

SPEECH DELIVERED BY ALHAJI ABDULLAHI IBRAHIM CON, SAN AT THE SPECIAL VALEDICTORY COURT SESSION HELD IN HONOUR OF THE RETIRING HONOURBLE JUSTICE J. A. FABIYI ON 25th DAY OF NOVEMBER 2015.

Your Lordship, the Honourable, the Chief Justice of Nigeria, Honourable Justice Mahmud Mohammed, GCON, the Honourable Attorney General of the Federation, Honourable Justices of the Supreme Court, the President of the Court of Appeal, Justices of the Court of Appeal here present, Chief Judges and various heads of Courts here present, Judges of different jurisdictions here present, the President of the Nigerian Bar Association, my colleagues of the Inner Bar, distinguished colleagues, our Royal Fathers here present, gentlemen of the press, distinguished guests, ladies and gentlemen.

We are gathered here this morning to celebrate and honour a patriot, a jurist of high integrity and a great servant of the legal profession, Honourable Justice John Afolabi Fabiyi, CON, as he takes a bow out of the Judiciary after years of meritorious service to his fatherland and the legal profession. Honourable Justice John Afolabi Fabiyi was born on 25th November, 1945 at Ekirin-Aade of Ijumu Local Government Area, in the present Kogi State. The history of his early education is well known and I need not repeat same here. The thirst for university education led him to the famous Amadu Bello University Zaria, where he pursued a course in Law and successfully completed his LLB program with Honours in May 1969. He subsequently attended the Nigerian Law School, between 1969 and 1970, where he was called to the Nigerian Bar on 26th of June, 1970.

Shortly after his Call to the Bar, he joined the law firm of E. Noel Grey & Co. in Kano, a firm of private practitioners, where he practiced between July, 1970 and September, 1975.

His Lordship's career as a Public Servant commenced on 20th December, 1975 when he joined the Kwara State Judiciary as Magistrate Grade I. His Lordship served in this position meritoriously and was appointed Chief Registrar of Kwara State Judiciary on 3rd August, 1981 until 21st October, 1984. On 22nd October, 1984, Hon. Justice J. A. Fabiyi was appointed a High Court Judge in the Judiciary of Kwara State, an office he held until, 1991 when Kogi State was created and he moved along with his brothers of Kogi State origin to start Kogi State Judiciary, where he served from October, 1991 to 12th November, 1998. In the course of his career as a High Court Judge, our Honouree was given several assignments- and I can say without any doubt that he performed creditably in all the assignments. He was Chairman, Kogi State Armed Robbery & Firearms Tribunal. He also served as Chairman, Election Petition Tribunal Anambra State between 1st May, 1998 and 13th July, 1998.

On 21st November, 1998, Hon. Justice Fabiyi was appointed a Justice of the Court of Appeal. He served in different divisions of the Court, namely Enugu, Port Harcourt and Ibadan where he was presiding Justice of the division.

On 4th March, 2009, Hon. Justice Fabiyi was appointed Justice of the Supreme Court and was sworn in on 12th March, 2009, a position he held with required comportment and dignity to this day. Your Lordship, you have been a great pride to the nation and everyone you had associated with. While in the Court of Appeal and in this Court, Hon. Justice Fabiyi wrote several

judgments on different areas of the law that time and space will not permit to recall here. His judgments are products of hard-work, deep thinking and scholarly exposition.

Honest and diligent Judges in this country sometimes have been subjected to malicious attacks, particularly by politicians who believe they must have their way all the time. Our dear brother, Hon. Justice Fabiyi may have had his share of such attacks at one time or the other. But I thank God that Hon. Justice Fabiyi is bowing out of the judiciary today with an unblemished record and his head held high.

Hon. Justice J. A. Fabiyi has served his Country so well and in recognition of his services, he is a recipient of the following awards:

1. Officer of the Federal Republic, OFR - 2008.
2. Commander of the Order of Niger, CON - 2009
3. Commander of the Federal Republic, CFR - 2014.

Hon. Justice Fabiyi is Life-Bencher of the Body of Benchers of Nigeria and is also a member of the World Jurist Association. My Lord is well travelled and a highly sociable person, though very reserved.

My Lord, the Chief Justice of Nigeria, let me use this opportunity to congratulate you on the steps you have taken so far to stem the tide of corruption and indiscipline in the judiciary. You have taken the bold step of not only protecting your personal integrity and those of your brothers, but you have given the judiciary and the legal profession the respect it deserves in the country. For some of us who have known you for such a long time, I must say that I am not surprised. I urge you to go the whole hog in taking all necessary steps to ensure

that all the reforms necessary are put in place. I believe that you have the support of the Bar and the entire profession.

One cannot be tired of talking about corruption because of the incalculable damage it has done in the past (and which it is still doing) to our system. Your Lordship, the Hon Chief Justice, I recall your recent statement banning politicians from paying courtesy visit to you and prohibiting Counsel, even Senior Counsel handling political matters from visiting you in chambers. I cannot fault your decision in this respect though it raises a serious moral issue for the Bar. There are stories of Counsel going around trying to influence the Bench. I think the time has come for the Judiciary and its members to stand up and be counted in the fight against corruption. I do not see any reason why Judges should not report to the appropriate body any Lawyer who goes beyond his professional calling and engages in acts calculated at perverting the course of justice. I am sure that the Bar and the entire legal profession will not hesitate to show the Counsel, irrespective of status, the way out. There is no immunity against discipline for any erring lawyer. The first duty of a lawyer is to the Court. We are ministers in the temple of justice, a lawyer who makes himself a purveyor of corruption and bad behaviour is not a minister in the temple of justice, and in my humble view, is a disgrace to his calling.

The issue of corruption is an issue we must all tackle at all levels of our national life. It is not limited to the Judiciary. It is reported to be in the Legislature and permeates the executive arm of Government. No aspect of our national life is devoid of corruption. Happily, the new leader of Nigeria in the person of the President Muhammadu Buhari is a leader who will not make a promise he would not keep. Therefore I believe that the fight against corruption has indeed started in earnest in our country

and by implication our society will move to the path of rectitude.

Your Lordships, permit me to digress a bit and delve into the raging controversy of the establishment of special Courts to try corruption cases. The argument in favour of the creation of a special court seem to be that because it takes time to try corruption cases in the present regular courts, the establishment of a special court will speed up the process. That position, to me seems to look only at the symptoms of the problem while ignoring the cause. That argument appears to be that the delay in the prosecution is due to the fault of the judicial system alone. It ignores or omits to take into account that the issue of smooth, efficient and effective prosecution starts from investigation of offenders, arrest, writing of legal opinion, vetting of the opinion, preferring the appropriate charge or charges, arraignment, calling of witnesses and so on. As at the time the matter is in court, a lot also depends on the quality of the prosecutor, the quality and experience of the presiding Judge and the quality and integrity of the defence Lawyer. I believe the entire process has to be looked into, rather than our usual fire brigade approach. I do not believe that we need any special court for corruption cases. The existing courts can effectively handle corruption trials if there is compliance with the practice direction made by the Chief Justice of Nigeria in 2013 and the new Administration of Justice Act. One is tempted to ask, if we create a special court for the purpose of trial of corruption cases, are we going to create special Judges, special investigators, special prosecutors and special defence Lawyers? Will those sets of investigators, prosecutors, Judges, and defence Lawyers be from the moon? Does delay in determining matters in Court apply to criminal case only? I recall with pride how in the then Northern region

state counsel worked with the Police and other law enforcement agents and prosecuted in the most professional and effective manner, cases that arose for prosecution. We examined what evidence the Police found in the course of investigation and advised the Police to dig further whenever we felt that there were chances of getting more evidence. Whenever we discovered from the facts that there were no sufficient evidence to prosecute, we advised against prosecution. On the other hand where we found that the facts were sufficient, we never hesitated in filing the appropriate charges. The Police and the Attorney General's office treated each other with mutual respect. There was co-operation. I cannot recall any incident of any petition written either by a complainant or the Police against any officer of the Attorney General's office. The defence Lawyers were highly professional and responsible in the way and manner they defended their clients. In addition, the Judges before whom we practised were no nonsense Judges who had the law and procedures on the tip of their fingers and read the case files before them prior to the start of trial. This also applied to civil cases. They therefore knew as much as Counsel on all sides the facts of the case before them. They therefore did not look favourably to Counsel asking for adjournment.

It is my strong believe that what the Judiciary and the nation need are Judges who know the Law and are conscious of their public functions, not the creation of special courts. I congratulate the National Judicial Council on the new approach to the appointment of Judges.

Another issue I will like to seize this opportunity to go into is the issue of the confirmation by the State Houses of Assembly and the Senate of the appointment of some high ranking Judicial Officers at the State and National level as provided by

the provisions of the Constitution of the Federal Republic of Nigeria (as amended), which make the confirmation of the State House of Assembly and the Senate a necessity in the appointment of high ranking Judicial officers. In the process of confirmation, the Legislature has adopted a method known as "screening" over the years before the appointment of a Judicial officer is confirmed. I believe, as a person who has been involved in the process of Constitution making over the years that the essence of making the appointment of those high ranking Judicial officers subject to the confirmation of the Legislature is to ensure that it is the best hands that are appointed and to enable the nation at large to know the antecedents of the Judicial Officer, what to expect if he/she is appointed, which school of thought he or she belongs to, is the officer a positivist Judge, is he or she of the liberal school? Is the officer a strict constructionist Judge when it comes to interpretation of statutes? Is the proposed candidate the type that holds strict moral or religious views? How do those views impact on his or her judgment? Is the candidate adventurous when there is need to do justice when there are impediments occasioned by inadequate provisions of the law? Those are the type of issues the screening of a candidate for a high judicial office in my humble view should elicit. To embark upon this task, it is necessary that the Legislators must have a good knowledge of the judicial system and be able to find out the personality of the candidate who is being considered for appointment.

I have watched in the past few years the screening done by the National Assembly when these high ranking judicial officers are to be appointed. It is grossly short of the standards required. It is no screening strictly speaking. A good number of the members of the Legislature do not have adequate

knowledge of the judicial system, most of the members who are Lawyers never practised law up to the level of the Courts of those judicial officers. In the process of screening, no word is mentioned about the candidate's previous judgments- even when it is common knowledge in legal circles that the person being considered has delivered judgments that are controversial and has attracted serious criticisms. The said screening has become a joke. I believe the time has come for us to reconsider those constitutional provisions relating to confirmation of those high ranking judicial officers by the Senate and Houses of Assembly. Perhaps another body may be vested with such duties or powers.

I believe I have digressed enough. Let me return to the issue at hand. On behalf of my colleagues of the Inner Bar, I congratulate Hon. Justice Fabiyi and his family not only for retiring with an unblemished record but in good health. My Lord will now have time to do other things like attending to family matters which the heavy judicial burden had prevented him from doing before. Also, he will have more time to associate with friends and family members and most importantly he will have time to join his fellow retirees like me in discussions.

My Lord, you have served your country very well, you can have a deserved rest. The entire legal profession would want to thank you. I thank you on their behalf.

I thank you all for listening.

Alhaji Abdullahi Ibrahim CON, SAN.