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THE IMPACT OF LEGAL REASONING IN JUDICIAL AND LEGISLATIVE PROCESS: TOWARDS ENHANCING BETTER LAW AND JUDGMENT IN NIGERIA

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Introduction

One vital institution that remains the last hope of common man in the society is the judiciary. The hope imposed on this institution by members of the public is not because judiciary bears such name, but because of its ability to make trained and professional judges apply their potentials and knowledge of law to causes by listening to litigants and the arguments and counter arguments of counsel for the purpose of extracting and determining the truth with a view to passing a verdict with respect to whoever the pendulum tilts. Listening to the submissions of Counsels and Attorneys and examining and passing judgments require special skills and knowledge by judges. This indeed brings us to the idea of having adequate knowledge of legal reasoning in judicial process. How then do judges pass judgment on the basis of the analysis of persuasive arguments advanced by Attorneys' appearing before them? Do they apply the same method in the interpretation of the arguments in order to arrive at their conclusion? What are the prominent terminologies and phrases used in this process? All these and many more will be understood through the knowledge of legal reasoning in judicial process.

The judiciary may virtually have nothing to interpret in the course of dispute and prosecution warranting judicial reasoning if the legislature does not make law for the nation. What determines their approach and reasoning in enacting and putting legislation into practice will indeed be the focus of this chapter. This includes the rudimentary and regimented knowledge of their reasoning in legislation.

Legal Reasoning in Judicial Process

One vital area where the knowledge of legal reasoning is applied and appreciated is in judicial process. Judicial process here simply entails the role of the court in interpreting the provisions of the law. Judges do apply the knowledge of reasoning in this process to arrive at

conclusions which might sometimes seem vague or wrong to the laymen. In this regard, the judges apply any of the following rules of the interpretation:

i. Literal rule of interpretation;
ii. Golden rule of interpretation;
iii. Mischief rule of interpretation; and
iv. Ejusdem generic rule.

Literal Rule of Interpretation

When judges interpret according to the ordinary meaning of the legislature from the words that are used in the statute, then they are said to apply literal rule of interpretation. In Onah v. Otenda, the Court of Appeal held that if the words of a statute are precise and unambiguous, then, then it is necessary to expound those words in their natural and ordinary sense[1]. A judge will not usually depart from this approach except there is compelling reasons to do so. The reasons here include hardship or inconvenience.

Golden Rule of Interpretation

When judges apply and interpret the statutes according to their ordinary meaning and the intention of the legislature will not be achieved, the judge will prefer to apply the golden rule of interpretation by varying or modifying the language of the statute to avoid manifest absurdity. In Becke v. Smith,[2] parked, B, remarked thus:

> It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute, or leads to any manifest absurdity or repugnancies, in which case the language may be varied or modified so as to avoid inconvenience, but no further[3].

Mischief Rule of Interpretation

When a statute is made with the intention of preventing some mischief in the society, then it is necessary

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[1] (2000) 5 NWLR (pt. 656) 244) CA. See also Awolowo v. Alhaji Shehu Shagari (1979) NSCC 87, Sussex Peerage Case (1844) II CC

[2] (1836) 150 ER 724.

[3] See also Attorney General Ondo State v. Attorney General Ekiti State (2000) 2 SCN QR 990, Rabiu v. the State (1981) 2 NCCR 293 at 326.

that judges when interpreting such statute apply the mischief rule rather than literal or golden rule. Thus, the mischief rule is often referred to as the rule in Heydon's case because it was developed in that case.[4] In this rule, judges often consider the historical backgrounds and information necessitating the promulgation of the particular statute to be interpreted. The courts observe four basic elements when applying the mischief rule:

i. What was the common law before the making of the Act or Statute;
ii. What was the mischief and defect for which the common law did not provide;
iii. What remedy hath parliament resolved and appointed to cure the defect of the common law;
iv. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress *** subtle inventions and evasions for continuance of the mischief, and to add force and life to the cure and remedy, according to the true intent of the maker of the Act.

The Nigerian Courts do apply this rule in the cause of their judicial legal reasoning where circumstances warrant. For example, in IBWA Ltd.[5] v. Imano Nigeria Ltd., the Supreme Court held that the court's duty is always to make such construction that will suppress the mischief and advance the remedy, but this will only arise if there is latent ambiguity in the words used in the statutory provision, otherwise it is the literal rule the first and most elementary rule of construction that will apply[6].

In Ogbonna v. Attorney General Imo State,[7] the Supreme Court reinstated the application of mischief rule in the following terms:

> The historical setting and the antecedent of an enactment may in case of difficulty be an aid to its interpretation. Under this rule the interpretation can bear in mind the historical antecedent to an enactment and the mischief which it set out to combat, these matters can be an aid to the construction of the words of the enactment and therefore, an interpreter cannot

[4] (1584) 76 ER 638.
[5] (1988) 3 NWLR 633.
[6] See also Ifezue v. Mbadugha (1984) 1 SCNL R 429, Emelogu v. the State (1988) 2 NWLR 524.
[7] (1992) 1 NWLR (pt. 220) pp. 655 – 656.

> encroach upon the legislative function by extending the scope of our content of the enactment …

Ejusdem Generis Rule

Ejusdem generis rule of interpretation is applied by judges in the course of judicial reasoning if there are specific words followed by general words. In this approach, the general words are interpreted to have the same meaning with the specific words. Therefore, ejusdem rule will not be applied where the specific word is not connected with general words.

In Nasir v. Bouari,[8] the court in determining the question whether premises used partly as living accommodation and partly as a night club fell within the definitions of premises used for the purpose of similar things to living or sleeping and not night clubs****. While in Palmer v. Snow,[9] the court while interpreting the "Sunday Observance Act" 1677 prohibiting the doing of certain works on Sunday by … listing the categories of people thus … tradesmen, artificers, workmen, labourers or other persons whatsoever" held that other persons whatsoever was limited to persons of the same genus as those expressly mentioned and could not include farmers and barbers[10].

Terminology and Phrase in Judicial Reasoning

Judges/lawyers while applying the knowledge of law in legal reasoning have their own language used just like engineers and doctors have their languages. Much of the confusion in legal reasoning result from the use of legal technologies that have multiple or even indefinite meanings. This syndrome resulted in courts using terms unconsciously even in the same paragraph.[11]

The legal profession is associated with many terminologies and phrases used in the course of legal reasoning. The phases may seem vague and verbose to laymen but however to lawyers these phrases and languages are quite normal and are made in good faith for the

[8] (1969) 1 All NLR 37.
[9] (1900) 1 QB 715.
[10] See also Jammal Steel Structures Ltd. v. ACB Ltd. (1973) 2 SC 72, Bronik Motors Ltd. v. WEMA Bank Ltd. (1983) 1 SCNR 296.
[11] Christie, C,G. Text and Readings on the Philosophy of Law. American Case Book. West Publishing Co. p. 789.

enhancement of understanding. The terminologies and phrases used in judicial legal reasoning; includes: ratiodecidendi, obiterdictum, perincuriam, resjudicata, subjudice.

Ratio Decidendi

One language relied upon in judicial legal reasoning is ratio decidendi. This simply means … any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion having regard to the line of reasoning adopted by him or a necessary part of his direction to the jury[12]. In other words ratio decidendi is the principle of rule of law on which a court's decision is founded and it can also mean the rule of law on which a later court thinks that a previous court founded its decision.

The above definitions suggest that it is difficult to have a clear-cut definition of ratio decidendi. However, two important extracts can be made from the above definitions of ratio decidendi;

First, it is the rule that the judge who decided the case intended to lay down and apply to the facts or the rule that a later court concedes him to have had the power to lay down. To this extent, ratio decidendi is a mixture of the legal principle on which a case was decided and a summary of the facts. The principle of the case in this sense is found by taking account of facts treated by the judge as materials and his decision as based on them. Second, in the determination of the principle of ratio decidendi, it is necessary to establish what facts were held to be immaterial by the judges for the principle may depend as much on exclusion as it does on inclusion[13]. In Gambari v. Gambari,[14] the Court of Appeal while reinstating the position of ratio decidendi of the case held that the finding of a judge wherein he decided the boundary, scope and possessory rights of the parties to the suit bind the parties and their privies and will be relied on at any subsequent occasion that the land is disputed by the same parties and their privies.

[12] Cross, Precedent in English Law (1968) p. 76.
[13] Goodhart, A.C. Essays in Jurisprudence and the Common Law. Pp. 25 – 26.
[14] (1990) 5 NWLR (pt. 152).

Also in Abu v. Adegbo,[15] the Supreme Court held that for the judgment of the superior court to be binding, the facts and issues pronounced upon must be on all fours with the case under consideration by the lower court.

Where there is more than one principle, and the court relied on many legal principles in arriving at its decision, each legal principle constitutes a ratio decidendi; and where there has been a dissenting judgment, it is the majority and not minority judgment that forms the decision and hence the ratio decidendi of the court that must be followed[16]. In Agedah v. Nkwocha,[17] the Court of Appeal disapproved of the trial court's majority decision to form the ratio decidendi, but followed the minority opinion in a Supreme Court case.

Obiter Dictum

It is pertinent to note that in the exercise of judicial legal reasoning, judges do make statements which in itself do not form part of the judgment, this indeed constitutes the obiter. Obiter is Latin word meaning "by the way or in passing". Therefore, obiter dictum simply means judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential, although it may be considered persuasive. Obiter dictum is strictly speaking a remark made or opinion expressed by a judge in his decision upon a cause, "by the way – that is incidentally or collaterally and not directly upon the question before the court. It is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy or suggestion. In speech of lawyers all legal opinions are referred to as obiter dictum[18].

It is therefore necessary to note that while ratio decidendi relates to principles and material facts relied upon which is binding, obiter dictum cannot arise except in the course of judicial reasoning while laying down the ratio decidendi, though, it may not be necessary to the decision.

[15] (2001) 41 WRN 1, see also National Electric Power Authority v. Onuh (1991) 1 NWLR (680) 688.
[16] Clement v. Imuanyanwu (1989) 3 NWCR 30 SC.
[17] (2001) WRN 100
[18] William, M.C. Brief Making and the Use of LawBooks. Third Edition, (1914) p. 304.

In Bamgboye v. University of Ilorin,[19] the Court of Appeal held that in the judgment of a court, the legal principles formulated by the court which are necessary to decide the issue in the pleadings or the grounds of appeal and the issue arising thereon, to witness the binding part of the decision is its ratio decidendi, the remainder is obiter dicta which is not necessary to the decision.

The above illustrate that ratio decidendi and obiter dictum are not same; in fact, the two are regarded as opposites. The Supreme Court of Nigeria distinguished the two in the case of A.L.C. v. N.N.P.C.[20] by stating that ratio decidendi of a case represents the reasoning or principle or grounds upon which a case is decided while the obiter dictum reflects, inter alia, the opinion of the judge which does not embody the resolution of the court. In other words, the expression of a court in a judgment must be taken in reference to the facts of the case which the court is deciding, the issues calling for decision and answers to those issues. In effect, the manner in which the court chooses to argue the case is not at all important, rather, it is the principle the court is deciding. In the instant case, the sole issue identified by the Court of Appeal for determination in the first appeal between the parties was whether the appellants' suit was barred by the doctrine of res judicata. It decided the issue negatively and allowed the appeal. The ratio decidendi of that case which is therefore binding is based on res judicata. The other remarks the Court of Appeal proceeded to the issue of res judicata was merely obiter dictum which is not binding because the issue of the propriety of joining the respondents as 2nd defendant was not specifically raised before the Court of Appeal in that appeal[21].

It must be noted that obiter dictum in judicial legal reasoning is not binding but persuasive. Nevertheless, a lower court would be well advised to take it very seriously. In Buhari v. Obasanjo,[22] the Supreme Court while commenting on the strength of obiter dictum said: "No

[19] (1991) NWLR (pt. 207) p.1.
[20] (2005) 1 NWLR (pt. 937) at 572
[21] See also Alhaji Baba v. Shehu (1986) SC 332 at 373 where Obiter Dictum was discernible into two, namely; statement of fact based on facts which were not found in existence to exist and statement of facts found to exist but not material to the case.
[22] (No. 3) (2004) 1 WRN 1.

lower court may treat an obiter dictum of the Supreme Court with careless, abandon or disrespect but the Supreme Court ignores it, if it does not firm up or strengthens the real issue in controversy"

While per Niki Tobi JCA (as he then was) said with respect to usefulness of obiter dictum that: "Let the judges be allowed to express their minds in such instances such pronouncements at times embellish the law court that is good let them not be castigated in such instances."

The above reinstatement of the strengths and usefulness of obiter dictum might not be unconnected to its species with varying degrees of authority. Where for example, the dicta are clearly irrelevant to the case in which they occurred they are sometimes called mere gratis dicta. Where they relate to collateral issue in the case they are sometimes said to be judicial dicta. Where the case is heard on appeal, particularly the highest court of the land, the court sometimes in order to settle the state of law in a particular field asks counsel to address them on the law and then makes general statements about the law, these are regarded as a superior species of obiter dictum and are likely to be followed in the High Court[23].

However, care must be taken that while giving strength and weight to a particular obiter dictum, the following seven factors are relevant: the rank of the court, the prestige of the judge, whether it was a considered judgment, the date of decision; whether there were different ratios for the same decision, whether action was opposed or the point argued by the counsel; and the reliability of the reporter[24].

Per Incuriam

Judges are not supernatural human beings that cannot behave as human beings, although learned, they still exhibit some human feelings such as mistake, carelessness, negligence, error of judgment, misdirection etc. These and others can lead them to arrive at a wrong judgment. Where

[23] Farrar J.H. & Dugdale A.M. Introduction to Legal Method. Op cit. P. 96. See also Bole v. Horton (1673), W.B. Anderson & Sons Ltd. v. Rhode (1967) 2 ALL ER 850.

[24] Philips, O.H. A First Book of English Law. Sixth Edition, Sweet & Maxwell (1970) Pp. 194 – 5.

this tendency occurs, the judgment is referred to as per incuriam.

Incuria is a Latin word meaning ‘‘carelessness’’ and decisions through legal reasoning made carelessly are often described as per incuriam. This type of decision is reached where the judge in the process of his legal reasoning failed or neglected to address his mind to a relevant rule of law, binding precedent or an operative statute that has an impact on his judgment.

Where this failure occurs, it is assumed that the court acted in ignorance or forgetfulness of such binding authority, and in that regard, the decision is described as given per incuriam.[25]Notice must however be taken that where a decision was reached per incuriam by Superior Court and Court of Appeal, such decision is still binding on the lower court, until set aside. In Attorney-General of Ogun State v. Egenti,[26] an attempt to depart from the decision of Supreme Court by a lower court on the basis of having been reached per incuriam attracted a lot of criticism and displeasure of the Court of Appeal. A similar approach was adopted by Supreme Court of Nigeria in Cardoso v. Daniel,[27] where the court expressed the opinion of being jealous of the principle of stare decisis, and would not lightly tolerate any interference with its judgment quoting Lord Hailsham L.C. in Cassel v. Broome[28]‘‘… that a lower court is not even entitled to question the opinion of a court in the upper tiers’’.

The same principle applies in High Court decision reached per incuriam to lower courts in Board of Customs and Excise v. Bolarinwa,[29] Thomson J. stated thus:

> A magistrate is bound by a High Court decision and has no discretion as to whether or not if the High Court decision is wrong, the magistrate is still bound with it as not within its jurisdiction to condemn a decision of the High Court. If he has any doubt, he may express it but only as an obiter dictum.

However, the Supreme Court and Court of Appeal can overrule their earlier decision reached per incuriam. In Ngwo v. Monye,[30] it was stated that only the Supreme Court

[25]Ngwo v. Monye (1970) All NLR 92.
[26] (1986) 3 NWLR 256
[27] (1986) 2 NWLR 1 at 23
[28] (1992) 2 WLR 645 at 653
[29] (1973) 1 NMLR 179
[30] (1970) All NLR 91

is entitled not to follow its previous decision that was reached per incuriam. With respect to Court of Appeal, it is generally believed that the court is still governed by the rules as laid down in the case of Young v. Bristol Aeroplane Co. Ltd.[31] at least in civil case. By this, the court may depart from its previous decision if reached per incarium.

Though, the inferior courts are bound to apply decisions of superior courts reached per incarium, and cannot overrule it, it seems going by the Court of Appeal decision in Warner and Warner International Associates (Nig) Ltd. v. Federal Housing Authority[32], the Court of Appeal saw nothing wrong in an inferior court highlighting and making appropriate observations or aspects of a decision of a Superior Court, though compelled by circumstance to adopt it. This is with a view to helping to draw the attention of the Superior Court, whose exclusive right is to review its own decisions to take a second look at the matter and if it so desires, to overrule it[33].

Res Judicata and Sub Judice

In the course of legal reasoning both judges and lawyers often use these two words: res judicata and sub judice. Although these words are not directly involved in the reasoning, they are used as yardstick in determining whether or not the reasoning or exercise should be pursued. Res judicata simply means; a thing adjudicated. Once matters are fully and finally decided on the merits between parties, those same parties cannot re-litigate those same matters or issues again.

The application is more relevant in judicial legal reasoning than legislative. Therefore, once an issue is res judicata, it is an affirmative defence barring the same parties from litigating a second suit on the same transaction or series of transactions. The three essential elements in res judicata are:

i. An earlier decision on the issue;

[31] (1944) 2 All ER 293

[32] CA/C/182/84 at 5. See further Salako v. Salako (1965) LLR 136, Danmole v. Dawodu (1953) 3 FSC 6, Federal Administrator-General v. Adeshola (1960) WNLR 53 in all these cases, the Inferior Court criticized the judgment, but follows it.

[33] Asein, J.O. Introduction to Nigerian Legal System. Second Edition, Ababa Press Ltd. Lagos (2005) p. 93.

ii. A final judgment on the merits; and
iii. The involvement of the same parties.

In Ito v. Ekpe,[34] the Supreme Court stated clearly the efficacy of res judicata in the following words:

> … Public policy demands that there should be an end to litigation. Once a court of competent jurisdiction has settled by a final decision, the matters in contention between the parties. Not only must the court not encourage prolongation of a dispute, it must also discourage proliferatio of litigation. And so the maxim interes relpublica ut sit finis litium has for long been accepted as one of the established principles of our law of equal importance in our law that no man ought to be twice vexed, if it proved to the court that it is for one and the same cause. Expressed in the terse Latin maxim: nemo debet bis vexari, si constat curiae quad sit pro una et cadem causa, the principle runs through the entire gamut of our legal approach, whether it be in civil or criminal matters. It, therefore, forms the foundation of plea of res judicata in civil cases.

With respect to the scope of application of res judicata, the Supreme Court further said in Aladegbemu v. Fasanmade:[35]

> The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

Unlike res judicata that barred the court from reopening the case against the parties, the opposite is sub judice, which simply means under a judge, before the court or judge for determination. In this situation, lawyers and judges are debarred from making any judicial reasoning and pronouncement because the matter is before the court. Therefore, no comment should be made or extraneous step been taken on ant case or matter that is sub judice except for academic purpose.

Legal Reasoning in Legislative Process

Legislative process is the procedure and methodology of law-making by the constituted legislative authorities empowered to do so. The authorities in this sense, within the context of Nigerian Legal Methods/System, are the National Assembly, Local Government Legislative Council and other subsidiary

[34] (2000) 2 SC p. 98 per Ejiwunmi JSC.
[35] (1988) 3 NWLR (pt. 81) at 129 per ESO JSC.

authorities empowered by statute to exercise delegated legislation.[36]

No legislation can be made without first forming the idea and thought on what purpose such legislation will serve and its benefits to the society or community concerned. It is after this that the legislation can pass all the legislative processes and assume the status of legislation and have a binding force.

Legislative reasoning here is not concerned with processes the legislation will undergo before becoming a binding legislation but it is concerned with how to conceive ideas and reduce them into writing in order to achieve what you intend to achieve through the legislative moves before your targeted audience (legislative members) that will approve it and make it a law.

More often than not, the initiator of a bill (legislation) need not be a legal expert who has the knowledge of drafting bill into legislation, hence it is necessary to approach the legal expert who is the draftsman with vast knowledge of drafting so that he can draft the bill (legislation) in concrete, cohesive, comprehensive and intelligible manner to effectuate the passing of the initiated bill into legislation with little or no difficulty from the members.

The legal reasoning and approaches to be adopted by the legal draftsman to effectuate the passing of the bill will be the centre of our discussion in this area.

Receiving Legislative Proposal/Drafting the Instructions

The draftsman's first legal reasoning will occur when he receives the legislative proposal and start drafting his instructions. The proposal may indicate the subject matter clearly or some specific area if the legislation is intended to touch some parts of the areas only. For example, HYPADEC bill proposal should indicate the present condition of people living in hydroelectric power stations and the danger they are facing as a result of outburst of water in dams and generation of electricity in the area. The

[36] See generally the discussion on the law making process (supra) and see also Kabir, M.D. Outline of Administrative Law and Practice in Nigeria. A.B.U. Press Zaria (2012) pp 91 – 101.

proposal should then suggest changes and methods of controlling the situation and the concrete legislations that will be needed to achieve the above goals.

This is the line of legal reasoning that is expected to be made by the draftsman at this stage; otherwise the bill will be rejected at first stage, which indeed will suggest that the initiator had not done his homework.

Planning and Designing

Planning is a vital tool that actualizes the mastery and application of language vis-à-vis the construction of the proposal into bill, which will later yield to legislation. Hence, the draftsman must familiarize himself with the proposals and apply same with the language and concretize them into bill. The planning of the bill is the beginning of success of the passage of the bill.

While designing the bill, the draftsman should make sure that it follows the following sequence;

i. Preliminary parts: such as long title, preamble, short title, citation, commencement etc. take their position.
ii. Principal parts: are also put in their rightful positions. These refer to the substantive administrative provisions.
iii. Miscellaneous provisions: these form the principal part of the legislation. This aspect relates to provisions relating to offences and other supplementary provisions; and
iv. Final provisions: these relate to savings, transitional provisions, repeals, schools and interpretations.

Construction of the Bill

When proper proposals are made by the draftsman via the instructions, the next is to draft the bill. More often than not what will eventually metamorphose into legislation is not radically different from the modified bill or in some instances directly the same thing. Therefore, at this stage, the draftsman is expected to exhibit high sense of legal reasoning by applying the best of his technical and legal expertise of draftsmanship.

The draftsman must master and apply the logic of universally recognized language of drafting the bill. The order of arrangement of standard bill must be adhered to.

Apart from mastering and applying the language and knowledge of bill making, the draftsman must also take the following into consideration:

i. The mandate or jurisdiction of the legislative authority to consider the bill;
ii. Whether the initiated bill does not contradict the provision of the constitution;
iii. Whether if passed into legislation the bill will not create breach of peace in Nigeria or any particular area where it is intended to apply; and
iv. Whether there has not been similar bill previous enacted.

Conclusion

The above indexes under legal reasoning indicate that lawyers and judges cannot achieve perfection in their career without this knowledge; this is so because their predominant duties centre on solving problems of individual(s). These rudiments and regimented training cannot be acquired in a day or some months through training at workshop or seminar but through long training. Hence such training must be inculcated and developed by law students right from lower level up till the time of their graduations. A very important catalyst for successful actualization of this field is language. The language of law within the Nigerian Legal Method is English, and this attracts the most vital regimental training in the profession. Suffice it to say, the sensitivity of the position English in legal profession compelled the National Universities Commission to make it mandatory for each prospective candidate to acquire credit at GCE ordinary level before gaining admission into LL,B in all Nigerian universities. The idea here is not only to make the law students be proficient in English but to enhance their ability of legal reasoning as ministers in the temple of justice. This is the only way they can learn, apart from being only educated.