

The guidelines came into operation on 1st January, 2004.³⁰ The guidelines were made to serve as mandatory rules for Federal Judicial Service Commission, State Judicial Service Commission and Judicial Service Committee of the Federal Capital Territory, Abuja in their advice, nominations or recommendations of candidates for appointment as Judicial

²² Chief Judge of High Court of a State, Grand Kadi of the Sharia Court of Appeal of a State and President of the Customary Court of Appeal of a State.

²³ Sections: 233(1), 238(1), 250(1), 254B(1), 261(1), and 266(1) of the 1999 Constitution (As Amended)

²⁴ Sections: 271(1), 276(1) and 281(1), Ibid

²⁵ Section 231(2), Ibid

²⁶ See sections: 231(4), 238(4), 250(4), 254B(5), 256(4), 261(4), 266(4), 271(4), 276(4) and 281(4), Ibid

²⁷ See section 231(5), 238(5), 250(5), 254B(6), 256(5), 261(5), 266(5), 271(5), 276(5) and 281(5), Ibid

²⁸ Sections: 238(2), 250(2), 254B(2), 256(2), 261(2), 266(2), 271(2), 276(2) and 281(2), Ibid

²⁹ See Paragraph 21(a)(i) and (ii), of Part I of Third Schedule to the Constitution, Ibid

³⁰ Rule 1(2) NJC Guidelines, 2003

Officers of the High Courts, Sharia Courts of Appeal and Customary Courts of Appeal under the constitution.³¹

Commencement of the process for the appointment of the judicial officers is by notice given to a State Governor by the Chairman of a State Judicial Service Commission proposing specific number of judicial officers to be appointed. The consent and approval of the Governor must be sought in the issued notice.³² Copy of the notice sent to the Governor is to be forwarded to the Secretary of the National Judicial Council while awaiting Governor's clearance. Immediately the clearance is available, it shall be equally forwarded to the Secretary of the National Judicial Council³³

Upon receipt of the Governor's clearance, the Head of Court concerned shall call for nomination of suitable candidates from every judicial officer within the state and all heads of the superior courts in Nigeria.³⁴ The recommendation or nomination by judicial officer of the aspirant for judicial office must be made based on the fact that the legal practitioner had appeared before him/them or he/they sat on appeal over judgment delivered by the candidate.³⁵

After closing date for the nomination, not less than double number of the judicial officers intended to be appointed should be shortlisted.³⁶ The list of the shortlisted candidates is to be circulated to all serving judicial officers of the State and the Nigerian Bar Association Branches in the State requesting for their comments on the suitability of any of the shortlisted candidates.³⁷ NJC form A which is a Bio-data form shall be forwarded to each of the short listed candidates.³⁸

The list of the shortlisted candidates shall be brought before the Judicial Service Commission/Committee for consideration.³⁹ The list tabled before the commission/committee must be together with: NJC form A⁴⁰, comments by judicial officers⁴¹, any petition or protest against a shortlisted candidate⁴², detailed Certificate of fitness issued by Government Hospital or Institution⁴³ and full report of facts found about the candidates by the Nigeria's secret security agency known as Department of State Security Services (DSS).⁴⁴

³¹ Rule 1(1)&(3), Ibid

³² Rule 2(1), Ibid

³³ Ibid

³⁴ Rule 3(1)(i) &(ii), Ibid

³⁵ Rule 3(ii)(b), Ibid

³⁶ Rule 3(2), Ibid. In short listing the candidates, head of court shall as much as possible take into consideration professional expertise, seniority at the Bar, Federal Character or geographical spread where necessary and possible devoid of considering issues that may affect independence of the judiciary.

³⁷ Rule 3(3)(a)&(b), Ibid

³⁸ Rule 4(1), Ibid

³⁹ Rule 4(2), Ibid

⁴⁰ Rule 4(2)(a), Ibid

⁴¹ Rule 4(2)(b), Ibid

⁴² Rule 4(2)(c), Ibid

⁴³ Rule 4(2)(d), Ibid

⁴⁴ Rule 4(2)(e), Ibid

In considering the shortlisted candidates for the selection, Judicial Service Commission shall consider good character and reputation of candidates. Sound knowledge of law and successful practice at the bar (within the private or public bar) shall also be considered.⁴⁵ Candidate shall be disqualified if he has been found to have involved in canvassing or lobbying for the appointment directly or indirectly.⁴⁶ Candidate with bad behavior whether in court or outside should be disqualified⁴⁷. Impecunious candidate shall also not be nominated⁴⁸. Candidate with very limited exposure to practice at the bar and conduct of cases in the High Court shall be disqualified.⁴⁹

Decision taken by Judicial Service Commission in nomination and recommendation of candidates shall be authenticated by an adopted minutes of the commission's meeting signed by the Chairman and Secretary. The Chairman of the Judicial Service Commission shall submit the request for National Judicial Council's recommendation by a memorandum concluding with a clear statement that NJC Rules have been complied with fully.⁵⁰ The memorandum must contain justification for the proposed number of judicial officers sought to be appointed. The memorandum must be accompanied: by minutes of the commission where the issue of the appointment of judicial officer was deliberated⁵¹; all documents placed before the commission as required by Rule 4(2) in respect of the nominated candidates⁵²; proof of the prescribed establishment by legislation for the particular court⁵³; proof of adequate capital vote provision in the current approved budget for the Superior Court⁵⁴ and practical proof of the availability of accommodation, Court Hall, Residence, Car and Library among others.⁵⁵

1.6.2 Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria, 2014⁵⁶

There were criticisms against NJC Guidelines, 2004 for lack of transparency and equality in consideration for nomination of candidates from members of the Bar⁵⁷ and by a retired justice of the Supreme Court.⁵⁸ The guidelines lacked concise procedure to be followed by the Federal Judicial Service Commission and Judicial Service Committee of the

⁴⁵ Rule 4(3)(i)(a)&(b), Ibid

⁴⁶ Rule 4(3)(ii)(a), Ibid

⁴⁷ Rule 4(3)(ii)(b), Ibid

⁴⁸ Rule 4(3)(ii)(c), Ibid

⁴⁹ Rule 4(3)(ii)(d), Ibid

⁵⁰ Rule 5(1)&(3), Ibid

⁵¹ Rule 5(3)(i), Ibid

⁵² Rule 5(3)(ii), Ibid

⁵³ Rule 5(3)(iii), Ibid

⁵⁴ Rule 5(3)(iv), Ibid

⁵⁵ Rule 5(3)(v), Ibid

⁵⁶ Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria 3rd November, 2014

⁵⁷ Okoye, A.O "Issues in the membership, powers and autonomy of the National Judicial Council in Nigeria," in A.I. Abikan and A.S. Ishola (ed), *Nigeria Judicial: Contemporary issues in Administration of Justice*. Essay in Honour of Hon. Justice I.A. Salam, Ilorin. Nigeria Bar Association, 2013, 393; Adelanwa Bamigboye, "NJC to Publish guidelines for appointment of Judges." Daily Trust Newspapers, accessed 6 October 2016 <http://www.dailytrust.com.ng>

⁵⁸ Uthman, K. "The Reality and the Myth: How Independent are the JSC in Filling Vacancies", accessed 6 October 2016 <http://www.justice-ng.org>

Federal Capital Territory, Abuja in selecting candidates to the judicial offices.⁵⁹ The new guidelines came into force on 3rd November, 2016.

Procedure for the appointment of judicial officers is initiated⁶⁰ with notice for proposal of the appointment given to the Governor of the State concerned stating the number of the Judicial Officers intended to be appointed.⁶¹ The Head of Federal Court and Chairman of the Judicial Service Committee of the Federal Capital Territory, Abuja who proposes to embark on the process for nomination of candidates to judicial offices, shall give such notice of the process to the Chief Justice of Nigeria stating the number of Judicial Officers they intended to propose for the appointment.⁶² A copy of the notice sent to the Governor or Chief Justice of Nigeria as the case may be, shall be forwarded to the Secretary of the National Judicial Council at the same time as such notice is given to the Governor or Chief Justice of Nigeria.⁶³

The Secretary of the Council shall on receipt of the notice, advise the Chief Justice of Nigeria/Chairman of National Judicial Council the number of judicial officers to be appointed based on budgetary provisions in the Council's budget of the year.⁶⁴ Upon consideration of the advice, the Chief Justice of Nigeria shall notify the appropriate Head of Court or Chairman of the Judicial Service/Committee concerned to proceed with the exercise, or not continue with the process; or the exercise may proceed but with a specified reduction in the number of the proposed Judicial Officers to be appointed.⁶⁵ The decision of the Chief Justice of Nigeria on this issue shall be communicated to the appropriate authority in writing and such decision is final. The Chief Justice of Nigeria has discretion if satisfied to review the decision upon good grounds presented by the Head of Court.⁶⁶

Where the Chief Justice of Nigeria approved the process to proceed in writing, the Judicial Service Commission/Committee concerned shall call for expression of interest from suitable candidates by way of public notice on website of the Judicial Service Commission/Committee. The expression of the interest should also be pasted on the notice boards of the Courts and that of the Nigerian Bar Association's branches⁶⁷. The call for the expression of the interest shall be sent to all other head of Superior Courts of Record in Nigeria and Judicial Officers of the court concerned to nominate suitable candidates for the proposed appointment⁶⁸. The President of the Nigerian Bar Association and Chairman of every branch of the Bar Association in the State concerned should be

⁵⁹ Rule 6 of NJC Guidelines, 2003 provides that Federal Judicial Service Commission in respect of proposed appointment to the Appellate Courts shall, so far as practicable, be guided by these Rules.

⁶⁰ Under the Revised Guidelines and Procedural Rule, 2014

⁶¹ Rule 2(1), Ibid

⁶² Rule 2(2)(a) and (b), Ibid

⁶³ Rule 2(3), Ibid

⁶⁴ Rule 2(4), Ibid

⁶⁵ Ibid

⁶⁶ Rule 2(5), Ibid

⁶⁷ Rule 3(1)(a)(i), Ibid

⁶⁸ Rule 3(1)(a)(ii), Ibid

requested to nominate suitable candidate for the appointments in the federal and state courts respectively. The two leaders of the association are also to bring to the attention of suitable candidates the call for the expression of the interest.⁶⁹

In case for appointment of Judicial Officers of the Court of Appeal and Supreme Court, the Chief Justice of Nigeria and President of the Court of Appeal as the case may be shall write to the Heads of Court, serving Justices of the Court of Appeal, Supreme Court and President of the Nigerian Bar Association asking for nomination of suitable Judicial Officers/Legal Practitioners for appointment as Justices of the two appellate courts.⁷⁰

After close of nomination and receipt of applications, the Chairman of the Judicial Service Commission /Committee, shall make provisional list on the merit of not less than twice of the number of the Judicial Officers intended to be appointed, and circulate same with necessary documents of the candidates and request for comments on any of the shortlisted candidates⁷¹ The provisional list of judicial officers other than head of a court is to be circulated amongst: serving and retired Judicial Officers of the court the appointment is proposed to be made.⁷² In the case of the appointment of a Head of Court, the list is to be circulated amongst all serving and retired Heads of Court of the relevant State or Federal Court, this includes retired Chief Justice of Nigeria and retired President of the Court of Appeal.⁷³ Provisional list of state appointment is to be sent to the Nigerian Bar Association branches in the State concerned; if the appointment is for Federal Court, the list shall only be sent to the President of the Nigerian Bar Association⁷⁴. Last but not the least; the provisional list should be circulated amongst members of the Judicial Service Commission/Committee concerned.⁷⁵ The Chairman of the Commission/Committee shall also place the provisional list before the Commission or Committee for ratification. Once the list is approved with or without modification, it shall become the final list.⁷⁶

The shortlisted candidates shall be given NJC Form A to be completed and returned to the Chairman of the Judicial Service Commission/Committee⁷⁷. The completed form together with all necessary documents shall be tabled before the Commission/Committee for its consideration. The Commission/Committee may make further inquiries from

⁶⁹ Rule 3(1)(a)(iii), Ibid

⁷⁰ Rule 3(1)(b), Ibid

⁷¹ Rule 3(4), Ibid

⁷² Rule 3(4)(i), Ibid

⁷³ Rule 3(4)(ii), Ibid

⁷⁴ Rule 3(4)(iii), Ibid

⁷⁵ Rule 3(4)(iv), Ibid

⁷⁶ Rule 3(5), Ibid; In short listing the Chairman of Judicial Service Commission/Committee shall take into consideration (i) professional competency in case of appointment to Court of Appeal and Supreme Court, i.e quality of judgment and judicial skills of the judge and for members of the bar, evidence of 6 contested cases in the last 5 years; (ii) sound knowledge of law, (iii) seniority at the Bar and or the Bench, (iv) Federal Character or geographical spread and where necessary and possible, without compromising the independence of the judiciary or allowing politics to influence the appointment. See Rule 3(6) Revised NJC Guidelines & Procedural Rules, 2014. In case of appointment of Kadi, the candidate must have knowledge of Arabic language and grammar. See Rule 4(4)(e) Revised NJC Guidelines & Procedural Rules, 2014

⁷⁷ Rule 4(1) & (2), Ibid

reputable sources as to the suitability of the candidate as it deems fit.⁷⁸ Candidate shall not be nominated if he/she is found to have exhibited conduct unbecoming of a person aspiring to become judicial officer or he/she has very limited exposure in practice at the Bar and conduct of cases in the Superior Courts of Record.⁷⁹

The Judicial Service Commission/Committee after completing the processes of short listing and deliberations shall advise or recommend to the National Judicial Council by memorandum candidates suitable for the appointment.⁸⁰ Where a candidate had been previously recommended to the Council, particulars of the previous recommendation shall be included in the documents to be sent to the National Judicial Council.⁸¹ In the case of appointment of a candidate to the office of the Kadi of a Sharia Court of Appeal, such aspirant must have knowledge of Arabic language and grammar.⁸²

In consideration for the appointment, the National Judicial Council will take into cognizance workload of the court and performance of the current judges of the court to arrive at its decision. The decision might either to allow for the appointment, reduce the number of the judicial officers proposed to be appointed or direct that no such advice shall be made until certain period of time.⁸³

Similarly, where the National Judicial Council agreed with the advice sent by the Commission/Committee, the shortlisted candidates would be subjected to interview by the Council to ascertain their suitability and competency.⁸⁴ The mode of the interview is subject to the discretion of the Council.⁸⁵ Candidate who failed the interview shall not be recommended for the appointment.⁸⁶

1.7 Issues and Challenges in the 2014 Guidelines for the Appointment of Judicial Officers in Nigeria.

Defect is defined as a fault or problem in something. While Challenge is something that needs great mental or physical effort in order to be done successfully and therefore tests person's ability.⁸⁷ The guidelines for the appointment of the judicial officers have shortcomings and loopholes that might affect processes for the nomination and recommendation of suitable candidates to be appointed as Judicial Officers. The defects in the Revised Guidelines gives wide latitude (without restraint) to the appropriate authorities saddles with the responsibility of making recommendation to the executive of suitable candidates to occupy judicial offices in Nigeria.

⁷⁸ Rule 4(3) Revised, Ibid

⁷⁹ Rule 4(4)(ii)(a-i), Ibid

⁸⁰ Rule 5(1) and (2), Ibid

⁸¹ Rule 5(3), Ibid

⁸² Rule 4(4)(e), Ibid

⁸³ Rule 5(5), Ibid

⁸⁴ Rule 6(1), Ibid

⁸⁵ Rule 6(2), Ibid

⁸⁶ Rule 6(4), Ibid

⁸⁷ Cambridge Dictionary, accessed 7 October 2016 <http://www.dictionary.cambridge.org>

The guidelines have in some paragraphs contravenes the provisions of the 1999 Constitution (As Amended). Rule one of the guidelines which make it mandatory for the Judicial Service Commissions/Committee to comply with the guidelines is unconstitutional. The rule is inconsistent with the constitutional mandate given to the Commissions/Committee by the constitution. The main power/function of the Commissions/Committee is to advice National Judicial Council suitable persons for nomination as judicial officers. The National Judicial Council may in turn recommend the nominated persons. to the President or the Governor as the case may be based on its judgment for appointment as judicial officers.⁸⁸

National Judicial Council lacks power to issue guidelines on the procedure Judicial Service Commissions/Committee should use in coming up with the advice and nomination to the Council. The Judicial Service Commissions and Committee have exclusive power/ discretion without interference from NJC to use their judgment in nominating candidates. The only thing NJC can do is to wait till when the advice and nomination reaches the Council to either accept or reject it.⁸⁹ Curiously the Extant 2014 guidelines issued by the NJC were couched in such a way to look like they are not binding on the council.

Another flaw with the guidelines is that it gives wide powers to Chief Justice of Nigeria beyond constitutional limit. Based on the guidelines, power to determine number of judicial officers to be appointed is solely at the discretion of the Chief Justice of Nigeria and his decision on the issue is final.⁹⁰ This power is unconstitutional. The constitution gives such power to the Council as a body. In addition to that co-opting Secretary of the National Judicial Council to advice Chief Justice of Nigeria on the number of the judicial officers to be appointed has run foul to the constitution. The Secretary has no jurisdiction to participate in decision making of the council. The main role of the Secretary is to discharge secretariat services and manage the employed staff of the Council.⁹¹

Insertion of knowledge in Arabic language and grammar for candidate of office of the Kadi of a Sharia Court of Appeal is beyond the powers of the council. This provision is akin to the Council amending constitutional provision and put an additional educational qualification.

The guidelines are subtle on the process to be followed in appointment of substantive Heads of Courts. These Judicial officers are first among equals; saddles with the responsibility of initiation of appointment of judicial officers. Absence of clear procedure for the appointment of substantive heads of court in the guidelines is a shortcoming and it

⁸⁸ Paragraphs: 13(a) of part I of Third Schedule; 6(a) of part II of third Schedule and paragraph 2(a) of part III of third Schedule to the 1999 Constitution (As Amended)

⁸⁹ Bamidele Aturu, "Crisis in Rivers State Judiciary and its Feudalistic Traits," <http://www.premiumtimes.com> accessed on 28th November, 2016

⁹⁰ Rule 2 (4) and (5) of the NJC Guidelines, 2014

⁹¹ Paragraph 22 of part I of the third Schedule to the 1999 Constitution (As Amended)

indicates lack of transparency. Although there is tradition of seniority when it comes to substantive head of court's appointment, the tradition is not always followed.⁹²

Furthermore in the guidelines, there is no mechanism the Council is to use to recommend re-appointment of Acting Head of Court whose three months' time-line period expires. This is even more problematic where the council's recommendation for re-appointment of the acting head has been rejected by the President or Governor. Who is to step into the office? This gives Governors room to abuse the process in appointment of acting head of court.⁹³

The guidelines did not provide a guide on the yardstick to apply in assessing suitability of candidates aspiring for the office of Judge of the Customary Court of Appeal. The constitution empowers the Council to use its opinion in arriving at candidates' competency. In Nigeria there are more than 250 languages⁹⁴, it is apparent that members of the National Judicial Council lacks the requisite expertise to determine suitability or otherwise of all persons that are seeking to become judges of the Customary Court of Appeal.

1.7 Conclusion

The 1999 Constitution is lacking exhaustive procedure in the appointment of judges of the superior courts of record in Nigeria. There are procedural loopholes in the constitutional provisions guiding appointment of the judges. The Chief Executive at the Federal and State level's role is to appoint suitable persons submitted to them by the National Judicial Council for appointment as judicial officers. The council's recommendation is rooted in the advice and nomination by the Judicial Service Commissions/Committee. The Senate and State House of Assembly must approve appointment of the heads of federal and state court as first among equals in the midst of judicial officers. The National Judicial Council in order to complement the constitution in the process for appointment issued guidelines in 2004 and 2014. The guidelines have inherent defects. In view of that the following suggestions are hereby proffered:

- i. Rule 1 of the NJC guidelines, 2014 should be amended to make the guidelines binding on the National Judicial Council only and discretionary for Judicial Service Commissions/Committee.
- ii. Rule 2 (4) and (5) of the NJC Guidelines, 2014 should be amended to give the National Judicial Council power as a body not Chief Justice of Nigeria to determine the number of judicial officers to be appointed. The Secretary of the National Judicial Council is to offer information to the Council as a body in determining the number of the judicial officers to be appointed.

⁹² Yerima, F. *Uproar in Buachi over appointment of new Chief Judge* Today Newspaper, accessed 26th November, 2016, <http://www.today.ng>

⁹³ AT Abubakar and K R Anwar, "How Politics keeps Adamawa judiciary in crisis," Daily trust, accessed 28th November, 2016, <http://www.dailytrust.com>

⁹⁴ A A Oba, Islamic Law As Customary Law: The Changing Perspective in Nigeria, *The International and Comparative Law Quarterly*, vol. 51, no. 4, 2002, pp. 817-850.

- iii. Rule 4(4)(c) of the Revised NJC Guidelines & Procedural Rules, 2014 which requires knowledge of Arabic language and grammar for candidate seeking to be Kadi of the Sharia Courts of Appeal be removed. The Council should raise a bill for constitutional amendment for such requirement to be inserted in the constitution.
- iv. There should be clear mechanism for the appointment of acting and substantive heads of court.
- v. The Council should have a mechanism to assist it in determining suitability of persons aspiring to become Judges of the Customary Courts of Appeal. The mechanism should reflect in the guidelines for the appointment of judicial officers.