It’s Lawlessness

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Itse Sagay, Senior Advocate of Nigeria, SAN, and professor of International Law, speaks with Dike Onwuamaeze, principal staff writer, on the crisis rocking the judiciary. Excerpts:

Newswatch: What is your view on the removal of the … … Sagay: (Cuts in) It was not a removal. It was suspension. Newswatch: But President Jonathan has sworn in a new President of the Court of Appeal? Sagay: He confirmed the recommendation of the National Judicial Council for the suspension of Justice Salami and swore in somebody to act during that period. But Salami has not been removed. Newswatch: How will you describe the conduct of the National Judicial Council in this matter? Sagay: They have obviously been very lawless. There is no question about it. To start with, the matter is already in court because Salami has filed an action to restrain them from taking any further steps on the matter. In spite of being aware of that, the NJC went ahead and recommended that Salami should be suspended and removed. That is an act of lawlessness. There is no question about it and it is shameful given the fact that these people are senior judicial officers. Number two, from the details one is getting, very few people were involved in this plot. Apart from the Chief Justice of Nigeria, CJN, who orchestrated everything, only five people were involved. And to make the ridicule most ridiculous they asked the President of the Customary Court of Appeal to preside over the meeting of the NJC as if they were there to discuss family headship and things customary courts are concerned with. Number three, if you should go through all the facts of this crisis, the only person whose guilt was established, but not punished is Katsina-Alu, the CJN. It was established that he illegally and unconstitutionally interfered in the Court of Appeal case in Sokoto governorship election over which he has no jurisdiction. All of his friends who have now ganged up to try to remove Salami admitted that. But he (Katsina-Alu) wasn’t punished for it. Nothing was recommended against him. Nobody recommended him for removal. The NJC merely said that he (Alu) carried out his unconstitutional act in good faith. So, you can have good faith in doing something wrong and that would be alright. What I see is that they want to get rid of him (Salami) before appeals start coming in from the tribunals. So, he does not constitute panels that will be determined to do justice. Newswatch: Why did the NJC asked Salami to apologise? Sagay: That was a trap that they set for him. Because if you apologise for what you did not do, you are admitting that you did it. NJC is not a judicial body. It is an administrative body and has no jurisdiction or competence to determine whether an oath is false. Only the court can decide that. Because, if it is discovered that you lied under an oath, it is a criminal offence for which you can be sentenced. Katsina Alu himself, in the case of Atiku Abubakar, was the one who laid it down that it is only a properly constituted court that can decide whether a person is guilty of an offence. Now, an administrative body which he (Alu) is involved in setting up either directly or indirectly is now finding Salami guilty of an offence which only a court can determine. But instead of apologising, Salami took the only step that was available for a civilised and cultured person by setting it before the court to decide whether he is guilty of perjury or not. However, the NJC being aware that he had committed no offence and being certain that if the thing had gone through the court they would have been exposed and the innocence of Salami determined, rushed in regardless of the fact that the case was in court, contemptuously and in a very uncivilised manner purported to have suspended him and recommended to the President to have him removed. It is all political. Newswatch: You said that Salami has not been removed as the President of Court of Appeal. So, what then is the difference between removal and suspension? Sagay: The difference between the two is that to be suspended means that he is still in office as the President but cannot perform his functions during that period of suspension. But there is no provision for suspension in the constitution. So, the suspension is illegal. And what President Jonathan did in carrying out that recommendation was adding illegality on top of illegality. Newswatch: Is there a limit in his suspension? Sagay: That is what we are waiting for. We do not know what the next move is going to be. Because from the way the president has behaved, we can no longer be confident that he is objective in this matter. We will just wait and see. Normally, Salami should be in his position until the case is decided and a court finds him liable for lying under oath. That is when his service would have come to an end or at the end of two years he still has left. As it is now, he has been illegally suspended. Newswatch: What did the constitution say about the removal of PCA? Sagay It is a straight forward matter. If the NJC finds him guilty of misconduct or incapable of performing his functions, they can recommend, and not determine, to the President that he should be removed from office. On receiving this recommendation, the President has the discretion either to accept it or to reject it. If he rejects it, the recommendation dies a natural death and the PCA continues in office. But if he accepts it, he will now forward the name of the PCA to the Senate with his own recommendation that he will be removed. And if the Senate adopts the recommendation by 2/3rd majority, then PCA stands removed. But up till now, the President has not done this and nobody knows what his own plan is. But what he has done does not exist in law. Newaswatch: What does this development portend? Sagay: It portends judicial lawlessness. And for me, all those involved in it are unfit for judicial office. They are a disgrace to the nation’s judiciary. I’m sure that legal action will be taken to have them removed. Newswatch: You once said that we are in the “dark age” of Nigeria judiciary. Sagay: Yes, because the quality of justices has gone down. We do not have men of the height and level that we had in the 1970s, 1980s and early 1990s. Since the Oputas, the Esos, the Aniagolus, the Nnamanis, the Obasekis, the Karibi Whytes left, the standard has dropped very sharply. Newswatch: How do you assess the involvement of President Jonathan in this matter because barely one year ago people fought for the constitution to be respected so that he would be declared the acting president but it seems he has forgotten? Sagay: It is very, very sad because he benefited from the proper application of the constitution. Now, a group of people have behaved in a lawless and unconstitutional manner and he has given his imprimatur on such unconstitutionality and illegality. It is very sad because it looks as if he is not looking back to see how he managed to survive the crisis. Now it

has come for him to enforce the constitution in like manner in a judicial matter and he has let everybody down.
Newswatch: If this precedent is allowed to stand, what would be its implication on the health of democratic government in the country? Sagay: It has many implications. First, it will destroy the judiciary. Because if the judges have no respect for the courts who is going to respect the courts. We are witnessing high level judicial officers showing contempt of the court. Secondly, if this signal that those who stand up for electoral justice cannot survive in the judiciary, then it means that justices who wish to survive may have to bow to electoral rigging and fraud in order to survive. So, it has implications for our democracy. It has implications for the rule of law and it has implications for the survival of a respectable judiciary.