

THE CONSTITUTIONALITY OF LAWYERS' DRESS CODE IN NIGERIA

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Abstract

The paper examines the constitutionality or otherwise of Lawyers dress code in Nigeria, this has become necessary in view of the fact that the Nigerian Council of Legal Education in conjunction with the Nigerian body of Benchers, by virtue of Law School Code of Conduct Rule 29 (a), imposed mandatory regulation dress for aspirants to the noble profession. The rule made the regulation dress mandatory for both male and female while at law school and in other extra curricula activities; when called to the bar, and when attending Magistrate and all superior courts .However no penalty for non-compliance was stipulated .The paper attempts a comparative analysis of lawyers dress code in Nigeria and other countries like, England and United States and concludes by observing that the imposition of the mandatory dress code in Nigeria is an infraction of Nigerian Lawyers' right to freedom of expression under section 33 of the Nigerian 1999 Constitution. The paper further makes a case for the abolition of the mandatory dress code in Nigeria on the ground that it was time Nigeria did away with these outdated colonial relics as it is not the dress that makes the lawyer.

Key words: Lawyers, Dress code, Nigeria, America ,England, Wig and gown, Court, Regulation Dress

Introduction

In Nigeria, the body that is vested with power to make and revise rules of professional conduct in the legal profession is the General Council of the Bar¹. The Council in exercising its power on the 25th of December. 1967, enacted the Rules of Professional Conduct for the legal profession². Rule 6(b) provides;

While the court is in session, a lawyer should not assume an undignified posture, and should not, without the judge's permission, remove his wig and gown in the courtroom. He should always be attired in a proper and dignified manner, and abstain from apparel or ornament calculated to attract attention to himself.

From the clear wordings of the above Rules of Professional Conduct, it is clear that no particular dress code was specified by the Rules. The Rules appear to have been lifted *in toto* from the Code of Conduct of England and Wales which never spelt out what a Barrister's dress code should be; it only stated "Respectable dress"³. In England, today, however by convention rather than regulation, dark suits, black jacket and pinstripes, wig and gown, are traditionally worn in court by men. While lady barristers, wear dress and no slacks⁴. At the time of writing, the writer could not lay hands on any specific regulation by the Nigerian Bar Council specifying in detail, what the dress code of legal practitioners will be like in Nigeria, therefore from all indications, it is to be assumed and, rightly so, that the English lawyers conventional dressing code was silently adopted in Nigeria, without taking our culture and climatic conditions into consideration.

The Nigeria Council of Legal Education on its establishment has tried to spell out in clear terms, what the dress code of lawyers should be like. The said Council of Legal Education being conscious of its responsibility for the legal education of persons seeking to become members of the profession in Nigeria, in conjunction with the

Body of Benchers, came up with a regulation on dress for the aspirants to the noble profession. The Nigeria Law School Code of Conduct Rule 29(a)

provides:

He should be well-dressed at all times. The regulation on dress for male students is dark suits, white shirts, black ties (not bow tie), black socks and black shoes with white breast pocket, handkerchiefs, striped black trousers may be worn under dark jackets

Rule 2(b) of the said Code of Conduct further stipulated the dressing code for females as:

For female students, white blouse, dark jacket and black skirts, covering knees (dark suit) or dark ladies and black shoes are to be worn. There should be no embroidery and trimmings of any type, and only moderate jewellery.

The Nigerian Law School Code of Conduct, further stated in Rule 2(b), that at all law dinners, students must be punctual, and be in regulation dress; it further stated that at call ceremonies, qualified students must wear regulation dress and also the Wig, Winged collar and Bids or *Collarette* and Barristers' Gown. Finally, the rule concluded by stating that the above mode of dressing is mandatory for both male and female, while at the law school and other extra curricula activities, and when called to the Bar,

and attendance at magistrate and all superior courts⁵. From all indications, it is clear that the above cited Code of Conduct of the Nigerian Law School legally institutionalized the use of dress code in the legal profession in Nigeria.

The question that ordinarily agitates one's mind is, why imposing a similar English lawyer's dress code on the Nigerian legal profession? Is it not one of the relics of colonialism, which we ought to have discarded after 52 years of independence? Why are we still slavishly adhering to another man's culture, without taking into consideration our climatic conditions and the constitutional right of every individual to self-expression? Is a lawyer not entitled to wear any thing that suits him, in so far as it is neat and dignified? Why trying to hinder or fetter a lawyer's right to self-expression, which right is guaranteed under Section 39(1) of the 1999 constitution of the Federal Republic of Nigeria; Which provides that "everybody is entitled to freedom to expression, including freedom to hold opinion... without interference"? In the light of section 39(1) therefore, is the dress code for lawyers as stipulated by the Nigerian Law School, not unconstitutional? Every citizen of Nigeria, and indeed every lawyer, is entitled to express himself in any wear which in his own opinion is suitable to him, in so far as it is modest. Are lawyers in Nigeria not sticking to the old conservative ways of the Englishman?

It is the writer's view that what matters in the administration of Justice is to the need to ensure that substantial justice is done in all cases. What a lawyer decides to put on, is immaterial. There was an instance where a judge refused to hear out a female lawyer because she was putting on a bright coloured blouse under her gown. Does this denial of appearance not amount to a infringement of her client's right to fair

hearing? It is noteworthy that the Nigerian Law School Code of Conduct did not stipulate any punishment for non conformity with the Code. The question may be asked, can a lawyer not wear attire in which he feels he can best express himself in court? One can go a step further in this enquiry by asking what the rationale for this dress code is for lawyers and law students. As far as doctors or students doctors are concerned, their white lab coat is understandable as it ensures their neatness, it also prevents transmission of one infection or the other, especially during surgery. In the case of lawyer's wig and gown, some rationalize the dark suit, wig and gown dress code by saying that it reflects the solemnity of the proceedings, especially in murder cases, when one's client's life is at stake⁶, they argue that it is only proper that you do not dress flamboyantly. It is submitted that dressing alone is not always a true reflection of how the individual feels, one can also express his inner feeling through his or her general conduct in court.

History of Lawyers' Dress Code in England

At this juncture, it will be appropriate to have a look at how the lawyers in England and Wales, from where we inherited the bulk of our judicial system including our conventions at the bar have fared as far as lawyers dress code is concerned. This is very necessary, as it will enable us know if we are not trying to be more Catholic than the Pope.

In Nigeria, the lawyer's dress code and its paraphernalia of wig and gown, were inherited from England, as part of our colonial heritage, and as highlighted earlier on, after 52 years of independence we are still holding unto it. To answer the various issues raised earlier on, in this write-up, a trace of the history of Barrister's dress

code in England is perhaps necessary as it will throw more light on the origin and continued relevance of Lawyer's dress code in Nigeria. History has it that, English judges and barristers began wearing wig and gown at the time of Edward II (1327-77), the fur and silk-lined robes were well-established as a mark of high judicial office. The judicial custom changed with seasons, generally green in the summer and violet in the winter, with red reserved for special occasion. The plain black gown was adopted by most barristers in 1985, when the bar went into mourning at the death of king Charles II. They have apparently not gotten over it till date⁷. As far as the wig is concerned, hundreds of years headgear of some kind, has been worn in court. In early Tudor times, it was black flat bonnet or cap. The word wig is short for periwig, derived from the French word for a wig, *peruque*⁸. Even to this day, a person of prominence is called a 'big wig' By 1980, most judges and barristers wore wigs to court because they were simply following the fashion of the day⁹.

Secondly, another reason often proffered for the adoption of wig, was because of the unsanitary condition of court room in earlier centuries which promoted the spread of hair lice, the judges were therefore forced to shave in order to avoid lice on their heads, and they covered their bald head with a wig¹⁰. These wigs are still worn in England & Wales and also in over twenty English colonized countries of the world, including some with the hottest climates in the world¹¹. Nigeria, from all indications, should be part of such twenty countries.

The protagonists of the retention of wig claim, however, claim that it stands for wisdom.

Firstly, it should be noted, right away, that in England wig and gown are still being retained because they distinguish a barrister from a solicitor; the former is entitled to appear in court fully robed while a solicitor does not enjoy such privilege¹². Secondly, the protagonists of the retention of wig and gown in England also argue that it suits the climatic condition of England and Wales. Thirdly, they argue that it confers dignity¹³ and solemnity on court proceedings. Fourthly, wigs according to them lend anonymity in highly charged criminal cases. Finally, they claim that it obscures the differences of age and gender, and consequently serves as equalizer in a profession dominated by men¹⁴. In Nigeria, the first and second reasons do not apply because every legal practitioner, by virtue of being called to the Bar, is an advocate and solicitor of Supreme Court of Nigeria¹⁵. Therefore, here in Nigeria, the need for the wig and gown to distinguish the 'barrister' from 'solicitor' does not arise. Secondly, the climatic condition in Nigeria does not need to be further compounded with English dress code and its other paraphernalia.

It is interesting to note that already in England, there have been several moves in the past to do away with the lawyer's wig and gown. In April 1992, there was much speculation that English judges might finally do away with their ridiculous paraphernalia and wear something more comfortable¹⁶. The judges of the Commercial Court were scheduled to vote on the recommendation that the wearing of wigs be abolished in Commercial Court proceedings. This did not succeed, they rather voted not to abandon their wigs, they instead placed the whole matter before the 55 judges of the Queen's Bench Division, for continued consideration and debate. It has however, been observed by legal analysts in

England, that it is clear that wig and gown were directly connected to something deep in the English judges psyche¹⁷.

In 1997, in England the old battle between traditionalists and modernizers raged again, after Geoff Hoon, the second ranking minister in the Department of Constitutional Affairs signaled that the government may abolish wig in 1997. This equally never happened. In 2001, a survey by the Bar Council on the wearing of wigs, showed indications from the Lord Chancellor, and the Lord Chief Justice, that they were in favour of a revised dress code for barristers. Although, at the time of writing this paper, wigs continue to be worn in England & Wales, one thing, is however clear, the lawyer's dress code particularly in England, is under serious attack. In 1992, Lord Taylor of Gostoth, observed that wigs make people look "slightly ridiculous". Carolyn Kirby, President of the Law Society, which represents 85 000 solicitors in England & Wales, has said her organisation favoured abolishing wigs, so court users should not feel intimidated¹⁸. In fact, Professor Charles M. Yablon, in his article was of the view that;

The silliness of American judicial garb, however pales into insignificance when compared to the truly ridiculous outfits of their brethren and sistern in England are expected to wear, while judicial robes in America at least have the minor virtues of being cheap and easily to clean, the English judges of the higher ranks are saddled (literally) with enormous horse wear wig....

The absurdity of English judicial attire was also roundly condemned by Thomas Jefferson, who described English judges as "mice peeping out of aakum"²⁰. A

member of the House of Lords, Lord Richard, equally described the lawyers wig as “insanitary, scratchy and extremely hot”²¹.

Despite the above observations, the English government has, however refused to state its preference over what barrister and judges and court officials should wear. In fact, a spokesman for the English Bar Council was of the view that there was by far more important challenges facing the legal system²². At the time of writing, wig and gown continue to be worn by barristers in England. According to Lord Donaldson, “there is no need to go discarding something which has been out of date for at least a century”²³. From the above statement of Lord Donaldson, it is clear that even the originators of this lawyer’s dress code agree openly that it has been outdated for over a century.

The Nigerian Position

Then, coming home to Nigeria, why have we continued its retention. From the foregoing, it is clear that the English barristers themselves have been debating since Lord Chancellor’s Consultation paper of 1992, whether to abolish the wig and Gown or not. Why is it that no such debates have ever taken place in Nigeria? In England, the issue of constitutionality of barristers’ dress code was never addressed by those attacking the wig and gown. This is probably as a result of the fact that it was adopted by convention. No English law or regulation required the wig to be worn by judges or barristers. In Nigeria, however, the Council of Legal Education has made the barristers’ dress code mandatory not only in attending courts, but other extra-curricula activities. Is this requirement of Code of Conduct not too far-reaching? It did not stop at making the regulation dress mandatory in Magistrate Courts, and all

Superior Courts, but extended same to other extra curricula activities, like Bar Dinners. Lawyers in Nigeria, are expected to wear their regulation dresses to Bar Dinners and other judicial functions. Whereas in England, during the lawyers' Alumni Group Dinner of 19th February 2002, the dress code was stated to be lounge²⁴ and not mandatory black suit, yet in Nigeria we have continued to stick to our usual dark suits of black for Bar Dinner. Other British colonized countries have equally held unto this dress code. For example, Hong Kong and Uganda²⁵, have continued to wear wig and gown. In fact in India, the Bar Council of that country²⁶ prescribes a strict regulation dress and an advocate has no choice in the matter while appearing in court, and will not be permitted to appear if incorrectly attired.

The question may be asked, why is it that the various dress codes for barristers in all these colonized countries mentioned, are made to be mandatory and that a lawyer has no choice in the matter? In Nigeria, is this not an infringement of the right to self expression? Why should a lawyer be hindered from wearing any suit he finds suitable in so far as it is neat and presentable? Is the Council of Legal Education Code of Conduct not inconsistent with the express provisions of Section 39 our Nigerian 1999 Constitution and therefore null and void? Again, where a judge refused in court to hear out a female lawyer because she was in a bright blouse,²⁷ is it not an infringement of the lawyer's client's right to fair hearing as enshrined in the Constitution? In fact, in Germany, it has been observed that lawyers wear their gowns over a sweater and jeans, yet the cases being handled by these lawyers were not presented less competently. The issue is that, it is not the garb that makes a lawyer²⁸

American Position

In America, for instance, the imposition of dress codes in public schools has been a subject-matter of much criticism. Mahling, M. I.²⁹ was of the view that such a code, appears to infringe an important freedom of expression, a right guaranteed under their constitution. Ray³⁰, writing on the same issue, opined that regulations on mandatory uniforms in public schools are unconstitutional limitation on students' rights of self-expression. Also, E.G Scrivene, G.A. Harrison³¹, are of the view that it is wrong or immoral to impose certain dress standards upon students. They argue that it is a deprivation of the students' civil rights and therefore illegal³². From the foregoing, it is clear that American Lawyers frown at any attempt to impose dress codes on students. However, in Nigeria the reverse is the case and nobody is agitating against the dress code imposed on lawyers by the Council of Legal Education. In fact, in America, where a mathematics teacher was fired after 15 years of teaching experience, because he refused to wear slacks and a necktie, B. Webb, criticized this, and believes that teachers must first be seen as individuals to be effective and to remove this freedom of choice is to deny educators a very effective means of communication with students. From the foregoing analysis of American writers on dress code in public school in America, it is clear that any dress regulation, which infringes on the individual lawyer's right to self-expression, is unconstitutional.

Conclusion

Our 1999 constitution has guaranteed the right to freedom of expression under Section 33, it therefore follows that the mandatory dress code, as provided by the Council of Legal Education, is null and void to the extent of its inconsistency with the Constitution. If the courts in America, frown at such violation of self-expression by the

imposition of uniform dressing code on secondary school students in America, how come lawyers in Nigeria are still being denied the right to express themselves in a way they like? In fact, as highlighted elsewhere in this write up, English lawyers are no longer bound to appear in law dinners in the mandatory dark suits; even the lawyers judicial attire costume has been under serious attack in England. Germany, also has no specific dress code for lawyers. It is submitted that it was high time our courts made specific pronouncement on this dress code issue to avoid propagating illegality in our judicial system. The continued retention of Lawyers' dress code gives the impression that legal profession is a regimented one. Our courts should not be seen as aiding illegality, moreover, it was time we did away with these colonial relics, as it is not the dress that makes a lawyer.

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