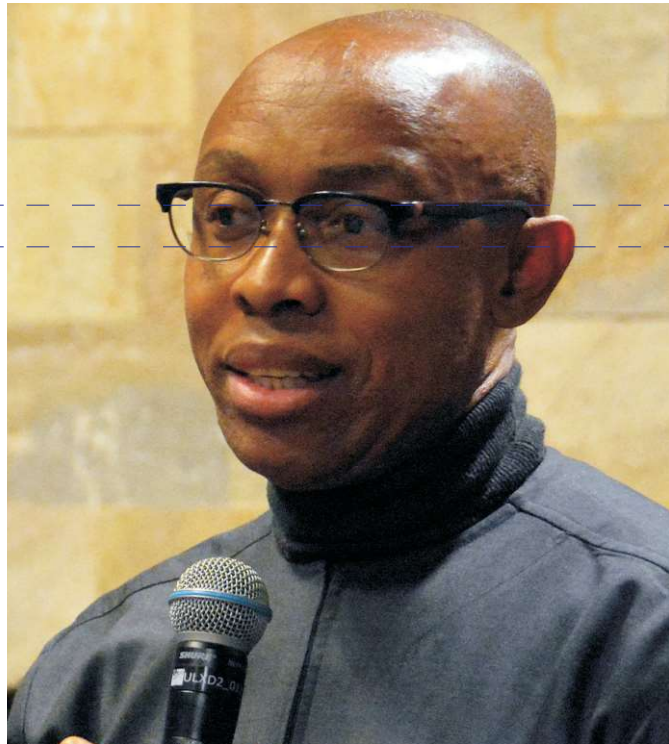


# A Captured Temple of Justice

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By Chidi Anselm Odinkalu

In July 2023, the Chief Justice of Nigeria (CJN) presided over a meeting of the National Judicial Council (NJC) to appoint his own son a judge of the Federal High Court. On 4 October, as his father presided over the swearing in of his own son, it fell to the Old Students Association of Ikolaba Grammar School, which the new judge attended for his secondary education, to defend his appointment with the cringe-inducing statement that "contrary to claims in some quarters, Ariwoola Jr.'s appointment as a judge was not on the influence of his father, who is the CJN." They lacked the standing to say this, of course, because they could not possibly know how he was appointed. In June 2023, the NJC convened to approve the elevation of the President of the Court of Appeal's son-in-law. This individual has previously been appointed as a judge of the National Industrial Court of Nigerian (NICN) a mere six years earlier in 2017. In January 2021, the Governor of Plateau State swore in the wife of this same son-in-law, herself the daughter of the same President of the Court of Appeal, as a judge of the High Court of Plateau State. The following year, the wife of the Judge President of the NICN was similarly appointed a judge of the High Court of the Federal Capital Territory. Her brother, like her husband, was also a member of the NJC. Meanwhile, at the meeting where it approved the son of the CJN for a judgeship, the NJC also approved for appointment to the Federal High Court a nephew of the Chief Judge of Ogun State. What is good for the judges is also good for the politicians. So, as the country headed into the 2019 elections, the then ruling party handed the ticket to represent Bauchi North in the Senate to the husband of the President Court of Appeal, who plays the primary role in election dispute resolution. On his exit from the Senate four years later, this Senator confessed that instead of using



the bedroom to enjoy geriatric connubium, he had converted it into a venue where he habitually "encroached" on his wife's judicial independence for the benefit of his political co-travellers.

Meanwhile, following the retirement of that President of the Court of Appeal, her husband became surplus to requirements and the party promptly re-allocated the ticket in 2023 for his senatorial seat instead to one of the sons of the then CJN. Not to be outdone, another major political party handed a ticket to the House of Representatives to another son of the same CJN.

In 2022, the Governor of Bayelsa State appointed his wife as a judge of the state High Court. He is just one of many senior politicians around Nigeria who keep their own judges in their bedrooms. These examples are just a tip of an iceberg of what has become a pattern of diversion and capture of high judicial office in Nigeria by a mutually sustaining incest of political and judicial insiders, mostly connected through bloodlines, personal favours, or genital relations. More than 63 years after Independence, this group have conspired to erode judicial independence in Nigeria. Law professor, Itsejuwa Sagay, the Senior Advocate of Nigeria (SAN) who also chaired the Presidential Advisory Committee against Corruption (PACAC) in the administration of Muhammadu Buhari, was on firm grounds when he declaimed over three years ago that "sons and daughters of retired and serving judges and justices are being nominated for appointment into sensitive judicial positions at the expense of more qualified candidates without privileged support and backing." One response to this trend is the refrain that propinquity or relationship to a judicial or political insider should not bar qualified persons from judicial office. Yomi

Aliyu, SAN, even goes further to claim that "the judiciary had become a family affair throughout the world, especially common law nations." He could not produce any evidence to back up this unimaginative invention, which is not surprising because there is none. Surely, if judicial temperament and skill were to be hereditary or sexually transmitted as Mr. Aliyu suggests, this tendency in Nigeria should have had some antiquity. But, among Nigeria's first eight indigenous CJNs until after Mohammed Uwais who retired in June 2006, only the first, Adetokunbo Ademola, could count a child of his (Philip Adenekan Ademola) as a judge. Many among their successors since then used their office at the head of the NJC to prefer their own children to high judicial office with no care or concern for conflicts of interest. Indeed, a former CJN preferred two of his own children to the high court bench and another two into positions in the registry of different courts in the country.

The idea that these scions the well-placed are more qualified for judicial office than others does not bear scrutiny. To begin with, the only constitutional requirement for judicial appointment in Nigeria is a minimum number of years of enrolment as a lawyer in Nigeria. There are no prescribed skill, character, or integrity thresholds. The judicial managers of the appointment process skew it deliberately to ensure pre-determined outcomes. This will not be the case if their children, spouses and mistresses (with whom they choose to fill many judicial vacancies) were that competitive. In 2020, for instance, the NJC advertised 15 vacancies for the FCT High Court but nominated 34 persons for appointment, with all the non-advertised nominations going to the children or relatives of judicial insiders. It seemed clear that they were deliberately parsimonious with disclosure of all the vacancies in order to be able to share those in an exclusive bazaar for judicial insiders. This is not the only problem. Femi Falana, SAN, complained last year that "two years ago, a candidate who scored zero in the NJC interview was made a judge." The qualification of that candidate was their relationship to a judicial insider. This is not an exception. A nephew of another senior judicial figure from southern Nigeria who similarly failed the written test was also jumped above other more qualified candidates in a recent round of judicial appointments. The alacrity with which parents and paramours in high judicial or political office in Nigeria suddenly discover these days that the hidden genius of their scions or sleep mates deserve elevation to the highest levels of judicial office tasks every calculus of probability beyond the realm of plausibility. The only explanation for

this pattern is that judicial office is hawked as a transactional token or filial favour, or for genital propinquity. In Nigeria, enabled by politicians in whose favour these offices are procured as inoculation against electoral misadventure, this pattern of abuse of judicial office prospers without credible challenge. Most importantly, this practice of insider dealing in judicial appointments violates the United Nations Basic Principles on the Independence of the Judiciary as well as Judicial Code of Conduct established by the NJC itself. As a rule under the Basic Principles, "any method of judicial selection shall safeguard against judicial appointments for



improper motives." That is what happens when the best qualification of a nominee for judicial office is who they are related to or whom they sleep with. Moreover, Rule 8.3 of the Judicial Code of Conduct contains this explicit prohibition: "a Judge who takes advantage of the judicial office for personal gain or for gain by his or her relative or relation abuses power." It is impossible to not see that a CJN who sits as chair of the NJC to prefer his own child to judicial office violates this stipulation. Yet this has become the rule not the exception. The result is that Nigeria's judiciary now suffers a terminal credibility deficit that endangers civilized dispute resolution to the point of making vigilantism highly profitable. The Council of Foreign Relations validates this causality between "public mistrust of the police and the judicial system" on the one hand and what it calls Nigeria's "epidemic of lawlessness" on the other. **There is no magic bullet out of this mess. But it is essential to return credibility to judicial appointments. That must begin with un-bundling the multiplicity of roles in the office of the CJN and making judicial appointments more transparent and less dependent on his or her whim.**

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