



ADDRESS BY AUGUSTINE ALEGEH. SAN. FCIArb [UK]. PRESIDENT OF THE NIGERIAN BAR ASSOCIATION AT THE VALEDICTORY COURT SESSION OF THE SUPREME COURT OF NIGERIA IN HONOUR OF HONOURABLE JUSTICE JOHN AFOLABI FABIYI JSC. CFR ON WEDNESDAY. 25<sup>th</sup> NOVEMBER. 2015

PROTOCOL

My Lord, the Honourable Justice Mahmud Mohammed, GCON Chief Justice of Nigeria; My Lords Justices of the Supreme Court of Nigeria; My Lords Retired Chief Justices of Nigeria and Justices of the Supreme Court of Nigeria [here present]; My Lord the President of the Court of Appeal of Nigeria; My Lords Justices of the Court of Appeal; My Lords Retired Presidents and Justices of the Court of Appeal; My Lords Chief judges, Heads and Judges of various Federal and State Courts; the Honourable Attorney General of the Federation and Honourable Minister of Justice, Abubakar Malami SAN; Attorneys-General of various States of the Federation; distinguished members of the inner and outer Bar; respected Members of the Body of Benchers; Royal fathers here present, members of Hon. Justice John A. Fabiyi's family; members of the fourth estate of the realm; invited guests; distinguished ladies and gentlemen.

INTRODUCTION

It gives me great pleasure and honour to present this address on behalf of the Nigerian Bar Association [NBA] at this valedictory Court session in honour of Honourable Justice

John A. Fabiyi, JSC, CFR as he graciously bows out from the Supreme Court of Nigeria after having served the judiciary creditably well since his appointment as Magistrate in Kwara State on 20<sup>th</sup> December, 1975.

My Lord. Hon. Justice J.A. Fabiyi, JSC, CFR can best be described as a quintessential gentleman, a legal colossus and a jurist per excellence who has contributed immensely to

the development of the legal profession through a plethora of landmark Judgments and Judicial pronouncements on topical issues brought before him.

Prior to My Lord's sojourn to the Judiciary, My Lord had ventured into private legal practice and had practiced in the Law Chambers of E. Noel Grey & Co. in Kano where he had cut his legal teeth for 5 years. My Lord, in all his years of practice exhibited a high

level of industry, dedication and an appetite for knowledge. A cursory analysis of My Lord's profile as a Jurist which has been so eloquently reeled out by My Lord, the Chief Justice of Nigeria depicts him as a distinguished and thorough bred jurist for whom integrity, hard work, fairness and a desire to do justice at all times were articles of faith.

In recognition of his selfless service to the Nation, My Lord, Hon. Justice J.A Fabiyi JSC was conferred with the National Honours of: 'Officer of the Order of the Federal Republic

(OFR); Commander of the Order of the Niger (CON); And Commander of the Federal Republic of Nigeria (CFRY by the President and Commander in-chief of the Armed Forces

of the Federal Republic of Nigeria in 2005, 2009 and 2014 respectively. My Lord has also

been the Recipient of several honours and awards from various bodies and organisations.

In recognition of his invaluable contributions to the promotion of the rule of law and the development of the legal profession, My Lord was appointed a Life Bencher of the Body of Benchers on 31<sup>st</sup> March, 2011.

His firm belief in the dispensation of justice in accordance with law can be easily discerned from several of his Judgments;

**In IKENYA vs. PDP (2012) 12 NWLR (Pt. 1315) 493 at 513**, My Lord commented on the construction and application of Section 255(S) of the 1999 Constitution:

**“With an adequate bird's eye view, it is clear in the provision of Section 285 (8) of the 1999 Constitution (as amended) that the Supreme Court in all final appeals from the Court of Appeal in respect of the gubernatorial election matters may adopt the practice of first giving its decision and reserving the reasons thereof to a later date. While the Court of Appeal in all final appeals from Election Tribunals in respect of National/State Houses of Assembly matters may also adopt the practice of giving its decision and reserving the reasons thereof to a later date. As an intermediate court, the Court of Appeal cannot adopt the practice in respect of gubernatorial matters as it is not in any way imbued with such power by the Constitution of the Federal Republic of Nigeria 1999 (as amended) - the *grund norm*”.**

Furthermore in **SKYE BANK PLC VS. AKINPELU (2010) 9 NWLR (Pt. 1198) 179**,

My Lord while considering the issue of trespass to land observed pointedly thus:

**“A person who is not in possession has no right to claim for trespass. Trespass to land is actionable at the suit of the person in possession of the land. The person can sue for trespass even if he is neither the owner nor the privy of the owner. This is so since exclusive possession of land gives the one in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title.”**

Similarly in **EKE VS. STATE (2011) 3 NWLR (Pt. 1235) 589**, the opportunity presented itself for My Lord to comment on when the testimonies of witnesses

can be said to be contradictory. In a most illuminating manner, My Lord posited as follows:

**“It is basic that testimonies of witnesses can only be said to be contradictory when they give inconsistent accounts of the same event. For contradictions in the evidence of witnesses to vitiate a decision, they must be material and substantial. Such contradictions must be so material to the extent that they cast serious doubts on the case presented as a whole by the party on whose behalf the witnesses testified, or as to the reliability of such witnesses. In sum, minor and inconsequential contradictions which do not seriously relate to the ingredients of the offence charged should not vitiate the case of a party”.**

Additionally, My Lord, in the recent case of **OYEBANJI vs. STATE (2015) 14 NWLR (Pt. 1479) 270 at 295**, commented on the meaning and operation of the doctrine of ‘alter ego’ under corporate law when he posited thus:

**“Under the doctrine of 'alter ego' a court merely disregards corporate entity and holds individuals responsible for acts knowingly and intentionally done in the name of the corporation. To establish the doctrine, it must be shown that the individual disregarded the entity of the corporation and made it a mere conduit for the transaction for his own private business. The doctrine simply fastens liability on the individual who uses the corporation merely as an instrumentality in conducting his own personal business. Liability springs from fraud perpetrated not on the corporation but on third persons dealing with the corporation”.**

### **Relationship with the Bar**

My Lord, Hon. Justice John Afolabi Fabiyi JSC, CFR is generally Bar friendly and maintained a very cordial relationship with the Bar. He has always attended Bar conferences and events despite his ever busy schedule. He attended the Annual General Conference of the Bar in 2014 at Owerri and 2015 in Abuja. He was also in attendance at the NBA Section on Business Law (SBL) 2015 Conference in Lagos.

I want to place on record the profound appreciation of the Nigerian Bar Association to My Lord, Hon. Justice J.A. Fabiyi, JSC, CFR for his invaluable support to the Bar at all times.

### **WELFARE OF JUDICIAL OFFICERS**

The Nigerian Bar Association commends My Lord, the Chief Justice of Nigeria for advocating for improved working conditions for Judicial Officers in all Courts.

The welfare of Judicial Officers must at all times be given prime attention. In this regard, there are some areas of intervention that must be given particular attention.

### **Research Assistants**

There is an urgent need for All Judicial Officers to have Research Assistants who will assist them in research and case management. These Research Assistants must be Legal Practitioners qualified to practice law in Nigeria and their work scope would be limited to providing research support to Judicial Officers.

The use of Research Assistants by Judicial Officers will aid the speedy dispensation of justice and will improve the quality of Judgments delivered by our Courts since a lot of legal research and time would have been expended in the case. The use of Research Assistants by Judicial Officers will reduce the burden on Judicial Officers who sit for long hours taking down proceedings in long hand and still have the burden to personally research the issues canvassed before writing their Judgments. It will also provide gainful employment for over 4,000 unemployed young lawyers in the country.

### **Use of ICT**

Our Courts should be equipped with modern technological facilities to meet the current demands of judicial work and conform to international best practices. The use of electronic voice recorders and transcribers should be encouraged to obviate the resort by Judicial Officers to taking down court proceedings in longhand. The present deluge of cases into our Courts presents us with the situation of having over-worked and fatigued Judges. We should therefore employ available technology to ease their workload and ensure a vibrant and efficient Judiciary.

### **Pre-Retirement Courses**

Our Judges should be afforded the opportunity of attending pre-retirement courses to aid their transition to retirement. This practice will go a long way in preparing them for the challenges they may face at retirement.

### **Facilities**

The NBA notes the commendable practice of providing the Chief Justice of Nigeria with a befitting house on retirement. We appeal that this gesture should be extended to all retiring Justices of the Supreme Court as well. We further appeal for the purchase of new cars for all retiring Justices of the Supreme Court. This should be the minimum that should be provided for Justices who have toiled and laboured for years to uphold the tenets of justice and the Rule of Law.

### **Security**

Our Government has an obligation to provide an enabling and secure environment for

Judicial Officers to work. Our Courts must be adequately fortified and made safe for both  
Judicial Officers and the litigants. Instances where Courts are bombed and vandalised  
by  
unscrupulous elements in a bid to thwart the course of justice are totally condemnable.

Our Judicial Officers themselves deserve adequate protection from sinister and violent attacks. This is because of the sensitive nature of their jobs as they are easy targets of violent attacks.

We commend the Inspector General of Police, Solomon Arase, Barrister at-law for his proposals in this regard and we urge for urgent implementation of the proposals.

### **Manpower in the Judiciary**

The NBA also commends the Chief Justice of Nigeria for the successful screening and appointment of thirty (30) additional Judges of the Federal High Court. These fresh appointments are a welcome development and will go a long way in reducing the workload of the serving Federal High Court Judges and will also aid the speedy dispensation of justice. We congratulate the successful candidates and urge them to emulate the sterling qualities of My Lord, Hon. Justice J.A Fabiyi, JSC, CFR in the discharge of their judicial duties.

The NBA however notes that the Supreme Court presently has only **seventeen (17)** Justices reducing to sixteen (**16**) today with the retirement of Hon. Justice J.A Fabiyi JSC, CFR. **Section 230 (2)(b)** of the Constitution of the Federal Republic of Nigeria 1999 (*As Amended*) provides for not more than **twenty-one (21)** Supreme Court Justices and we believe that there should be full compliance with the provision by the appointment of Justices to complete the constitutional quota.

This proposed increase will help reduce the workload of the Supreme Court Justices and ensure that 2 panels can sit simultaneously while another panel can sit in chambers in order to decongest the Court and save our Justices from the stress caused by the avalanche of matters. This Court may consider moving closer to the people by having special Court sessions in the various regions to deal with matters from that region. We cannot be seen to be complaining about delay in justice delivery when we still have a shortfall in the quota of the Supreme Court.

The NBA urges the National Judicial Council (NJC) to give full meaning and effect to the provisions of the Constitution, 1999 (*As Amended*) by ensuring that the Supreme Court has its full complement of 21 Justices at all times.

The NBA commends the recent policy introduced by the NJC for the appointment of members of the Bar to the Supreme Court. We commend this laudable initiative and believe that it will aid the administration of justice. It could help address situations where  
the Supreme Court panels cannot handle matters because a member of the panel

previously handled the matter at the Court of Appeal level.

## **CONCLUSION**

My Lords, distinguished ladies and gentlemen, the time has come for the Bar to bid an eminent jurist, a consummate administrator, and a distinguished public servant, a well-deserved goodbye from the Bench. As you enter into retirement, the NBA thanks you for

your long service to the legal profession and the Nation. As a sign of appreciation and utmost respect, the Bar will be hosting a President's Dinner in honour of My Lord, Hon. Justice John A. Fabiyi JSC, CFR tomorrow, Thursday, 26<sup>th</sup> November, 2015 at the Congress Hall, Transcorp Hilton, Abuja at 7:00pm.

We also thank your family for their patience and understanding in a life and career that precipitated frequent transfer and movement from one part of the country to the other, most times without adequate notice. We trust that you will now be able to spend more time with your family.

We pray for God's continued blessings on you during this next phase in your life. May his presence be with you as you explore new paths. May you be blessed with strong network of friends and family to enjoy the journey that lies ahead. We pray that the Almighty God will continue to grant you good health and strength in body, mind, soul and spirit.

As we end this prayer, thankful for what has been and grateful for that which is to come, I wish to end with this quote from the scripture - **Matthew 25:23:**

*“Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things. Come and share your Master's happiness!”*

Happy 70<sup>th</sup> Birthday, My Lord. We wish you many more years of joy and happiness.

Thank you all for your attention.

**Augustine Alegeh SAN, FCIArb. [UK]**

**President, Nigerian Bar Association**