



A SPEECH BY THE HONOURABLE, THE CHIEF JUSTICE OF
NIGERIA, HON. JUSTICE MAHMUD MOHAMMED, GCON, AT
THE SPECIAL SESSION OF THE SUPREME COURT TO
MARK THE COMMENCEMENT OF THE 2016-2017 LEGAL
YEAR AND SWEARING-IN OF NEWLY CONFERRED SENIOR
ADVOCATES OF NIGERIA

HELD AT THE MAIN COURT OF THE SUPREME COURT, ON 19 SEPTEMBER 2016, AT 10 AM.

A SPEECH BY THE HONOURABLE, THE CHIEF JUSTICE OF NIGERIA, HON. JUSTICE MAHMUD MOHAMMED, GCON, AT THE SPECIAL SESSION OF TI-IE SUPREME COURT TO MARK THE COMMENCEMENT OF THE 2016-2017 LEGAL YEAR AND SWEARING-IN OF NEWLY CONFERRED SENIOR ADVOCATES OF NIGERIA, HELD AT TI-IE MAIN COURT OF THE SUPREME COURT, ON 19 SEPTEMBER 2016, AT 10 AM.

PROTOCOL

On behalf of the Supreme Court of Nigeria, I wish to extend our sincere welcome to the Opening of the 2016/2017 Legal Year.

It is with immense pride and a great sense of achievement that we are gathered here today to be part of this occasion. This year's ceremony is all the more poignant as it marks the commencement of my final legal year in the service of my nation.

Nevertheless, I am proud to say that by the will of the Almighty, I am leaving the Supreme Court in a better shape than I met it. Indeed, in the past year, this Court has witnessed numerous improvements both in terms of physical infrastructure and statutory functioning that will no doubt put us on the cusp of greater accomplishments in the future.

This legal year has certainly been an eventful one. We have rowed against the proverbial tides and withstood the blistering winds and gale forces. Indeed, we must appreciate and commend the efforts made by our Justices, and all Judicial Officers and Staff of the various strata of our Judiciary towards enhancing the administration of justice, despite the various attacks and challenges to our independence, none more so than those directed at this Court.

At the beginning of every Legal Year, it is expected that we count our good deeds and the accomplishments of the Supreme Court will be reduced to mere numbers that is the number of appeals determined as against the number of cases filed as a way to establish the success of the Court.

However, I believe the true test of our success is whether this apex court has dispensed justice in a way that our people can say that justice has indeed been done and seen to be done. Without sounding like a Judge in my own case, I strongly believe that the Supreme Court has achieved this objective. The impact of the decisions of the Supreme Court, have not only been just but they have served the cause of Justice.

REVIEW OF THE 2015/2016 YEAR

The Chinese philosopher Confucius, counsels us that one must “*study the past if you would define the future*”. In true and time honoured fashion, the Legal Year Speech is a statement of intent as to the steps, policies and objectives that the Supreme Court proposes to embark upon. It must also reflect upon the Court's achievements and identify past challenges as well as steps taken to address same.

I daresay that in the 2015-2016 Legal Year, our Court confirmed its status as arguably the most overworked Supreme Court anywhere in the World. This was characterized by the near herculean hearing of 1489 matters, consisting of 908 motions and 581 substantive appeals, delivering 268 Judgments in that period.

Indeed, during this period we received about ten new appeals per week, most of which were interlocutory in nature. Consequently, we have taken the historic step towards the expansion of the single track of justice delivery in the Court by allowing for appeals to be mediated where the parties and issues permit.

The last legal year witnessed a transition in the ranks of the Justices of the Supreme Court with the appointment of one new Justice to join the ranks of the Court in the person of Hon. Justice Amiru Sanusi. While we are waiting for the confirmation of the appointment of two Justices of the Court by the Senate, the National Judicial Council is expected to consider and recommend to the President of the Federal Republic of Nigeria, the appointment of two more additional Justices to the Supreme Court at its sitting on 28 September 2016.

We also held Valedictory sittings on the retirement of two of our Brothers, in the persons of Hon. Justice John Afolabi Fabiyi, *CFR* and Hon. Justice Saifullahi Muntaka-Coomasie, *CFR* into a well-deserved life of leisure and rest. I thank these two distinguished jurists and gentlemen, for their invaluable contributions to the jurisprudence of the Court and rest assured, they are sorely missed by us all.

On a sad note, the Supreme Court also witnessed the passing away of Hon. Justice Niki Tobi, *CON*, a retired Justice of this Court. His death was a stark reminder that the Almighty has given each of us limited time to shine and his lordship did indeed shine brightly as a Judicial Officer of this Nation. Though his light has physically gone out like a candle in the wind, yet we remember the many encomiums that describe such a colossus of the law. To us in the Nigerian Judiciary and many around Nigeria and the world, his lordship was a revered colleague, brother justice, peacemaker, a consummate gentleman, an erudite scholar, lecturer, a former dean of law in the University of Maiduguri, mentor and indeed one of the most notable Jurists of his generation. His lordship's indelible contributions are remembered fondly and I daresay that he will be missed by us all.

Despite the vacuum left by the departure of these eminent jurists, the Supreme Court was largely successful in effectively adjudicating and administering justice, in the face of the significant challenges both from within and outside the Judiciary that threatened the institutional integrity of the entire judicial system.

ADMINISTRATION OF JUSTICE

My Lords, Distinguished Guests and Gentlemen of the Bar, in the past year, the Judiciary has once again had to address the perennial issue of delays in the administration of justice.

While we all rush to rehash the age-old rhetoric that *Justice Delayed is Justice Denied*, the actions of our key stakeholders, particularly members of the Bar have often proven to be far from the words.

Although new laws and practice directions have been enacted with the aim of speeding up the administration of justice, incessant delays remain and are aggravated by challenges from those seemingly bent on continuing to live in the doldrums of the past.

Sadly, certain members of the Bar are conspicuous in utilizing unethical, frivolous applications and appeals, multiplicity of actions in courts of coordinate jurisdiction and other acts of calumny to frustrate the speedy dispensation of justice. These abuses of court process not only occasion delays, but also diminish the standing of the justice system and the legal profession in the eyes of Nigerians.

Persistent delays result in a ripple effect that deliberately frustrates due process. Indeed, the opportunity cost of listing a matter that is a manifest waste of the Court's time could delay the hearing of other matters, which may involve the liberty of a citizen or protection of another from harm. Suffice it to say, the Supreme Court takes a dim view of such delays and we will constantly introduce measures to reduce delay in the administration of justice as the past year's statistics will doubtless testify.

Likewise, on a plethora of high profile cases, our determination that justice be done, has been borne out regardless of the parties or consequence of such adjudication.

In the wake of the myriad of political appeals filed in the Court after the 2015 Elections, my colleagues and I went the extra mile by sitting till unusually late hours, sometimes up to 11pm, in order to conclude the appeals, especially as these had a potentially far reaching effect on the lives of our citizens. Indeed, we were obligated to sit even during the Court's vacation in order to dispense matters as required by the Constitution and laws of Nigeria.

Furthermore, the second Panel I initiated in the Supreme Court continued to sit on Wednesdays in addition to the normal panel sitting in chambers on the same day. This initiative continues to record resounding successes and had resulted in the speedy disposition of appeals, thus helping to build public confidence in the Court.

I must therefore place on record that the Justices of the Supreme Court of Nigeria are the hardest working Supreme Court Justices in the world and must receive due ovation for the sacrifices made and deprivations endured in the performance of our onerous duties, in the interest of Justice and our dear Nation.

Nevertheless, we will not rest on our laurels. I therefore urge all Judicial Officers to ensure that they expedite the determination of all cases especially criminal cases, utilizing the Administration of Criminal Justice Act and the 2013 Practice Directions on Serious Crimes that were specially enacted to address delays in cases pertaining to serious crimes.

DISREGARD FOR *STARE DECISIS*

It is with great trepidation and dismay that I note the growing trend of the disregard for laid down precedent in decisions from various levels of courts, even the appellate court.

Hence, it behoves upon me to remind our Judicial Officers of the fundamental legal principle of *Stare Decisis*, as aptly presented by Professor Nwabueze, who stated that “*only a court of law has the power and the right to say authoritatively and conclusively what the law is ... and once a superior court of record has spoken, then its pronouncement, however perverse or blatantly wrong it may appear to be, establishes the law unless and until it is reversed on appeal by a higher court*”.

As Hon. Justice Oputa, JSC, succinctly put it in the specific context of the Supreme Court “*we are final not because we are infallible, rather we are infallible because we are final*”. Therefore, as posited by Justice Frankfurter in the United States Case of *Cooper v Aaron*, “*because a court of law is composed of fallible men, it may err. But revision of its errors must be done by orderly process*”. My lords, members of the Bar, it is also necessary to restate that according to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the decisions of the Supreme Court remain final until the Supreme Court alone decides otherwise.

As such, and in the light of the foregoing, I am of the firm conviction that every court in Nigeria is bound by the decisions of the Supreme Court and shall not graft a different outcome from those expressly laid down by the Supreme Court. Such departures from precedent therefore risk creating the type of confusion, which is inimical to the trust reposed in us by the people and we risk our reputations, our integrity and even our existence by such indiscipline.

Several conflicting decisions were recklessly dished out by the Court of Appeal last year in appeals arising from various decisions of the Election Petitions Tribunals, given on election petitions filed by the parties who lost in the General Elections conducted in April 2015. Such decisions were made as the result of flagrant refusal of the Panels of the Court of Appeal involved, to be bound not only by its own decisions but also by the decisions of this Court,

I therefore call on our Judicial Officers to have due respect for the law and strive to adjudicate in a manner that is premised upon the principles of Justice. Little wonder therefore that people are now increasingly looking at Alternative Dispute Resolution in order to engender more certainty to the resolution of their disputes.

COMPLAINTS TO THE NATIONAL JUDICIAL COUNCIL

My lords, distinguished ladies and gentlemen, I believe that, just like the purity of gold is determined by its hallmark, a sure measure of the strength of our Judiciary is its constitutionally guaranteed independence. A pivotal part of this independence is the ability of the Judiciary to act on complaints or allegations of misconduct against Judicial Officers. The Constitution clearly places the power to exercise disciplinary control over Judicial Officers in the National Judicial Council. Furthermore, in line with the provisions of the Constitution, the Judicial Discipline Regulations 2014 comprehensively sets out the procedure for making a complaint, without undue interference from other Arms of Government.

It is therefore of great concern and wonder that the growing trend for our lawyers, litigants and even members of the public to route complaints against Judicial Officers to the Office of the President of the Federal Republic of Nigeria. I am most dismayed that Legal Practitioners who ought to better appreciate the need for the independence of their primary constituency would engage in this misguided practice.

This dangerous new trend has borne itself out in various complaints ranging from disparaging remarks against Judges of our Superior Courts, to unprecedented, unwarranted and unfortunate personal attacks on Judicial Officers.

I must admit that these cases were particularly distasteful and have been marked for action against the erring Counsel by the Legal Practitioners Disciplinary Committee.

This trend is a distressing indicator that having overcome the evils of interference with the independence of our courts during the Military era, some Legal Practitioners now engage in dragging the Judiciary back into the same bondage in this current democracy. I deduce that the motivation for this trend lies undoubtedly in their narrow, deplorable self interest and incompetence.

However, we must understand that the only way to improve the performance of our Courts is through the Judiciary itself. Unlike the days when rule was by decree, it is apt that we educate ourselves on the doctrine of separation of powers and hold strongly to it.

As I have hitherto said in various speeches, where a complaint against any Judicial Officer is properly submitted to the National Judicial Council, the Council will act upon same swiftly and decisively.

THE APPOINTMENT OF JUDICIAL OFFICERS

In the area of Judicial Appointments, there had been in the past, measured criticism of the process of appointment of Judges and I am glad to report that the previous 12 months oversaw great changes in the integrity of the system of appointment to the Bench.

Since assumption of office, I have worked to strengthen the process through the use of the *2014 Revised National Judicial Council Guidelines & Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria*.

The National Judicial Council's new Guidelines provide a more comprehensive, robust and transparent method of appointment, leading to the emergence of only the best legal minds with high moral standards and the temperament to serve as our Judges. With the judicious use of this innovation, I daresay that the last appointments for new Judges of various courts were overwhelming successes.

My lords, distinguished ladies and gentlemen, given that this is my last Legal Year speech, I must use this medium to address speculations that have arisen as regards the appointment of persons to the Office of the Chief Justice of Nigeria.

Permit me to restate that Section 231 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), is clear as to the procedure that must be followed in appointing a Justice of the Supreme Court or indeed a substantive Chief Justice of Nigeria. The National Judicial Council recommends, the President of the Federal Republic of Nigeria approves and the Senate confirms such appointments.

While I would admit that there is no constitutional restriction as to where those to be appointed are selected from, the long held practice, which I daresay had been apolitical, transparent and fair, had been to appoint the 1110st senior Justice of the Supreme Court to the Office of the Chief Justice of Nigeria. With the exception of two Chief Justices who were appointed from outside the Supreme Court during the Military regimes and in exceptional circumstances, this system had proven to be seamless, predictable, respectable and dignified.

The idea that we can appoint a Legal Practitioner, without the proven experience or the temperance of character developed through years of active participation in adjudication, may indeed be fraught with risk, none greater than the risk of creating another sinecure for party loyalists or reducing the Office of the Chief Justice of Nigeria to one which can be "lobbied" for.

This will undoubtedly and irreversibly hurt our justice system and must be strenuously resisted.

As experienced Judicial Officers, having served on the Bench for an average of 25 years or more prior to elevation to the Supreme Court, we know each other's weaknesses and strengths, but most importantly, we know how important the Judiciary is to us. We have dedicated our lives to the Judiciary and accepted our calling as Judges. We know that the Judiciary is our home. Our independence is intrinsic to us. A firm sense of Justice had also been developed, forged as it were, in the furnace of practical jurisprudence, rather than one recently adopted. We are constant, not subject to the direction of the political wind like a blade of grass bends to the harmattan breeze. As with all institutions of the Judiciary, the prospect of lobbying is one that we eschew and would not wish to introduce it to the Bench.

I must state that this penchant for stability, independence and fairness is one which is sorely needed and had been evident in the recent conferment of the noble rank of Senior Advocate of Nigeria.

APPOINTMENT OF SENIOR ADVOCATES OF NIGERIA

Permit me to extend my sincere congratulations to the newly appointed Senior Advocates of Nigeria (SAN), on the conferment of the distinguished rank upon you all. As I had stated last year, this is a rare privilege, which imposes both moral obligations and professional duties on you. You have become leaders in the noblest profession and must therefore strive to uphold the trust that our society reposes in you.

You were selected based on strict criteria such as an unquestionably sound command of the law and ethics of your profession and now occupy an enviable position that recognizes these attributes.

I therefore advise you to imbibe the highest tenets of integrity and humility that is befitting your status. You must ensure that your reputation is carefully defended and protected, remembering that your privileges are ones of humility and service. To those who aspire for this noble rank, I urge you to emulate the virtues of honesty, diligence and hard work, shunning the temptation to attain the rank "by all means" as it were.

Institutionally, the last legal year oversaw a consolidation of the ongoing reforms to make the process of selection more reflective of the work that the Legal Practitioners' Privileges Committee had done to ensure transparency and fairness, thereby eliminating the risk of bias and the possibility of preferential treatment of candidates.

Desirous of improving the process, the Legal Practitioners' Privileges Committee, acting under its powers as set out in Section 5 of the Legal Practitioners Act, (Cap L11, Laws of the Federation of Nigeria, 2004) enacted ***Guidelines for The Conferment of the Award of the Rank of Senior Advocate of Nigeria 2016***, which is now gazetted. The new Guidelines, which sought to ensure that the award becomes an independent indication of excellence in the Legal Profession, remove parochial considerations of ethnicity and origin, and ensuring a self-financing process that ensures that rigorous screening is embarked upon. These Guidelines have, in my opinion, entrenched a more meritorious system for the selection of those men and women who have been deemed worthy of conferment.

A perusal of Paragraph 19 of the said Guidelines, for instance, will reveal the minimum standard of competence, expected of the candidates and utilized in the screening process, thus infusing the quality of transparency into the process. Indeed, the enactment and meticulous application of the new Guidelines have ensured that the current set were the most scrutinized in the history of the conferment of the noble rank of Senior Advocate of Nigeria. It is also worth noting that this set of applicants were also among the most qualified in a very long time, with all applicants scoring above the cut-off marks, which I assure you was not an easy feat.

Furthermore, for the first time, since the inclusion of the compulsory criterion of *Law Office Inspection* in Paragraph 15(1) (a)-(e) of the ***Legal Practitioners' Privileges Committee Guidelines, 2013***, we have seen candidates whose facilities reflect the standards expected of conferees of the rank. I was particularly impressed by the report of the said inspections, which indicated that the facilities of all shortlisted persons were in their words, "outstanding".

No doubt, the process was exhaustive and gruelling for all concerned but it ensured that only the best candidates emerged. In recognition of their efforts in improving this year's exercise, I wish to express my gratitude to the members of the Committee, for their industry, time and effort in safeguarding the selection process and underpinning same with fairness, equity, and good conscience.

Although we have worked to sanitize the system, I note that in recent times some senior lawyers have resorted to conduct which is reminiscent of a "*crime drama*", in order to gather the number of cases to meet the requirements needed to be considered for conferment. Certainly, it is not uncommon to hear of lawyers "gazumping" briefs held by their colleagues at appellate courts including this Court.

I must say that nothing is worth the denigration of the esteem attached to the rank of SAN and its status as the reward of consistent demonstration of excellence. Our noble profession should not be populated by fraudsters, cheats and liars nor by persons who believe in the maxim that "*the end justifies the means*". Ours is a profession where integrity is worth more than gold and a good name, more than its weight in platinum.

It is saddening to hear reports of insults directed at our Judges from some Senior Advocates and senior members of the Bar, whose words are often an outright contempt. The tradition of maligning the Judiciary in order to demonstrate dubious professional credentials as a "radical" must stop. I urge the leadership of the Bar to be more proactive in disciplining such errant counsel in defence of the integrity of the Judiciary and the Legal Profession. I daresay that no sane person harvests his crops by burning his field. A word is indeed enough for the wise and I urge our Judicial Officers to ensure that such behaviour is decisively dealt with.

INNOVATION VIA INFORMATION AND COMMUNICATIONS TECHNOLOGY

In our quest to provide a speedy, affordable and transparent system of justice, the Nigerian Judiciary has adopted the use of Information and Communications Technology in order to bring our court processes in line with

the expectation of our millennial generation of citizens who crave a swift, 21st Century system of justice.

In a year of inevitable change, the Supreme Court became a pilot court for the Judiciary's drive for the historic launch of the Nigerian Case Management System (NCMS) software, which was developed in order to facilitate the transition to a paperless adjudication system, through the automation of the process of filing, service and notifications via hearing notices, among many other innovations.

In addition to the development of the NCMS, the Judiciary also developed a unique and exclusive Legal Email System, known as the Nigerian Legal Email System (NILES) that has been rolled out to facilitate easier and secure electronic communication between the Supreme Court and members of the Bar.

At present, 2772 lawyers have activated their legal email, which represents a sharp 131 % increase in just one month. I would like to use this opportunity to acknowledge the support received from the past President of the Nigerian Bar Association, Augustine Alegeh, SAN, in this regard. I am sure we will receive same active support from the incoming leadership of the Bar.

Similarly, the Court's infrastructure has been upgraded and our courtrooms are being retrofitted with modern court technology hardware to enable state of the art paperless operations to be utilized in advance of its eventual rollout to all Jurisdictions in Nigeria.

Given the rave reviews that the Case Management software received whilst being adopted by the Chief Justices of five Caribbean Community countries earlier this year, we have an independent assurance of the quality, robustness and obvious benefits of this software of the future.

ENHANCEMENT OF COURT FACILITIES

My Lords, Ladies and Gentlemen, I am sure you will agree with me that speedy dispensation of justice is only possible when requisite facilities exist. You will also concur that given its federalized structure, several State Judiciaries in Nigeria are sadly handicapped by an acute shortage of resources

necessary to ensure smooth administration of justice. Nevertheless, the various Heads of Court and Chief Registrars have had to be resourceful in order to position our courts for improved service delivery. This informs the efforts made by the Supreme Court to upgrade and improve upon its facilities in order to provide a clean, comfortable and conducive environment to court users, despite our limited resources.

Sequel to my direction and premised on my passion for positive change, the Supreme Court has been embarking upon an extensive refurbishment exercise aimed at meeting the requirements of a modern Supreme Court.

Our Courts' audio visual equipment and IT solutions, when finally completed, will comprise of a Digital Conference System, a room audio system, video wall for projections, display monitors, Video Conferencing system, Cameras and an Audio Visual Control Management system.

In addition, there has been an upgrade of the security architecture of the Court in response to the current security challenges in our country. The installed scanners are working perfectly as I am sure you observed on the way into the Court. I am sure that my lords and our distinguished guests observed the efforts being made to secure our Court through the extensive use of specialized visitor tags and security cordons that ensure only authorized persons can visit various parts of the Court at any given time. There has also been an aesthetic addition to our court with the automated door system bearing our logo, which doubtless improves the entrance of the Court, while ensuring the effective security of the court users.

We are also determined to improve upon the physical ambience of the Court through the growth of flowers, landscaping and increased soft furnishings that aim to provide an improved user experience for our court users.

The Judiciary, perhaps more than the other arms of Government, has faced adverse economic conditions this past legal year. We would be naive not to note the effect that the significant loss of national revenue has had on our budget and the ability to meet the basic needs of the Court.

Notwithstanding the reductions made to the budgetary allocation of the Judiciary, we have persisted in prioritizing the needs of our court staff and we shall continue to work assiduously to ensure that the basic working conditions and welfare of the staff are met.

CONCLUSION

My Lords, Distinguished Guests and Gentlemen of the Bar, as I wind down this Legal Year Speech I must confess that I do so with a certain sense of nostalgia.

I also do so in the firm knowledge that since my elevation to this noble Court, I have put my hands to the proverbial plough in contributing my quota to the decisions of the Court and by extension, the resonant development of our jurisprudence.

I am satisfied that the initiatives introduced by my predecessors and I have steadily led to an improvement in the procedures and business of the Court. I am similarly confident that this will continue to be achieved when the baton is transferred to my successor -in -office.

I am proud to have witnessed many epochal developments in the administration of justice while being part of a Supreme Court that can be rightly regarded as the umpire of our Nation, and a veritable defender and guarantor of the democratic rights of our citizens.

Beyond the statistics, this Court has consistently proven to be successful in engendering greater judicial certainty, while the decisions of the Supreme Court on such diverse issues as the status of the card reader will stand the test of time.

On a particularly encouraging note, I am glad to have also *walked the talk* in establishing the first court-connected ADR facility in the Supreme Court. I feel rewarded to be departing the Court, safe in the knowledge that our Court is now a beacon to other jurisdictions in the use of a multi-modal justice delivery system. I urge you to be part of the success of the Supreme Court Mediation Centre.

My Lords, distinguished ladies and gentlemen, while it would be true to say that the Judiciary faces various challenges, we must address these challenges by guaranteeing that justice is blind to extraneous considerations. This requires us all- Legal Practitioners, Senior Advocates of Nigeria, prosecutorial agencies, Court Staff and Judges- to commit to a speedy, fair and transparent system of justice.

I leave you all with the charge for us to remember that justice is not limited to our generation but is one of the most valuable virtues that we can bequeath to posterity.

I therefore call on us all to do better than we did last year and work to deliver the sort of justice that will restore our battered reputation in the eyes of our fellow citizens.

On behalf of myself, and my brother Justices of the Supreme Court, I would like to extend our sincere gratitude to all our distinguished guests and well wishers, from far and wide, who are gathered here to witness this event. On this reflective occasion for me and for the Court, I also wish to express my personal appreciation to you all for giving me the benefit of your rapt attention.

It is now my singular honour and privilege to declare the Supreme Court of Nigeria 2016/2017 Legal Year, Open. I wish you all a beneficial and favourable, new Legal Year ahead.

Thank you all and May God bless us all.

Mahmud Mohammed, GCON
Chief Justice of Nigeria