

**ADDRESS BY THE PRESIDENT OF THE NIGERIAN BAR ASSOCIATION  
(NBA) ABUBAKAR BALARABE MAHMOUD/OON, SAN, AT THE  
VALEDCITORY COURT SESSION AT THE SUPREME COURT OF  
NIGERIA, IN HONOUR OF HIS LORDSHIP, THE HONOURABLE LATE  
JUSTICE NIKI TOBI *CON*, RETIRED JUSTICE OF SUPREME COURT OF  
NIGERIA 28<sup>th</sup> NOVEMBER, 2016**

My Lord, the Acting Chief Justice of Nigeria,

My Lords, Justices of the Supreme Court

The President of the Court and Justices of the Court of Appeal

Attorney General and Minister of Justice

Former Chief Justices of Nigeria,

Justices of Superior Courts from across the Country

Benchers, Learned friends and colleagues of the Inner and Utter Bar

Excellences, Royal Highnesses

Distinguished ladies and Gentlemen.

My Lord the acting Chief Justice of Nigeria, it is indeed a great honour to make these remarks this morning at the special sitting of this Court held in memory of one of the most outstanding Supreme Court Justices of our time: The late Hon. Justice Niki Tobi, *CON* who passed away on June 19, 2016 a few weeks before his 76<sup>th</sup> birthday.

Hon Justice Niki Tobi served as a Justice of this Court from 2002 until his retirement in April 2010. He has been described as a jurist, an academic and a true nationalist. His contributions to our jurisprudence and indeed to our national life are truly remarkable and will remain indelible in the annals of Nigeria's history.

Niki Tobi was born on 14th July, 1940 at Esanma in the riverine area of Delta

State. He attended Community School Esanma between 1946 and 1949, the N.A. School Akugbene, from 1950 to 1953. He trained as teacher at Teachers Training College, Bomadi from 1956 to 1957. He studied law at the University of Lagos between 1966 to 1969. Niki Tobi was called to the Bar in 1970 after attending the Nigerian Law School. He also obtained PhD law degree from the University of Nigeria Nsukka.

My Lords, distinguished ladies and gentlemen, there is no gainsaying that Niki Tobi had a truly remarkable career that traversed several fields of human endeavours. He started as a teacher, veered into administration, he had a brief stint as a private legal practitioner and later joined the official bar before venturing into the academia. He became a Professor of law and subsequently a Judge of the High Court.

Niki Tobi's teaching career took him through several schools in his locality as a teacher or headmaster. He taught in various schools in Esanma, Bomadi, Toru-Ibeni, Okpokunou, Oboro and Warri between 1954 to 1965. He then took an administrative position and moved to Lagos in 1966 before starting his legal education at the University of Lagos.

Mr. Niki Tobi had a brief stint in Private Legal Practice in 1970 before joining the Federal Ministry of Justice Lagos as State Counsel in 1972. He rose to the position of Senior State Counsel in 1976. Mr. Tobi then made a significant career shift into the academia. He took up the position of Lecturer 1 with University of Maiduguri in 1976. He rose to become the Dean Faculty of Law, a position he held from 1978 to 1982. He was appointed Deputy Vice Chancellor (Academic Services), University of Maiduguri, 1981-1983, Visiting Professor of Law, University of Calabar, 1983-1984 Dean Faculty of Law University of Maiduguri, 1984-1985)

Mr. Niki Tobi was appointed to the Bench of the High Court of Rivers State in 1985. He was on the bench of that court until 1990 when he was elevated to the Court of Appeal from where he was elevated to Supreme Court Bench in 2002.

Justice Niki Tobi was indeed a legal colossus, a great jurist with an outstanding

intellect. His judgments were lucid, often written in his characteristic flowery prose. His judgments, whether lead, concurring or dissenting reflected the depth of his learning and scholarship. During his many years on the appellate bench, particularly his eight years on the Bench of the Apex Court, he participated in many landmark decisions which have defined our jurisprudence.

Time will not permit me to undertake a detailed review of the many landmark decisions of Hon. Justice Niki Tobi suffice to mention a few: *Mojekwu v. Mojekwu* (1997) 7 NWLR pt. 512) P 283; *AG. Abia & 2 ors v. A.G. Federal & 33 ors.* (2007) 6 NWLR pt. 1029 P 200; *NEPA v. Edegbero* (2002) 18 NWLR 798 at 79; *Onagoruwa v. IGP*

In *Mojekwu v. Mojekwu*, the Court of Appeal struck down some discriminatory cultural practices. This was what Niki Tobi said: Nigeria is an egalitarian society where the civilized sociology does not discriminate against women. However, there are customs all over which discriminate against the womenfolk which regard them as inferior to the menfolk. That should not be so as all human beings, male and female, are born into a free world and are expected to participate freely without any inhibition on grounds of sex. Thus any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy. The Oli-Ekpe Custom which permits the son of the brother of a deceased person to inherit his property to the exclusion of his female child, is discriminatory and therefore inconsistent with the doctrine of equity."

Niki Tobi's decision in ***Inakoju v. Adeleke*** (2007) 4 NWLR (pt. 1025) 423 redefined the jurisprudence around impeachments by the legislature in Nigeria. In a profound dicta, he stated thus: "A legislature is not a secret organisation or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion .... It is not a lawful or legitimate exercise of the constitutional function in Section 188 for a House of Assembly to remove a Governor or a Deputy Governor to achieve a

political purpose or one of organised vendetta clearly outside the gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor .... " This decision without doubt had a great impact on Nigeria's political landscape.

Justice Niki Tobi's legal prowess is visible in all fields of law. His decisions in criminal law have been no less compelling in shaping our criminal jurisprudence. In **Sunday Nidid v. The State** S.c. 128/2005, his lucid legal reasoning was clear and expressed, as he often did with the aid a metaphor. "It is trite law that contradictions can only be of use to an accused person if they are material or substantial. In other words, contradictions can only be of use to an accused person if they affect the live issues in the matter. Contradictions which are merely peripheral or not affecting the substance of the case will not exculpate an accused from criminal responsibility. In the circumstances, where the report of the crime was made is not relevant to the issue of robbery. So too when appellant made the statement to PW4. And so the contradictions cannot be of help to the appellant. They all look to me like making a storm out of a tea cup.

This is a case of concurrent findings on the part of the High Court and the Court of Appeal. This Court cannot tamper with such concurrent findings because they are clearly borne out from the evidence before the Court. I do not see any perversity in the findings.

I have looked at this matter from all angles and I do not see my way clear in disturbing the concurrent findings of the two courts below. They are right. I accordingly dismiss the appeal. After all, lantern exudes light; though not as much as electricity light to identify a person. The appeal is dismissed".

**In Newswatch Communications Limited v. Alh. Aliyu Ibrahim Atta;** 5C/101/2001 Nik Tobi spoke eloquently clarifying the concept of fair hearing in judicial proceedings. He began his judgment in his usual characteristic manner: "This appeal has so much to do with dates and all that. It is an appeal in which the appellant complains of denial of fair hearing on the ground that the learned trial Judge refused its application to arrest the judgment delivered on 9<sup>th</sup> May, 1996. It is a case where the appellant, who was the defendant, had

not the time to present its defence in court but finally had all the time in the world to file a motion to arrest the judgment delivered on 9<sup>th</sup> May, 1996. Fair hearing is fair hearing when and if it is fair to both parties.

Counsel, quite a legion, find the fair hearing principle duly entrenched in the Constitution as pathway to success whenever they are in trouble on the merits of the case before the court. Some resort to it as if it is a magic wand to cure all ills of litigation. A good number of counsel resort to the principle even when it is inapplicable in the case.

The constitutional principle of fair hearing is for both parties in the litigation. It is not only for one of the parties. In other words, fair hearing is not a one-way traffic but a two-way traffic in the sense that it must satisfy a double carriage-way. In the context of both the plaintiff and the defendant or both the appellant and the respondent. The court must not invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly. That will not justice. That will be injustice".

Niki Tobi will be remembered not just for his contributions on the bench and for his numerous lucid judgments, but he will also be remembered for his numerous other contributions as an author and an academic. He has written numerous major books and published several academic papers. His books are used by law students as well as seasoned practitioners as well as ordinary citizens: From 'Justice Tobi's Law Students' Companion', 'Aspects of Jurisdiction of the Court of Appeal in Nigeria' , "The Nigerian Judge" to 'Understanding the 1989 Constitution Better: The citizens Companion'

Hon. Justice Niki Tobi has also made significant contributions to the country's political evolution. Justice Niki Tobi was Chairman Constitutional Debate Coordinating Committee (CDCC) appointed by General Abdulsalami Abubakar which ushered the 1999 Constitution of the Federal Republic of Nigeria.

In his speech at the presentation of the report of the Committee to the Head of State His Excellency General Abdulsalami Abubakar, Justice Niki Tobi, lamented that Nigeria's chequered constitutional history did not appear to have

enthroned truly democratic polity. This is what he said:

"Nigeria is one country known to me, and probably to world legal history, where the constitution, the highest law of the land, the *fons et origo* of any legal system, changes like the weather clock in climatology. And that is sad, very sad indeed. It is part of our colonial history that following the amalgamation of the Northern and Southern Protectorates in 1914 by Lord Lugard, we had the Clifford Constitution of 1922, the Richard Constitution of 1946, the McPherson Constitution of 1951 and the Federal Constitution (otherwise known as the Littleton Constitution) of 1954. That was before Independence in 1960. At independence, we had the 1960 Independence Constitution. In our third independence anniversary the country became a republic and had the 1963 Republican Constitution. After some experience of military regimes, the country returned to a civilian government by the promulgation of the 1979 Constitution of the Federal Republic of Nigeria. It is the hope of the Constitution Debate Coordinating Committee (CDCC) that the Provisional Ruling Council will implement the desires, wishes and the views of Nigerians in the making of the Constitution and enthrone a truly democratic polity."

Again, in 2005, Hon. Justice Niki Tobi headed the National Political Reform Conference Committee constituted by the Obasanjo Administration. There is no doubt that Justice Niki Tobi has contributed enormously to Nigeria's journey to nationhood. I have no doubt that as we continue our march to our glorious destiny as a nation built democracy and the rule of law, which Justice Niki Tobi personified, he will continue to be remembered and celebrated as an outstanding Nigerian who has made his mark.

On behalf of the Nigerian Bar Association, I extend our condolences to the family of Late Justice Niki Tobi CON, JSC (rtd), to his numerous friends and colleagues and admirers across the country and beyond.

Thank you for your attention.

Long Live the Federal Republic of Nigeria

Abubakar Balarabe Mahmoud, OON, SAN, President, Nigerian Bar

## Association