

LAWYER

A THIS  DAY WEEKLY PULL-OUT

27.03.2018



**'NIGERIAN
ELITE EVADE
TAXES'**

Professor Abiola Sanni



Doctrine of Covering the Field

PAGE 4



'Democratise Award of SAN Rank,' - Falana

PAGE 5



Lagos CJ, Sagay, Osipitan, Magu, Others to Grace NBA Rights Symposium

PAGE 6



Lawyer: National Assembly Can Reorder Elections Schedule

PAGE 6



'A Lawyer Must be a Mini Encyclopaedia'

PAGE 6



The Passing of a Legal Icon: Chief Idowu Sofola, MON, SAN

PAGE 13



The Use of Social Media Within the Legal Profession

PAGE 14

QUOTABLES



'Oil prices were at an average of \$110 a barrel, and only N99 billion was spent on Power, Works, and Housing; and in one day, a hundred billion was issued, and people essentially shared it. When we talk about our economy, we talk about it as if it's not that bad. That is abnormal. I'm not saying that corruption under this administration, has been completely dealt with. No, certainly not. Where corruption has become systematic, such as we have in our country today, you can't deal with it in one fell swoop. It's not possible'

- **Professor Yemi Osinbajo, SAN, GCON, Vice President, Federal Republic of Nigeria**



'We have been in negotiations with this faction of insurgents for quite a while, and one of the understandings was that, while we negotiate towards a total cessation of hostilities, there would be no abductions. So, for us, it was a moral issue. The Government, led by its negotiators, reminded them of the agreement that there would be no abductions, that they had breached the agreement. That was why there was no swap. There was no money paid. Any other story to the contrary, is false.'

- **Alhaji Lai Mohammed, Lawyer, Honourable Minister of Information and Culture**

COLUMNIST



ABUBAKAR D. SANI

Abubakar D. Sani holds a Bachelors degree from the University of Maiduguri, and has been in active private legal practice since he was called to the Nigerian Bar in 1987. He is the Principal of Abubakar D. Sani & Co., which has offices in Abuja and Kano. "INSIGHT" aims to unravel, analyse and proffer solutions to numerous anomalies in Nigerian law and practice, particularly statutes, vis-a-vis the Constitution, International Treaties and Conventions to which Nigeria is a signatory, Judicial Precedent and other relevant statutes and issues.

Dapchi and the Shame of Northern Elite

Return of Dapchi Girls

I am extremely happy that majority of the Dapchi girls have been returned to their families, safe, sound and unspoiled. I mourn with the families that lost their beloved daughters. May God strengthen and comfort them, during this difficult time. Amen. As for Leah Shuaibu, the only young lady in this batch of girls that is still in captivity, because she refused to denounce her faith, I pray that God will touch the hearts of her abductors, so that she will be returned home to her family unharmed. Amen.

Can the Girls Speak English?

That said, what struck me about the Chibok and Dapchi girls, is that at secondary school level, these girls seem unable to express themselves in English Language. Each time any of them has appeared on television to give some account or the other of their ordeals, the accounts have been given in Hausa. Last Thursday, I watched a clip of an interview of one of the Dapchi abductees, Khadija Grema, recounting their ordeal. The whole account was animatedly given in Hausa. My question is, do these girls not understand the English Language? I am beginning to suspect that they may not! Considering the fact that English is our official language in Nigeria, and pupils and students are supposed to be taught in English, how can this be?

There is a message which has made the rounds on social media, about the National Common Entrance Examination (NCEE) cut-off mark for each State in Nigeria, for the 2017/2018 session. Where Imo State has the highest cut-off mark of 66% without any discrimination between males and females, for the same examination, Sokoto State has the lowest cut-off mark of 7% for females, while Zamfara State comes in second to the last with 14% for males and 12% for females. According to the table, Yobe has 20% while Borno has 33% cut-off marks for both sexes.

My next question is, how does a person who only needs 7%, which is closer to 0%, and an abysmal failure by any standard worldwide, get into the same class and compete with someone that gets 66%? A person that gets 7%, I am sorry to say, knows next to nothing! How does such a person, go through secondary education,

and pass the GCE O levels or whatever examinations they now take to complete secondary school, not understanding English? Are the examinations taken in Vernacular/Hausa?

Section 18(1) & (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the Constitution), provide respectively that "Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels", and "Government shall strive to eradicate illiteracy" providing when practicable, free education from primary to tertiary level, and even adult education programmes. It seems that, successive Governments have failed in delivering on the constitutionally provided educational objectives, especially to some of the Northern States. Why are their cut-off marks so low?

Low Budget Allocation for Education

Why is it that people like Governor Nasiru El-Rufai, who said that he is a beneficiary of our public education system, are properly educated and articulate, while we now have secondary school students in the same system, that cannot even express themselves in English? The answer is that, our educational system is in shambles! The quality of our educational system in Nigeria, has fallen to rock bottom, ground zero. In our grandparents days, those that studied up to 'Standard 6', that is, passing out of Primary School, seem to have been more literate and educated, than some of our Secondary School finalists of today.

Successive Nigerian Governments, have failed to allocate enough funds for the development of education. While UNESCO has recommended that 15%-20% budget allocation for education is the international benchmark, Nigeria has consistently been allocating something in the region of 6%-7% since the return to civilian rule, less than half of the recommended budget allocation. It is therefore, no surprise, that our educational system is in such a deplorable condition.

For 2018, the budgetary allocation for education in Nigeria is 7.04%, that is, about N60.5 billion or so out of an N8.6 trillion budget. Other smaller African countries, spend more on education than Nigeria. Ghana has spent up to 31% of its budget on education, Ivory Coast

30%, while Kenya has spent 23%. In Nigeria's case, it is interesting that the Military Governments spent more on education, and that there has been a downward trend from 1999 when Nigeria became a democracy, from about 11% to 7% budget allocation. Meanwhile, recurrent expenditure has been on a constant rise, which goes to show that Government is run more inefficiently without proper focus on crucial sectors like education, as the years go by!

Honourable Kazaure

The other day, I saw a video clip of Honourable Gudaji Kazaure, APC Member representing the Kazaure/Roni/Gwiwa/Yankwashi Federal Constituency of Jigawa State, talking about Women purportedly to mark International Women's Day. Honourable Kazaure is said to have obtained his WASC at the age of 22 in 1994, and did not seem to further his education after that. The video was hilarious, and at the same time, sad and somewhat derogatory towards women. His command of the English Language was rather poor, leaving a lot to be desired. He referred to women as 'womens' and children as 'childrens', saying that women should only be giving so much opportunity, so that they do not take over from men. That women were meant to serve men, and that if they took over the Chamber (which he pronounced as 'Chambas'), they would mess up! I know that members of the House of Representatives travel abroad to meet their counterparts, and attend all sorts of programmes; I wondered whether Honourable Kazaure would understand anything, if he was part of any of those trips abroad, and what positive contribution he would be able to make. Making the kind of submission he made on the floor of the House of Representatives at a forum abroad, would be seen as the 'faux pas' that it was, highly offensive, derogatory and discriminatory (to use the latest Nigerian slang, "hate speech" against women!). Yet he holds such an esteemed position, and is responsible for making laws etc for the country!

Honourable Kazaure, **"It is not scientific proof of gender equality that is required, but general acceptance that women are at least the equals of men or better."** ~ Stephen



ONIKEPO BRAITHWAITE

THE ADVOCATE

onikepo.braithwaite@thisdaylive.com

onikepob@yahoo.com

"IT IS TIME TO DECLARE A STATE OF EMERGENCY IN THE AREA OF EDUCATION IN NIGERIA, BEFORE IT IS TOO LATE. IF NOT, ONE DAY IN THE NOT TOO FAR FUTURE, WE WILL WAKE UP AND DISCOVER THAT WE ARE ONE OF THE MOST BACKWARD COUNTRIES IN AFRICA, BECAUSE WE ARE A MOSTLY UNEDUCATED NATION"

Hawking.

State of Emergency

It is time to declare a state of emergency in the area of education in Nigeria, before it is too late. If not, one day in the not too far future, we will wake up and discover that we are one of the most backward countries in Africa, because we are a mostly uneducated nation. It is time for Government to cut useless expenditure like having Special Assistants, Special Advisers, Luxury cars for Government Officials, constantly sending Politicians and Government Officials on wasteful trips abroad, and so on, and instead use the funds gainfully, providing the international recommended budget allocations for the educational sector.

Teachers in Nigeria are so poorly paid, that there is hardly any incentive to be a Teacher anymore. Only those who are barely educated and have limited options, are interested in teaching, so that they can at least attempt to make ends meet, and earn a salary, instead of dying of hunger! We saw this happen in Kaduna State, where Teachers could not even pass basic Maths and Literacy Examinations. Governor El-Rufai certainly did the right thing, in expunging those who are not qualified to teach, from the system. Our educational system also seemed to work better, before this 6-3-3-4 system we have now. It seems that, we may have to rethink our whole educational system from scratch. So much needs to be done, like increase in Teachers' remuneration and welfare, proper professional training for them, upgrading of educational infrastructure, libraries, equipment, school boarding facilities etc. The curriculum also needs to be re-evaluated and overhauled.



Dapchi girls

Doctrine of Covering the Field

Facts

The 1st Respondent filed an Originating Summons before the Federal High Court, Lagos, seeking a determination of the question whether remittance of money collected as tax by it from its consumers, should be paid to the Federal Board of Inland Revenue (FBIR) or to the Lagos State Government, having regard to the provisions of Sections 1, 2, 10, 11, 12, 13, 14, 15 and 16 of the Value Added Tax (VAT) Decree No 102 and Sections 1, 2, 3, 4, 5 and 6 of the Sales Tax Law. Both the Appellant and the 2nd Respondent, filed Counter-affidavits in opposition to the Originating Summons. The Judge held that the 1st Respondent could only be a 'taxable person' or remitting agent in respect of the amount due as tax on its sales to its consumers to a single agent, which is the FBIR. The Appellant, who was dissatisfied, unsuccessfully appealed to the Court of Appeal; it has further appealed to the Supreme Court.

Issues for Determination:

The issues as formulated by the Appellant which were adopted by the Respondents are:

- Whether the Court below was right when it held that the cases of **ATTORNEY-GENERAL OF OGUN STATE v ABERUAGBA** (1985) 1 NWLR (Pt. 3) 395 and **NIGERIAN SOFT DRINKS LTD v ATTORNEY-GENERAL OF LAGOS STATE** (1987) 2 NWLR (Pt. 57) 444 cited to the trial Court as *stare decisis*, is a non-issue, and that none of those decisions was authority to say that the 1st Respondent is obliged to remit proceeds of Sales Tax to Lagos State Government.
- Whether the Court of Appeal was right, when it held that the Value Added Tax has covered the field of Sales Tax, and its provisions prevail over the Sales Tax Law of Lagos State.
- Whether the Court below was right, when it held that imposition of both Value Added Tax and Sales Tax, will create double taxation.

Arguments:

On the first issue, Counsel for the Appellant contended that the cases of **ATTORNEY-GENERAL OF OGUN STATE v ABERUAGBA** (1985) 1 NWLR (Pt. 3) 395 and **NIGERIAN SOFT DRINKS LTD v ATTORNEY-GENERAL OF LAGOS STATE** (1987) 2 NWLR (Pt. 57) 444 have conclusively determined the sales taxing power of Lagos State, and were decisions of the Supreme Court and Court of Appeal respectively and that by the doctrine of *stare decisis*, both the Federal High Court and the Court of Appeal should have held themselves bound by the decisions. He relied on **NAB LTD v BARRI ENGINEERING NIGERIA LTD.** (1995) 8 NWLR (Pt. 413) 275 at 289.

He argued that, the Federal Government derived its power to enact VAT Act from Item 61 in the Exclusive Legislative list, and that the provision was considered and interpreted by the Supreme Court in *Aberuagba's* case, wherein the taxing power of the Federal Government was limited to international and interstate trade and commerce. On their part, Counsel for the 1st Respondent submitted that *Aberuagba's* case was distinguishable from the present case. The present action was for a determination as to who should receive remittance of tax already collected by the 1st Respondent, as against the validity of the Sales Tax Law of Lagos State, which was the decision in *Aberuagba's* case. Counsel for the 2nd Respondent submitted that, even though a State has power to enact a Sales Tax Law, that law must not be inconsistent with any validly made Act, especially where the Act has covered the field.

On issue 2, Counsel for the Appellant argued that, it is not in all cases where a statute enacted by a State is in conflict with an Act on the same subject, that the former would be declared invalid and inoperative. He submitted that, for the doctrine of "covering the field" to apply, the Federal Government must first have the legislative competence to enact the law. He conceded that the Federal Government has incidental sales taxing power in respect of trade and commerce, but that the power is incidental only to the exclusive power of the National Assembly over international and interstate trade and commerce. He submitted that, the National Assembly does not have power to make laws on intrastate trade and commerce and therefore, cannot impose tax on such trade as the VAT appears to do. He relied on **FAWEHINMI v BABANGIDA** (2003) 3 NWLR (Pt. 808) 604. He concluded that the issue



Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC

In the Supreme Court of Nigeria
Holden at Abuja

On Friday the 8th Day of December, 2017

Before Their Lordships

Musa Dattijo Muhammad
Kudirat Motonmori Olatokunbo Kekere-Ekun
John Inyang Okoro
Amiru Sanusi
Ejembi Eko
Justices, Supreme Court
SC.321/2007

Between

Attorney-General, Lagos StateAppellant

And

- Eko Hotels Limited
- Federal Board of Inland RevenueRespondents

(Lead Judgement delivered by Hon. Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC)

"THE DOCTRINE OF COVERING THE FIELD, IS ESSENTIALLY THAT WHERE THE MAIN, PRINCIPAL OR SUPERIOR LAW HAS COVERED A GIVEN FIELD OR AREA, ANY OTHER SUBSIDIARY LAW MADE IN THAT AREA OR FIELD, CANNOT OPERATE SIDE BY SIDE WITH THE MAIN, PRINCIPAL OR SUPERIOR LAW. IF THE INFERIOR LAW IS INCONSISTENT WITH THE PRINCIPAL LAW, IT HAS TO BE DECLARED VOID TO THE EXTENT OF ITS INCONSISTENCY"

of covering the field, is not applicable so as to make the VAT prevail over the Sales Tax Law. For the 1st Respondent, Counsel argued that the constitutionality of the VAT Act, was not in issue at the lower Court. He submitted that VAT and Sales Tax are the same, as the incidence of both taxes is on the consumer. He submitted further that, the lower Court was right to have held that the VAT Act had covered the field. Counsel for the 2nd Respondent submitted that VAT is a tax payable on goods and services all over Nigeria, and that all tiers of government, including Lagos State, are beneficiaries. He concluded that since VAT is a valid law of the National Assembly, the Sales Tax Law is void to the extent of its inconsistency.

On issue 3, Counsel for the Appellant submitted that, double taxation might arise in two situations: (i) the imposition of two taxes on the same property, tax payer or profit or goods, during the same period by one taxing authority; and (ii) the imposition of comparable taxes in two or more States on the same tax payer for the same subject. He relied on Black's Law Dictionary, 8th Edition. He submitted that, neither situation is applicable in this case. Counsel for the 1st Respondent countered the submission of Counsel for the Appellant, and posited instead that in so far as the objectives of the VAT Act and the Sales Tax Law are the same and the incidence of the taxes is on the consumer, then the imposition of both taxes would create double taxation. Counsel for the 2nd Respondent, agreed with the Counsel for the 1st Respondent on this point.

Court's Judgement and Rationale

On issue 1, the Supreme Court relying on Black's Law Dictionary, 8th edition defined '*Stare decisis*' as follows "*to stand by things decided*", *the doctrine of precedent under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation*". Based on this definition, the Apex Court held that the issue in *ABERUAGBA'S* case was the validity of the exercise of the legislative powers by the Ogun State House of Assembly in enacting the Sales Tax Law of 1982, which imposed tax on the purchase of specified goods and services. The Court held further that, in this case, the 1st Respondent did not challenge the validity of the Sales Tax Law of Lagos State; therefore, the cases of **ABERUAGBA** and the **NIGERIAN SOFT DRINKS LTD** cannot constitute *stare decisis* for the trial Court.

On issue 2, the Learned Justices held that **the Value Added Tax Decree No. 102 of 1993 was promulgated by the Federal Military Government and it remained in effect until the coming to effect of the 1999 Constitution. At the time the cause of action arose, the VAT Act was deemed to be an Act of the National Assembly and until there is a decision of a competent Court invalidating it, it remains valid.** The Court held further that Section 2 of the VAT Act, provides that the tax to be charged and payable on goods and services is as set out in column A of schedules 1 and 2 of the Act. Section 1 of the Sales Tax Law of Lagos State makes similar provision. **The Supreme Court, agreeing with the two lower Courts, held that the goods and services covered by the VAT Act and the Sales Tax Law, are the same. It follows that the VAT Act has effectively covered the field in that regard. The provisions of the VAT Act, having covered the field on the issue of Sales Tax, its provisions prevail over the provisions of the Sales Tax Law of Lagos State.**

Deciding issue 3, the Supreme Court held that, not only do both the VAT Act and the Lagos Sales Tax law cover the same goods and services, they are also targeted at the same consumer. **The court is unequivocal that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers, under two different legislations.**

Having resolved all the issues against the Appellant, the Supreme Court dismissed the appeal.
Appeal Dismissed.

Representation:
S.A. Quadri Esq. (DCL) with E.R. Agu (Mrs.) (CSC)
Ministry of Justice, Lagos State for the Appellant.

M.N.O. Olapade Esq. with Ibiye Tyroll Thompson for the 1st Respondent. B.H. Oniyangi (Mrs) with Ibrahim Abdul-lah for the 2nd Respondent.

Reported by Optimum Law Publishers Limited (Publishers of the Nigerian Monthly Law Reports (NMLR))



L-R: Mr. Jide Gomez (son), Pa Tunji Gomez, Aduke (daughter); Mr. Chukwuka Ikwuazom, NBA Lagos Branch Chairman; Chief S. M. Olakunrin, SAN, former Chairman of Body of Benchers and Mr. Chukwuma Ezeala, Chairman of Planning Committee, at the dinner to mark the 90th birthday of Pa Tunji Gomez, Life Bencher



Pa Tunji Gomez flanked by the clergy and (from left) grand-daughter, Jumoke; daughter, Aduke and NBA Lagos Branch Vice Chairman, Mrs. Bola Animashaun at the birthday thanksgiving service at The Cathedral Church of Christ, Marina, Lagos recently

'Democratise Award of SAN Rank,' - Falana

Leading human rights activist, Mr. Femi Falana, SAN, has advised further review of the guidelines for the award of rank of Senior Advocate of Nigeria (SAN), to ensure that all qualified applicants are awarded.

Delivering the dinner speech at an event to mark the 90th birthday of foremost activist and Life Bencher, Pa Tunji Gomez, Falana also commended the Nigerian Bar Association (NBA), Lagos Branch for "celebrating Pa Gomez while he is still very much with us".

According to him, the dinner/lecture which was held at the MUSON Centre, Lagos "is also a challenge to all

Lawyers to live a good life, so that they can be celebrated in their lifetime".

Falana noted that Pa Gomez's anti-SAN rank stance "is borne out of his commitment to equality before the law and equal rights. As far as he is concerned, a Lawyer is a Lawyer. And if we are running a truly democratic system like in America, there should be no ranking of Lawyers." Falana however, observed that since Nigeria "inherited the British tradition of having a club of Lawyers to act as a shining example for others, we are retaining the rank of Senior Advocate".

The human rights activist,

however, noted that over the years, "it is undeniable that the rank has been mired in controversy, just like any honour given in Nigeria. It ought to be pointed out that, the campaign for the abolition of the rank is not limited or peculiar to Nigeria".

He observed that, the rank was abolished in Ghana in 1988 following a court judgement, adding that the attempt by the abolitionists in Nigeria led by Pa Gomez to replicate that feat, was truncated by the Federal High Court on a "technical ground" of lack of service.

He however, noted that former Chief Justice of Nigeria, Justice Mahmud Mohammed, had advised the abolitionists to seek an amendment of the enabling law, in their bid to sound the death knell on the rank.

Falana stated that he owed a debt of gratitude to the Gomez-led abolitionists for the award of the rank to him, "and for keeping up the struggle", adding that without Pa Gomez's struggle, "it would have been impossible to open the floodgates as it were" to accommodate more applicants.

"Today, large-scale reforms have taken place," he said. "And when I stand before you and I am described as SAN, I think it was the struggle that pushed the legal establishment to expand the frontiers to accommodate those who were otherwise said not to

be fit and proper persons to be Senior Advocates of Nigeria."

He observed that late Chief Gani Fawehinmi and himself were listed consistently for 10 and 8 years respectively, before they got frustrated, adding that "it was the system on its own" that invited him to take silk.

Falana enumerated some of the shenanigans that had attended the award of silk, and noted that the revised guidelines had sought to reverse this, by focusing on advocacy at the trial courts, adding however, that this may cause hardship to some applicants "in the midst of many senior advocates" whose cases take precedence.

He observed that, the new guidelines also sought to strengthen the award mechanism, and ensure that more people are admitted to the inner Bar, adding that the guidelines equally place emphasis on the conduct of the awardees, as they may now be derobed.

Falana however, warned that "the legal establishment of a conservative profession, is not going to abolish the rank of senior advocate. What the authorities have settled for is to reform the process". He therefore, advised better case management by Judges, to accommodate non-SANs,

adding that Senior Advocates should play more leading roles in the affairs of the Bar at the branch level.

Falana urged that the awards should be democratized, saying: "There is no way you can justify giving the award to only 21 lawyers in a year, where you may have shortlisted over 200 applicants. It gives room for a lot of discretion, and this has to go". Instead, he said Nigeria should emulate England, Jamaica and Canada, where all qualified applicants are awarded the rank.

Falana also deprecated the situation where only two percent of female Lawyers, have been awarded the rank since inception, adding that this does not show Nigeria as progressive. In his remarks, NBA Lagos Branch Chairman, Mr. Chukwuka Ikwuazom said that the decision of the Branch to honour Pa Gomez, was to appreciate his "uncommon and zealous" commitment to the Branch, even as the Chairman of the Planning Committee, Mr. Chukwuma Ezeala, thanked all who contributed in making the celebration a huge success.

The event which was chaired by former Chairman of the Body of Benchers, Chief S. M. Olakunrin, SAN, was attended by the cream of Nigeria's Bar and Bench.

Lagos CJ, Sagay, Osipitan, Magu, Others to Grace NBA Rights Symposium

Akinwale Akintunde

The Nigerian Bar Association (NBA), Ikeja Branch, will today hold a one-day symposium at St. Leo's Catholic Church, Toyin Street, Ikeja.

The symposium with the theme 'Salvaging Nigeria's Criminal Justice System: The Jury Option', was organised by the Human Rights Committee of the Branch in collaboration with The Jury Justice & Rectitude Advocacy Initiative.

A statement issued by the Chairman of the branch, Mr. Adesina Ogunlana and Chairman, Human Rights Committee,

Mrs. Caroline Ibharenefe stated that Professor Taiwo Osipitan, SAN will deliver the keynote address, while the Lagos State Chief Judge will be the special guest of honour, and Professor Itse Sagay, SAN, is expected to be the Chairman of the occasion.

Other dignitaries expected to grace the event include, the Acting Chairman of the Economic and Financial Crimes Commission (EFCC), Mr. Ibrahim Magu, Lagos State Commissioner of Police, Mr. Edgal Imohimi, Justice Mohammed Idris, Dr. Muiz Banire, SAN, Rt. Hon. Razak Atunwa and Hon. Aminu Shagari.

Court Dismisses N200m Suit Instituted Against Peninsula Garden Estate Residents

Akinwale Akintunde

Justice Wasiu Animahun of a Lagos High Court sitting in Igbosere, has dismissed a N200 million suit filed against some residents of Peninsula Garden Estate in Lekki, Eti-Osa Local Government Area, by a Lawyer, Mr. Fredrick Chinedu Anaje.

The Judge dismissed the suit, on the ground that the Applicant's rights were not violated.

The Lawyer had dragged the Estate residents to court, claiming that they violated his rights by denying him access to a road within the Estate.

Joined as Respondents in the suit were Mr. Sulyman Bello, Olu Adewusi, Dr. Maureen Igwe, Nicholas Adesina, Abiodun Ekeade, Funmilayo Ekeade and Femab Properties Ltd.

According to Anaje, residents had erected a wall barricade on Ogombo Road in the Estate, without approval from the State Government.

The Applicant sought N200 million in general damages against them, for violating his rights, as well costs of the action "on a full indemnity basis".

Anaje said he lives on a street in Ogombo Town, and that he uses the Ogombo Road to access the Lekki-Epe Expressway.

He said that, despite being issued with contravention notices by the State, the Respondents restricted his access to the road

by building the wall, thereby forcing him and others who live in Ogombo Town, to use an unsafe, bushy, and impassable road.

In a counter-affidavit sworn to by Adesina, the Respondents said Femab Properties bought the large expanse of land, on which the Estate and the road are situated.

The Respondents, through their Lawyer Prince Adebayo Adesola of Midas Solicitors, argued that although contravention notices were issued by the State, the wall was not demolished, which supports their claim that the Government admitted that the wall was on a private road.

In his judgement, Justice Animahun held: "What the case reveals, is that the Applicant would not have complained of infringement of Section 34 of the Constitution, if the other access road was motorable.

"It follows that, infringement of the Applicant's right, arose from the deplorable state of the road. It is my view, that this head of claim is only maintainable against whoever made the road to be in deplorable condition.

The Judge further held that, no citizen has a fundamental right to use good roads.

"The right to a good road may be recognised in law, but it is certainly not an inalienable right. It does not qualify for litigation under Chapter IV

Stop MTN from Listing on NSE, Lawyer Tells Court

Akinwale Akintunde

A Lagos Division of the Court of Appeal, has been asked to restrain telecoms operator, MTN, from listing its shares on the Nigerian Stock Exchange, pending the determination of a suit filed against the telecoms operator by a legal practitioner, Dr. Charles Mekwunye.

Dr. Mekwunye, in the appeal with suit No: CA/L/1349/16, is seeking an order of interlocutory injunction restraining MTN, its agents or licensees, from listing its shares in the Nigeria Stock Exchange or any globally recognised stock exchange, pending the determination of his appeal.

Mekwunye had dragged

MTN before the Federal High Court sitting in Lagos, over the breach of a contractual agreement by firms representing the company in a privately placed share units offer.

Joined in the suit as co-Defendants are Lotus Capital Ltd, Stanbic IBTC Asset Management Ltd, IHS Holding Ltd, and INT Towers Ltd.

Mekwunye had contended at the Federal High Court, that after buying about 5,000 MTN Linked Units shares through MTN's nominee, Stanbic IBTC Asset Management Ltd via a private placement memorandum, the firm failed to fulfill its obligation of converting the share units into MTN Nigeria shares.

But ruling on a preliminary

objection raised by MTN on the competence of the suit, presiding Judge, Justice Mojisola Olateru, asked parties in the suit to explore the arbitration clause embedded in the disputes contract.

Dissatisfied with the ruling of the lower court, Mekwunye through a motion on notice filed on February 26, 2018, approached the Court of Appeal.

Mekwunye insisted in the appeal papers, that the crux of the matter is the failure of the Respondents to list MTN shares in Nigerian Stock Exchange in 2013 as agreed by parties, and that until the suit or appeal is properly determined, MTN ought not to be allowed to list

its shares in the stock market.

In an affidavit in support of the motion on notice, the Appellant averred that sometime in February, 2008, Lotus Capital and Stanbic IBTC Asset Management, via a private placement memorandum, represented that MTN International was offering to allocate shares of MTN Nigeria to the Nigerian public as investors, through private placement arrangement.

According to the deposition, Stanbic IBTC Asset Management, which was appointed as nominee for the MTN linked offer, subsequently, engaged Lotus

CONTINUED ON PAGE 6

CONTINUED ON PAGE 6

Lawyer: National Assembly Can Reorder Elections Schedule

Akinwale Akintunde

A Lagos based legal practitioner, Dayo Ogunjebe, has lent his voice to the controversy surrounding the attempt to re-order the 2019 general elections by the National Assembly, saying that it is within the power of the legislators to do so.

Ogunjebe explained that, since it is the duty of the Legislators to make laws, and the Independent National Electoral Commission (INEC) is a product of the laws made by the National Assembly, they (Legislators) therefore, have the power to vary the law, modify it or scrap it altogether.

"Whether it is good or bad, I can tell you what I feel. Most of the politicians went into office, due to the bandwagon effect of the Buhari candidature at that time.

"Because they feel he has disappointed the public now, they don't want a recoil, if he was to loose the election. They now want to operate solo. But the problem here is this; even if they operate solo, it will not absolve them from the backlash effect because they are still in All Progressive Congress (APC) party.

"And if the APC is not considered a good party, to project to the National Assembly or even the Presidency, whether they stagger the elections or not, they will fall in the same

way", he added.

Ogunjebe, who contested during the 2011 elections on the platform of PDP, for the Lagos House of Assembly from Ikeja Constituency 2, also commented on judicial corruption, adding that it may be difficult to differentiate between a bribe and gift to a Judge.

He gave the example of Justice Ademola, who during his trial, was able to lead evidence that one of President Muhammadu Buhari's Lawyers, passed him some money.

"So if you describe all other money he had received as bribe, then, that too is a bribe.

"Judges are human beings, just like everybody else. If I am a Judge, and my father or my uncle decides to give me something, I will collect.

"People look at Judges, as people isolated in one corner, but they are not. In the case of Rickey Tarfa, he said he and the Judge had worked somewhere, before he was made a Judge.

"They did some cases and suddenly, they made him a Judge, but they paid him for those cases; is he now going to say, my Lord, you cannot collect any money from this case anymore, because you are now a Judge? He can't do that! In the other case, the Judge was his classmate, and an old boys association member. They were contributing money together. So, it would be ridiculous to say that a Judge dropped from the skies", he said.

On Nigeria's human rights record, Ogunjebe said, "It is not good at all. I have tried to tell some people, because some of them are saying the record is getting better because we have dropped from 136 to 138. I tell them to stop looking at the numbers. It is a good index.

"The farther you are away from that index, shows how bad you are. The truth of the matter is that, this government has not been transparent", he added.



Dayo Ogunjebe

STOP MTN FROM LISTING ON NSE, LAWYER TELLS COURT

CONTINUED FROM PAGE 5

Capital Ltd to procure investors.

Mekwunye subsequently, bought 5,000 units of the shares at the rate of US\$122,800, the then Naira equivalent of N18, 376, 800.

The Appellant averred that, the nominee

structure as spelled out in the agreement papers was to last for three months, after which the shares would be transferred to an exit special purpose vehicle, which would then be exchanged for MTN Nigeria shares.

According to the Appellant, at the end of three years, the Respondents failed to create the agreed exit SPV, on the ground that MTN International is already quoted on the Johannesburg Stock Exchange.

He further averred that, the Respondents opted to create an alternative exit mechanism, which is not listed on the Nigerian Stock Exchange, without his consent or knowledge.

Mekwunye claimed that, series of deductions were made on his share units by the Respondents in the new agreement, which he never gave his consent to.

The prayers sought by the Appellant include; an order of interlocutory injunction restraining MTN, its agents, servants, privies, employees, licensees from listing its shares in

the Nigerian Stock Exchange or any globally recognised Stock Exchange, pending the final determination of his appeal.

An order of interlocutory injunction restraining MTN or its agents from putting up signs, adverts or notices, which may suggest the listing of its shares on the Nigerian Stock Exchange or any globally recognised StockExchange.

An order of interlocutory injunction restraining MTN or its agents, from putting up advertisements inviting the members of the public to buy or purchase its shares in any public offer in Nigeria, pending the determination of the appeal.

The Appellant is also asking the court, to reverse the interference of IHS Holdings and INT Tower in the agreement between him, MTN, Lotus Capital, and Stanbic IBTC Management Ltd.

The court is yet to fix a date for hearing of the matter.

COURT DISMISSES N200M SUIT

of the Constitution.

"It is a luxury in the class of economic, social and educational rights guaranteed in Sections 16, 17 and 18 of the Constitution, and yet rendered unenforceable.

"I, therefore, hold that the claims anchored on Section 34 of the Constitution, are not well founded and, therefore, fail", Justice Animahun held.

The Judge also dismissed the Lawyer's claim, that his right to freedom of movement under Section 41 of the Constitution was violated.

"Once there is no confinement and there

CONTINUED FROM PAGE 5

is an alternative route, there cannot be an infringement of freedom of movement... Restriction of movement will not arise, where the Applicant is at liberty to use alternative routes.

"The restriction envisaged under Section 41 of the Constitution, must be total. This is not the case here. In view of the above, I hold that the fundamental rights of the Applicant, were not infringed.

"The amended originating motion on notice dated 19/06/2017, therefore, fails and is hereby dismissed", Justice Animahun held.

Legal Personality of the Week Florence Adesola Falaiye

'A Lawyer Must be a Mini Encyclopaedia'

My name is Florence Adesola Falaiye, a Lawyer with Ph.D. in Commercial Law from the University of Lagos (2015). I was called to the Nigerian Bar in 2005. I started my legal career with Dokun Makinde & Co. In 2008, I joined the corporate world and began a career in legal practice and Administration. Learning on the job and being lucky to have expert mentorship, I rose through the ranks to become the Deputy Managing Director and Company Secretary of Afkar Printing and Publishing Company Limited, an international standard company situated in Lagos. I became a CEDR (UK) Accredited Mediator in 2009 and was admitted as a Mediator and member of Panel of Neutrals, Lagos Multi Door Court House (LMDC). I am a Member of the Nigerian Bar Association (NBA), Member, Society for Corporate Governance Nigeria (SCGN), Associate Member, Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), Member, Nigerian Institute of Management (Chartered) (NIM), Fellow, Association of Corporate Governance Professionals, Nigeria (ACGPN), Member, Manchester Business School Association and Associate Member, Chartered Institute of Taxation, Nigeria (CITN).

I enjoy working, reading, travelling and dancing.

Have you had any challenges in your career as a Lawyer, and if so, what were the main challenges?

As a Lawyer in a corporate setting, every day comes with its own challenges. You are expected to know almost everything, advice appropriately, and ensure full compliance with regulatory requirements. You are expected to have your eyes everywhere and be the company's



Florence Adesola Falaiye

know-all, since you are the "learned person". A Lawyer/Counsel that wants to grow and go far has to be perpetually on his/her feet. To meet up with this expectation, I always "forward plan", I have my list of compliance requirements with time limits. This has helped me to be on top of my game.

What was your worst day as a Lawyer?

I had a Board Meeting and AGM on the same day, and I had prepared the resolutions and CAC forms to be signed. I always like to be perfect in my preparation for meetings, so I had spent sleepless nights ensuring that there were no mistakes and smooth meetings. Alas, the Board Meeting started and I discovered my checklist was not in my file, in fact I took

a different file in my rush. I was thrown a little off balance, but I still carried on using the meeting agenda as a guide. When it was time to pass resolutions and sign, I couldn't find my arranged paperwork. The Chairman of the Board usually wouldn't be patient; his pass mark is 110 percent. But I guess they felt my misery, and they gave me a few minutes to comport myself. Fortunately, the right file was next door. I picked it, got my act together, and subsequently had my excellent meeting. But it could have been worse, if I had not found my file.

What was your most memorable experience as a Lawyer?

Oh I have had many memorable events! Every success I have recorded as a Corporate Lawyer, has been memorable. The ones I enjoy talking about: Having the best Ph.D. thesis in law, and one of the best 10 out of 103 Ph.D. graduating students in Unilag in 2015. It was memorable because, it was an example of experience is the best teacher; the research was more live than abstract, because I was experiencing what I was writing about at work. The second would be on an opinion I wrote to my Board of Directors, opposing a very senior Lawyer's opinion on a Board matter. It was audacious, and getting it wrong may have cost me a lot, but instead, I got a commendation for it.

Who has been most influential person in your life?

Many people! My parents taught me values like hard work, integrity, perseverance, discipline, loyalty, humility etc, on which I measure success. My husband, Prof. Muyiwa Falaiye, and my children have also been a great influence. My

direct influences also include my supervisors and academic mentors, my bosses at work. In general, I have a long list of mentors; I am in relationship with some of them, and I watch some of them from afar. I have a list of things I look out for in successful people, especially women, and when I identify any of those values, I include them in my list. Whenever I meet them, I introduce myself to them, and a few of them have taken interest in me. One can never get it wrong with the right influence/mentors.

Why did you become a Lawyer?

I have always wanted to study law. I believe that one should pursue whatever one can easily handle. I am a natural problem solver and for me, being a Lawyer fits perfectly into that.

What would be your advice to anyone wanting a career in Law?

Anyone wanting a career in law, must be interested in reading and research. You must strive to know a little of everything, in your area of specialisation. You have to be a mini encyclopaedia. Continuous learning, is a must for a Lawyer who wants to remain relevant for long.

If you had not become a Lawyer, what career would you have chosen?

A Counsellor and Motivational Speaker, or a Researcher, an Events Planner or an Interior Decorator.

Where do you see yourself in ten years?

By God's grace, in 10 years, I should be at the peak of my career; be on the Board of quality corporate establishments, and a reference point in Corporate Governance.

**SAVE
THE DATE**

JUNE 27-29 2018



**NIGERIAN BAR ASSOCIATION
SECTION ON BUSINESS LAW**



12th ANNUAL BUSINESS LAW CONFERENCE

THEME
**BRINGING DOWN THE BARRIERS:
THE LAW AS A VEHICLE FOR
INTRA-AFRICA TRADE**



TRANSCORP HILTON, ABUJA

For further information, please contact:
The Nigerian Bar Association
Section on Business Law (NBA-SBL)
T: +234 903 800 0094-5, 0805 488 1900
E: info@nbsbl.org
W: www.nbsbl.org

Follow us on





Professor Abiola Sanni

PHOTOS: Kolawole Alli

'Nigerian Elite Evade Taxes'

Tax, is such a touchy issue in Nigeria, so much so that the various tax regimes, are viewed with circumspection by most Nigerian elites, who perceptibly, chronically evade taxes. While in most advanced jurisdictions, tax evasion attracts stiff penalties, including jail terms, in Nigeria, the rich are never punished for refusing or neglecting to pay their taxes. The ongoing uproar engendered by the upward review of Land Use Charges in Lagos State, took **Onikepo Braithwaite** to the University of Lagos Law Faculty, to seek the views of a tax expert, Professor Abiola Sanni on various tax related issues

Prof, there has been a serious outcry against the new Lagos State Land Use Charge Law. Despite the subsequent 50% reduction, people are still protesting that the new Lagos State tax and various charges regime, is oppressive. As an expert in Taxation, do you believe it is oppressive?

There is no doubt that the new Land Use Charge Law, 2018 has generated a lot of controversy, which has put an otherwise popular Governor and his administration on the spot. This reinforces the aphorism that, no one pays tax with a smile, even in climes where there is transparency and accountability in governance. It is important to note that, it was Lagos State that popularised the cliché "Taxpayers money in action". The fact that Lagosians, to a large extent,

can see and appreciate judicious use of taxpayers money, does not mean that they will not engage government and ask critical questions on its tax policy preferences and manifestation. History is replete with how unpopular tax policy, precipi-

"IT WOULD APPEAR THAT, NOTHING PREPARED TAXPAYERS GENERALLY FOR THE INCREASE. WHILE THE STATE HOUSE OF ASSEMBLY MUST HAVE DONE A PUBLIC HEARING TO FULFILL THE CONSTITUTIONAL RITUAL, IT APPEARS THAT CRITICAL STAKEHOLDERS HAVE NOT BEEN CARRIED ALONG"

tated war and collapse of empires.

Property tax is particularly complex, because taxpayers who consider the rate to be outrageous and unacceptable, cannot physically move their properties to another location. This is what inspired the taxpayers in California, to initiate a constitutional amendment which capped the rate of property tax in what is popularly known as Proposition 13. For me, the takeaway for the Lagos State Government from these developments, is to make a conscious and deliberate effort to consolidate on its manifold achievements, by leveraging on leading practices in its tax policy formulation and legislation.

In response to your pointed question whether the tax is oppressive, I will rather use a well-settled terminology in tax parlance which is equity or fairness. One of the cardinal principles of taxation espoused by Adam Smith in his *The Wealth of Nations*, which is reinforced in the Revised National Tax Policy, is equity. For the category of taxpayers whose tax burdens have been significantly increased

suddenly, it would be unfair. The sense of unfairness, cannot be rationalised by generous treatment of another category of taxpayers. It would appear that, nothing prepared taxpayers generally for the increase. While the State House of Assembly must have done a public hearing to fulfil the constitutional ritual, it appears that critical stakeholders have not been carried along. In future, I will suggest that the type of open and frank consultative meetings which took place after the crisis, should have come before the passage of the law, in order to gauge the public pulse and form a consensus on critical issues. I will urge the Government, to urgently rethink the policy of imposing charges on drilling of boreholes and water treatment, if the document on the scale of charges circulating in the social media is true. Without mincing words, that will be tyrannical and oppressive.

There have also been questions about the legality of the Law, as some aspects of it seem to be unconstitutional, like the collection of tenement rate which the Constitution makes the exclusive preserve of the Local Government, and the attempt to devolve this constitutional power to the State by virtue of the new Law. Kindly, comment on this.

This is a tricky question. Let me clarify that, it will be wrong to suggest that the entire law is illegal and unconstitutional. Rather, the concern on constitutionality centres on the section which permits the local government to delegate the collection to the State. Having said that, the provisions of Section 7 item I(J) of the Fourth Schedule of the Constitution seems clear enough; to mandate every State to confer the function of levying tenement rate on a local government. The basis of this, in my view, is to give local government access to independent revenue, with which it can discharge its functions. However, due to the near collapse of the local government system in Nigeria, it is almost illusory to expect local government, to efficiently perform this role. The need to reinvigorate the property tax system, led to the introduction of the Land Use Charge Law of 2001. I did a critical review of the Law in an article, which the new Law could have benefitted from.

Anyway, irrespective of the popular view that section 3(2) of the Land Use Charge Law is unconstitutional, the Lagos State High Court had held in a number of cases that there was no constitutional infraction. However, in **GRINAKE v ATTORNEY GENERAL OF RIVERS STATE**, a similar provision in the Property Law of Rivers State, was declared as unconstitutional. The Land Use Charge

Law of Osun State, recently suffered the same fate however, on the basis that a House of Assembly not known to law enacted it. Anyway, it is elementary that decisions of the Rivers and Osun State High Courts on this matter, have no force of law in Lagos State. So, Land Use Charge Law remains constitutional in Lagos State, until the decisions are set aside on appeal, or there is a pronouncement of the Court of Appeal or Supreme Court on the matter. I have consistently advocated through my writings, my preference for strengthening the local government system, through appropriate decentralisation of critical responsibilities to them, rather than the current centralisation even at the State level. It is doubtful if there can be sustainable development at the grassroots, without a well-structured and well-funded local government system.

Lagos Residents have over the years, complained about being the most taxed in Nigeria, in comparison to Residents of other States. Is this true?

It is not correct, to state that Lagos State residents are the most taxed in Nigeria. Practically all the tax laws existing in Lagos State, also exist in most states of the Federation, except the Wharf Landing Fee. Even taxes that did not previously exist in those States, are now being enacted as by other States, including non-APC States who tend to copy Lagos. And the rates are the same, even though in an ideal federal system, taxes cannot be uniform. Tax rates in the cities may not be the same in the provinces. The correct statement

“NO TAX AUTHORITY IN NIGERIA, HAS THE POWER TO IMPOSE TAXES ON PROPERTIES THAT ARE SITUATE OUTSIDE NIGERIA, SINCE TAX IS TERRITORIAL. HOWEVER, NIGERIA CAN IMPOSE TAXES ON INCOMES (RENTS) DERIVED FROM PROPERTIES SITUATE OUTSIDE NIGERIA, IF THE OWNERS OF THOSE PROPERTIES ARE RESIDENT IN NIGERIA”

may be, that Lagos State is the most “tax aware” State in Nigeria. We can trace this development to the advent of the administration of Asiwaju Bola Ahmed Tinubu, which envisioned a State run mainly through taxes. Whatever people may say about Asiwaju, without his vision, Lagos would have also been drenched by fiscal rain, and be on the verge of failure like some other States. All the manifestations of fiscal adversity, would have had multiplier effects in Lagos, far beyond smaller States. With a relatively decent investment in the establishment of Lagos State Internal Revenue Service (even before the FIRS was established under a statute), Lagos State was able to recruit experienced and innovative people from the private sector, to drive the reform. That Mr. Tunde Fowler now calls the shots at FIRS, is a testimony that Lagos tax reform has largely succeeded. I wish and pray, that we do not fritter the goodwill and the brand advantage.

What is your assessment of the nation's tax regime? What can be done to improve it?

The problem of the Nigeria tax system, is well documented. The National Tax Policy 2017 listed 11 critical issues, which we must focus on as a nation. They include lack of a robust framework for the taxation of the informal sector and high net worth individuals, fragmented database of taxpayers and weak structure for exchange of information by and with tax authorities, inordinate drive by all tiers of government to grow internally generated revenue, lack of clarity on taxation powers of each level of government, and encroachment on the powers of one level of government by another; poor accountability for tax revenue; use of aggressive and unorthodox methods for tax collection; failure by tax authorities to honour refund obligations to taxpayers; the non-regular review of tax legislation, lack of strict adherence to tax policy direction and procedural guidelines. The list is almost endless.

In my view, the expression of these challenges, constitutes an admission in the National Tax Policy, that all is not well with the Nigerian tax system. My take is that, focus should now be on how to develop appropriate responses to get out of the fiscal wood. Stakeholders in the system, should devote their intellect and energies on designing a new tax system, which will be simple, administrable and efficient, as envisaged by the Revised National Tax Policy.

Many are complaining that in a country where most people have to provide their own services, like electricity and water, while the roads are practically non-existent and public education and healthcare are almost nil, that it is unfair to make people pay such high taxes. That instead, Government should reduce expenditure on frivolities. Do you agree?

The question speaks to a general lack of basic infrastructure, which are taken for granted in other climes. It is most unfortunate, and negatively impacts on tax culture. If taxpayers in developed societies are not happy paying taxes; you can then imagine what the attitude would be in a society where taxpayers spend private funds to do or mend road, provide security and other basic amenities. It is even worse, because of the pervasive corruption in the public sector, which makes it difficult even in accessing available public services. In some cases, it is like daylight robbery. Imagine where a complainant has to facilitate the police to get them to act, or is made to pay a civil servant for “pushing” your file. There is no doubt that, more revenue will be available for infrastructure development, if we minimise waste and white elephant projects. But I think that, the problems run deeper than just availability of revenue for developmental projects.

States have continued to be in an unending contention about the sharing formula of Value Added Tax (VAT). The main argument has been that, some States like the core Northern States, which prohibit the consumption of alcohol and some other activities that are subject to VAT, have no moral justification to share from VAT revenue generated from other States that do not prohibit such activities. How can this be resolved?

Let me correct one general erroneous impression. A significant amount of VAT revenue comes from importation, which is clearly beyond the powers of States. To that extent, all States are entitled to share from the revenue accruing from international and inter-state supplies of goods and services. This however, does not minimise the clamour by advocates of fiscal federalism on the constitutionality of VAT under the extant Constitution.

The Federal Government should come to terms with the fact that, an important aspect of VAT on intra-State supply of goods and services, is essentially within the taxing powers of the States. It is therefore, ultra vires the Federal Government, to



'NIGERIAN ELITE EVADE TAXES' CONTINUED FROM PAGE 9



continue to impose and collect VAT on intra-State supply of goods and services. Hence, the Federal Government should yield the power to administer VAT on intra-state supplies to the States. As more States introduce their consumption tax alongside VAT; following the Lagos State model, the problem of multiplicity of taxes will be exacerbated.

States who desire to continue with the federally administered VAT, should be able to work out the modalities for such an arrangement, while a State like Lagos and few others, who desire to stand alone and administer their consumption tax, should be free to do so. Lagos State should internally resolve the multiplicity of taxes, arising from the concurrent administration of VAT and its consumption tax. It should take an informed decision on whether to stay with VAT, or go the whole hog in implementing its consumption tax. If it chooses the latter, which to me is a better option, the base of the consumption tax should be widened beyond the tourism and hospitality sector. This will require an amendment of the charging clause of the Hotel Occupancy and Restaurant Consumption Law, to include all taxable intra-state supply of goods and services, and the adoption of a new title which is general and not hospitality sector-specific.

What is your opinion on the Federal Government's VAIDS tax regime?

VAIDS (otherwise known as Tax Amnesty), is one of the strategies for encouraging voluntary compliance and widening the tax net by offering incentives (sweeteners) for those who have been defaulting on their tax obligations to come clean; within a specified period of time; failing which the full weight of the law will be brought against them. It is a good programme which, if implemented properly, will yield manifold advantages. First, there will be increase in revenue. Secondly, it will help the government to gather and enrich its taxpayers' data base. Thirdly, it will increase compliance, as more people will take advantage of the fact that they will not be prosecuted or made to suffer interests and penalties, for failing to pay or remit taxes. In addition, it will provide the government with more and better arsenals, to

prosecute recalcitrant tax defaulters. Various countries have at one time or the other, implemented tax amnesty with fantastic results. For example, it was recently reported that, Indonesia realised over 8 Billion USD from tax amnesty last year. So, in my opinion, it is a right step in the right direction. I commend the Honourable Minister of Finance, Mrs Kemi Adeosun for this initiative. Posterity will remember her, for this quantum leap.

Lately, we have been hearing that Nigerians will now be taxed on the properties that they own outside Nigeria. How will this particular tax operate? In a situation where for instance in the UK, people have bought their properties by means of mortgages meaning that they do not own the property in entirety until payment is made in full, does this tax still apply to them?

I do not think that information is correct. No tax authority in Nigeria, has power to impose taxes on properties that are situate outside Nigeria, since tax is territorial. However, Nigeria can impose taxes on incomes (rents) derived from properties situate outside Nigeria, if the owners of those properties are resident in Nigeria. Accordingly, the focus of the Personal Income Tax Act, is on income and not properties/assets.

What is being currently carried out is an investigation on the properties abroad owned by

Nigerians resident in the country, to determine whether the owners of these properties have either discharged their tax obligations in Nigeria, or paid taxes on their global incomes including rent, dividend, interest from their offshore investments/assets.

Are Tax Tribunals really fulfilling their statutory roles?

Tax Appeal Tribunal (TAT), has no doubt filled an important gap since their establishment until the term of the Chairmen and Commissioners lapsed in 2016. As a publisher of All Nigerian Tax Cases (a compendium of all Nigerian tax cases since 1922 till date consisting over 500 tax cases), the project would not have seen the light of the day, without the contributions of the TAT. Having said that, I believe that, the time is ripe for us to have proper tax courts as recommended by the National Tax Policy. It will be recalled that the Federal High Court (formerly known as the Federal Revenue Court), was initially established as a revenue exclusive court, until its jurisdiction became convoluted during the military era. While this will require a Constitutional amendment, it is achievable in the long run. At a recent retreat organised by the FIRS for members of the National Assembly, a few Legislators expressed their support for this recommendation, which is an indicator that the conversation is gaining traction.

Kindly, shed some light on their composition and legality.

In terms of composition, the Tribunal is established in different zones. Each zone is made up of five Commissioners headed by a Chairman who is Lawyer, well versed in tax law. Other members are a mix of Lawyers and other non-Lawyer tax experts. By reason of their composition, they ordinarily should not dabble into core legal issues, but they are vested with jurisdiction to adjudicate on all disputes arising from the operation of the federal tax laws, which I think is too wide. The focus should have been on, dispute on assessment.

While some claim that the common man who is in the majority, does not pay tax at all

"HOWEVER, THE ELITE, BY VIRTUE OF THEIR WEALTH, ARE ABLE TO HIRE EXPERTS HAVE STRUCTURED THEIR BUSINESSES IN A TAX EFFICIENT MANNER, LARGELY AVOID TAX. THE ONES THEY CANNOT AVOID, THEY EVADE"

CONTINUED ON PAGE 11

'NIGERIAN ELITE EVADE TAXES' CONTINUED FROM PAGE 10

"I SINCERELY THINK THAT IT IS CONCEPTUALLY, LEGALLY, AND CONSTITUTIONALLY WRONG, FOR A COURT TO ENTERTAIN A SUIT WHICH SEEKS TO TIE THE HANDS OF THE NATIONAL ASSEMBLY, IN THE EXERCISE OF ITS CONSTITUTIONAL POWER"

(aside from those that are forced to by virtue of PAYE), the man on the street claims that it is the Nigerian elite that are notorious for tax evasion and they are never really prosecuted for tax related offences. Are these assertions true?

The two assertions are true to a large extent. Most of the "common men" usually belong to the sector of the economy, known as informal economy. Transactions and payment in this sector are undocumented and difficult to track, so they are off the radar of the tax authorities and therefore, untaxed. The informal sector is quite huge, and larger than the formal sector. However, the elite, by virtue of their wealth, are able to hire experts who have structured their businesses in a tax efficient manner, largely to avoid tax. The ones they cannot avoid, they evade. If it may be asked, how many so-called big men have been convicted for tax evasion in Nigeria? The recent exposé by the Vice President, that only 214 big men pay taxes in Nigeria, is a pointer to the fact that Nigerian big men do not pay taxes. So, the statements are correct to some extent. It suffices to say that, VAIDS is aimed at addressing some of the perceived inequities in the tax system.

As crucial as it is, Taxation Law does not seem to be a popular subject taught in Law Faculties or the Law School. Yet, it is a growing and lucrative area for Lawyers. Having taught the subject for so many years, how can the curriculum be tinkered with to fully accommodate Taxation?

The story is changing. Taxation was not available, when I was in the University. I virtually read up the subject, in the course of my teaching and research. The first tax class I taught at the Obafemi Awolowo University under the mentorship of Prof Margaret Okorodudu-Fubara, consisted of only 7 students. Tax classes are now larger in the region of about 150 students, at both undergraduate and postgraduate levels (Master of Laws Degree). There are Tax Clubs in tertiary institutions across the country, and even all the secondary schools in Kwara State. To me, these are the future of the Nigerian tax system. I use this opportunity, to appreciate and commend all the institutions and persons, supporting the project. The Chairman of the FIRS and Joint Tax Board, Mr Tunde Fowler, the President of the Chartered Institute of Taxation of Nigeria, Lagos State Internal Revenue Service (LIRS), Kwara State Internal Revenue Service (KWIRS) and the Big 4, deserve special mention.

There are on-going efforts in University of Lagos, to introduce Taxation at the Bachelors and

Postgraduate levels. Most of the practitioners now, are accidental tax practitioners. We need to encourage young persons, to elect from the onset to study taxation the way people choose accounting, law, medicine, because they have mentors who have succeeded in that field. Then, we will have well-rounded students with knowledge of economics, legal and administrative dimensions of taxation.

There has been an ongoing debate by Lawyers about the Election Act Amendment Bill, as to whether the National Assembly can change the sequence of the elections. What is your opinion on this issue?

Beyond legalism, I think our basic concern should be on the credibility of the processes, rather than the effect of the political manoeuvring of the legal framework by seekers of elective offices. I really do not see how the outcome of the sequence, will affect the common man in the real sense. So, we should leave those who are contesting election, to worry about the consequences of the sequence, while we live with what is provided in the Electoral Act, as amended.

Having said that, while I appreciate the value of separation of powers and checks and balances, I believe the intrusion of the National Assembly into the executive turf, is becoming unacceptable. Besides politics, what could be the basis for the Legislators foraging into purely executive matters? In the University where I work, Senate approves the period of examinations, while the nitty-gritty of administration, is left for the management. The right question to ask, is whether the attempt by the National Assembly, has succeeded in overriding the well-established line of judicial cases, that sequence of election is an executive matter, either the Amendment of the Constitution or the Electoral Act. If the answer is in the affirmative, we have to err on the side of the existing law, and clamour for its review in future, if considered intrusive and unacceptable.

Does the court also have the power to stop the National Assembly from performing an act that is provided for by the Constitution, that is, to override the President's veto on a Bill?

There are express provisions in the Constitution, empowering the National Assembly to override the Presidential veto. To that extent, there is nothing wrong if the National Assembly decides to activate or leverage those provisions. I believe that by so doing, our jurisprudence will be enriched. Their motive is secondary. I sincerely think that it is conceptually, legally, and constitutionally wrong, for a court to entertain a suit which seeks to tie the hands of the National Assembly, in the exercise of its constitutional power. It is wrong, in my view for a court to issue an injunctive order against the National Assembly, in these circumstances. The proper thing, in my view, is to challenge the exercise after it has been exercised, not before.

Of what advantage would it be for Nigeria if the Petroleum Industry Bill is passed?

For one, it would bring about stability and certainty to the petroleum industry. The uncertainty surrounding that sector, owes to a large extent to the non-passage of that Bill. This also makes investment in that sector very difficult, as no businessman worth his salt, would love to invest in an environment full of uncertainty. I have always advocated that the fiscal aspect should be severed from the Bill, considering the nature of taxation and the rules on interpretation of taxing

statutes. I don't agree with the logic of consolidating all the laws applicable to a sector, into a single statute. It is just unwieldy. If the logic is sound, why are we not applying it to all sectors, such as financial institutions and even the university system. Even when these laws are scattered in different statutes, practitioners have no difficulty in collating them into a compendium. So, what is the sense in an omnibus law, that has taken almost forever to be passed into law?

What is your opinion about Restructuring Nigeria? How do you think Government should go about this? Since the proscription of IPOB, it seems that the movement for Restructuring et al seems to have lost steam.

I am an advocate of Restructuring. I honestly believe that, Nigeria is not going anywhere without Restructuring. Restructuring will bring about efficiency, in terms of allocation of resources. Allocation of functions, should be done based on the doctrine of subsidiarity. If the States are in the best position to provide certain services such as policing, it makes no sense to centralise it, while the States continue to share the cost with the Federal Government. The current challenges facing the nation, have rather brought the issue of restructuring to the fore. You can see that even APC who failed to deliver on its election campaign to restructure, is again posturing to be determined to do so.

I believe that, the struggle for restructuring predated, and is bigger than IPOB. The radical approach of IPOB and the Niger Deltans, has however, reinforced the imperative of restructuring. I believe that in the long run, we are all victims of over-centralisation, including those who are benefiting from the current arrangement.

The Lagos State Government recently endowed a Chair on Taxation, of which you are the pioneer distinguished Lecturer. Kindly, shed some light on this.

Lagos State broke a new ground, by being the first State in Nigeria to invest in a professorial chair. The main object, is to provide finance over a period of time towards teaching, research and public service, on State and local government taxation in Nigeria, on which I am passionate. The whole idea is that, the occupier of the Chair, will be able to meaningfully contribute to the development of State and local taxation in the State. I owe Lagos State Government a debt of gratitude, for this honour, and I hope that they will take full advantage of what the Chair has to offer. Governor Ambode has challenged us to come up with innovative ideas, and this is what we hope to do. My prayer is that other States and the Federal Government, will follow the lead of Lagos State in this regard.

You have authored several books, including one on Taxation which you recently published. What is your book 'Introduction to Nigerian Legal Method' about?

I will like to say that the best is yet to come, in terms of my offerings on law of taxation. I am humbled, by the rate of penetration of *The Nigerian Legal Method* in Nigeria and West Africa Sub Region. Since its publication, in 1997 (21 years ago), the book has enriched the teaching of the subject. I edited the book as a Lecturer 1 while at OAU, providing leadership for colleagues who contributed to it. The book is long overdue for review. By the grace of God, that mission will be accomplished before the end of this year.



INSIGHT

ABUBAKAR D. SANI xL4sure@yahoo.com



Alleged Non-declaration of Assets: Any Reprieve for Ekweremadu?

Introduction

At its sitting of Thursday, the 22nd day of March, 2018, the House of Representatives is reported to have resolved to probe the validity of the Recovery of Public Property Panel, set up last year by the then Acting President Prof. Yemi Osinbajo, SAN. The House Resolution, is apparently in response to a flurry of investigations reportedly commenced by the Okoi Obono Obla-led Panel, into property allegedly acquired by public officers in contravention of the Recovery of Public Property (Special Provisions Act (formerly Decree), Cap. R. 4 LFN 2010.

The immediate trigger for the intervention of the House, appears to be the report that the Panel is investigating the Deputy Senate President, Dr. Ike Ekweremadu, over allegations of failure to declare a number of local and foreign properties, in the assets declaration form which he submitted to the Code of Conduct Bureau. For reasons that will shortly be manifest, I believe that House might be on a strong footing here. This would be in marked contrast to its recent antecedents, which have fuelled the public perception of the House, as engaging in quixotic oversight and outright bombast.

Legal Construct of the Act

The long title of the Act reads: "An Act to make provisions for the investigation of assets of any public officer who is alleged to have been engaged in corrupt practices, unjust enrichment of himself or any other person who has abused his office or has in any way breached the Code of Conduct for Public Officers contained in the Constitution of the Federal Republic of Nigeria."

Sections 1, 2, 3(1),(3) and 11(1) thereof, however, provide as follows, respectively:

- **Section 1(1)(a)** empowers the President to constitute a panel to investigate the assets of any public officer who is suspected of corruptly enriching himself or any other person or has in any other way violated the Code of Conduct;

- **Section 1(2)** provides that any such public officer who is convicted shall forfeit property connected with the commission of the offence to the Federal Government

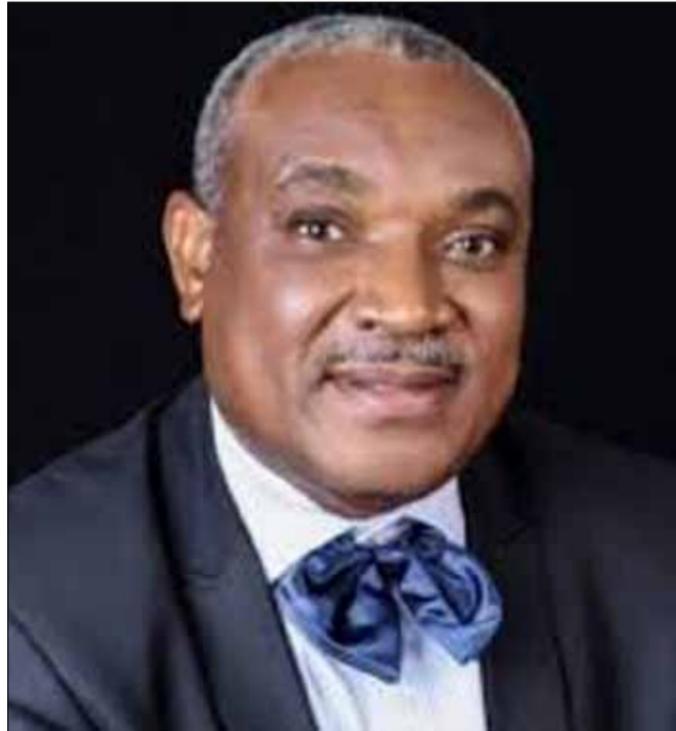
- **Section 3(1)(a)** provides that the Panel may require a Public Officer to fill and return a form for declaration of his assets

- **Section 1(4)** defines a 'public officer' as any person who holds or has held any of the offices specified in Part II of the Fifth Schedule of the 1999 Constitution at any time after 30th September 1979

- **Section 3(3)** provides that any public officer who fails to declare his assets or makes a declaration which he knows to be false shall be guilty of an offence and liable on conviction to imprisonment for five years without the option of a fine as well as forfeiting any undeclared assets to the Federal Government.

- **Section 11(1)** defines "Code of Conduct" as the Code of Conduct for Public Officers contained in Part 1 of the Fifth Schedule to the Constitution.

There is no doubt that the object of the Act, is to tackle official corruption, as well as economic/financial crimes allegedly committed by both public and non-public officers - with a clear emphasis on the former. With regard to official corruption, I believe that **Paragraphs 1 - 3 of Part 1 of the Third Schedule and Paragraphs 11, 12 & 15 of Part 1 of the Fifth Schedule to the Constitution**, completely displace the



Chairman, Recovery of Public Property Panel, Okoi Obono Obla



Deputy Senate President, Ike Ekweremadu

provisions of the Act. The former empowers the Code of Conduct Bureau (which is established by **Section 153(1)(a) of the Constitution**), to:

"Receive and examine declarations by public officers made under the Fifth Schedule to this Constitution in accordance with the requirements of the Code of Conduct or any law;

"Receive and investigate complaints about non-compliance with or breach of the provisions of the Code of Conduct, and, where appropriate, refer such matters to the Code of Conduct Tribunal"

The latter, specifically **Paragraph 12 of the Code of Conduct in Part 1 of the Fifth Schedule to the Constitution**, provides that an allegation that a public officer has committed a breach of the Code, shall be made to the Code of Conduct Bureau. **Paragraph 11** thereof enjoins public officers to declare their assets periodically; any declaration that is found to be false, shall be a breach of the Code. **Paragraph 15** establishes the Code of Conduct Tribunal referenced in **Paragraph 3(e) of Part 1 of the Third Schedule to the Constitution**.

Similar provisions in the 1979 Constitution, were interpreted by the Supreme Court and the Court of Appeal in **OKOYA v SANTILI** (1994) NWLR pt. 338 pg. 256 @ 323 and **EPEROKUN v UNILAG** (1986) 4 NWLR pt. 34 pg. 162 @ 184, respectively. In the former, the court held that "any allegation that a public officer has committed a breach of the Code, shall be made to the Code of Conduct Bureau. The Tribunal would impose a punishment, if it finds a public officer guilty of contravention of any of the provisions of the Code . . . Only the Code of Conduct Tribunal and not the regular Courts, can declare the action of (a public officer) a breach of the provisions of the Code of Conduct." These decisions make it clear that the affected provisions of the Act, are invalid. The reason, is simply

because the Constitution has covered the field: See **ISHOLA v AJIBOYE** (1994) 6 NWLR pt. 352 pg. 506 @ 573D

Non-Public Officers

By the provisions of **Section 2** of the Act, it appears that it is almost limitless in scope, as they expressly extend it "to any other person to the same extent as it applies to a public officer", and further, to "any person who engages in any manner whatsoever in any form of corrupt practice or corruptly enriches himself or any other person (whether a public officer or not) or has engaged in any unlawful activity in any form whatsoever, including banking or other business." **Section 3(5)** of the Act empowers the Panel to apply it to a person who, though not a public officer, is related to or connected with a public officer whose assets appear to be "far in excess of any income from his known or ostensible means of livelihood".

I believe that, a close analysis of these sweeping provisions vis-a-vis relevant statutes such as **the EFCC Act, the ICPC Act, the Money Laundering Act, the Advance Fee Fraud Act, the Anti-Terrorism Act**, etc, reveals that, rather than being enablers to the Panel, they actually limit its scope. This is because, to the extent that these and other statutes make specific provisions for investigating and prosecuting distinct criminal offences, they derogate from the powers conferred on the Panel under the Recovery of Public Property Act. The reason is the trite principle of statutory construction, that special things derogate from general things. Accordingly, in my view, in respect of those offences, the powers of the Panel are ousted. See **INDEPENDENT TELEVISION & RADIO v EDO STATE BOARD OF INTERNAL REVENUE** (2014) All FWLR pt. 759 pg. 1144 @ 1167G.

This view is supported by **Section 6(c)**

of the EFCC Act which unequivocally charges the EFCC with "the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority". The implication of this is that, at least in relation to economic and financial crimes, the Panel is precluded from exercising the powers conferred on it by the **Recovery of Public Property Act**.

Conclusion

The distinct overlap between the powers of the EFCC and those of the Panel over economic/financial crimes on one hand, and those of the Code of Conduct Bureau and the Panel in respect of the Code of Conduct for Public Officers, is the result of the glaring inconsistencies between the aforesaid enabling provisions of the Panel, the EFCC and the Code of Conduct Bureau and Tribunal under the 1999 Constitution. However, the solution is clear enough. The Constitution is supreme. Accordingly, its provisions prevail over those of the Act, in respect of alleged contraventions of the Code of Conduct by public officers.

As for economic/financial crimes, corruption and "any unlawful activity in any form whatsoever" (to use the words of **Section 2 of the Act**), in my view, whether the Panel may validly investigate them or not, depends on the existence or otherwise, of any other statute(s) which deal(s) specifically with those offences. With regard to economic and financial crimes, the EFCC Act is clear, that the EFCC enjoys a near monopoly in terms of their investigation and prosecution; I submit that, the fact that it is the latter in time, puts it beyond peradventure: **F.R.N v OSAHON** (2006) 6 SCNJ 348.

Suffice it to say that, given the similarity of functions between the Panel, the Code of Conduct Bureau, the EFCC and the ICPC, both the Panel and its enabling statute, are not just superfluous and otiose, they are simply invalid. Accordingly, in the light of the anomalies in its legal construct highlighted herein, the Panel ought to be quietly disbanded, in the interest of the rule of law. Does this mean uhuru for Ekweremadu? Hardly, as the Code of Conduct Bureau and Tribunal, are waiting in the wings . . .

"ACCORDINGLY, IN THE LIGHT OF THE ANOMALIES IN ITS LEGAL CONSTRUCT HIGHLIGHTED HEREIN, THE PANEL OUGHT TO BE QUIETLY DISBANDED, IN THE INTEREST OF THE RULE OF LAW"

The Passing of a Legal Icon: Chief Idowu Sofola, MON, SAN

Folabi Kuti pays tribute to Chief Idowu Sofola, MON, SAN, a former President of the Nigerian Bar Association (1980-1982) and Chairman of the Body of Benchers (2012-2013), who died on Friday, March 23, 2018 at the age of 83, and was buried in his hometown Ikenne, Ogun State according to Islamic Rites on Saturday, March 24, 2018. Chief Sofola was called to the English Bar at Middle Temple on July 17, 1962, and he enrolled at the Supreme Court of Nigeria on July 30, 1962. He was elevated to the rank of Senior Advocate of Nigeria in 1989. May the Almighty Allah grant him Al Jannah Firdaus

Folabi, Have You Heard?

Attending court hearings in Port-Harcourt between the 21st and 23rd of March, 2018, I had just returned to Lagos, to the typical nerve-wracking 2-hour traffic ride from the Airport back home. It was a Friday. Braving the usual Lagos 'go-slow' (in the common tongue), I eventually made it home at about 10p.m, exhausted, and just needing a good night's rest. I had barely retired to bed, when I was jarred awake by the unwelcome sound of my phone ringing. It was a much-revered senior colleague and friend on the line. 'Folabi, have you heard?'

That was an unexpected and foreboding salutation, especially for a late-night telephone call. I had no clue and was not about to indulge in any mental exertion. The details soon hit me: 'Chief Sofola is dead. He died a few hours back...'. I retorted immediately, swinging into denial mode: 'No, it can't be. I saw him on Tuesday'. As though my explanations would somehow remind the caller, that he had made a huge mistake, and that he was probably speaking of someone else. As it turned out, that was not to be the case.

Our Last Interaction

Yes, Tuesday last, I had gone to the purpose-built office, housing *Ereke Chambers*, to give *Oga* some prepared notes, summing up my comments on a newly filed litigation he wanted me to look at. Even though prepared by some other law firm headed by a senior advocate, *Oga's* advice had been sought on the prospects of the case, because of the sensitivity of the subject-matter. *Oga* had called me and sent the documents over, with instructions on areas to look at, and research upon. That was just the other week.

I finally got around to it. Having not seen him in a while, I decided to take the prepared notes down to him personally. As I walked into the expansive building housing the chambers and other offices, I met him in the parking lot, seated in the car – genial, unruffled and graceful – as ever. His 83 years of age were still packed strong. Pleasantries over, he explained that he had only just arrived the office, and was catching a breather before going upstairs to his office. I handed over the documents, discussed same briefly, and decided to return after he must have had a look at them. He would call me later that same day to discuss briefly, and when it became increasingly hard to make conversation due to poor network signal (despite his son's intervention, using his line to call me), I promised to return to see him



The Late Chief Idowu Sofola, MON, SAN

either on my way to the airport the next day, or upon return. Court engagements on Wednesday morning, made it impossible to make it down to see him. I was barely on time for my scheduled flight to Port Harcourt by the time I passed through Ikeja, and I immediately decided to see him upon my return on Friday. And so, fate conspired to rob me of one final meeting with *Oga*.

How I started

But I remember...

It all started the weekend after my law school exams. After a most exacting period swotting to pass, I just wanted to relax and laze idly, pending the release of the examination results. I would then decide, what next to do with my law degree. I mean, yes, I was undecided about the practice of law, until that fortuitous meeting with Chief Idowu Sofola, SAN, as facilitated by my uncle, Otunba S.A Rabi (former Chairman, Lagos State Board of Internal Revenue). Uncle had given me a letter to go see his 'egbon, personal lawyer' for an internship, pending the release of Law School results. *Oga*, or Chief, as he would soon be affectionately referred to, asked me a few questions, before referring me to see the Head of Chambers, Mr. Sina Sofola (later, SAN), 'for another round of questions and answers' (as I was to later derisively put it, in a feedback to Uncle). The relevant detail here: I was employed, and thus began,



"AND WHEN IT CAME TO COURTROOM ADVOCACY SKILLS, HE DELIVERED HIS BLOWS ALMOST WITHOUT BEING SEEN. HE DIDN'T WEAR A PARTICULARLY SERIOUS MIEN; JUST SOFT-SPOKEN AND DISGUISEDLY EMPATHETIC TO THE MAN IN THE BOX; HE DID NOT BARRAGE AND HARASS WITNESSES BEING CROSS-EXAMINED. YET, HE EFFORTLESSLY EXTRACTED ALL HE WANTED"

almost reluctantly, a career I eventually grew to love to bits and pieces. Results came, and *Oga* gladly handed me a letter to NYSC, asking that I be posted to the chambers for service year. That pupillage, beginning February 2002, lasted till July 2005. During that period, I had the opportunity to learn, and finally make up my mind on a career as a

litigator (some of my fond experiences along the journey, shared here). My period of pupillage with *Oga*, saw me travelling around the country, representing the firm's clients in matters spread across locations as far-flung as Etinan, Akwa Ibom State; Kano; Port Harcourt; to nearby Ibadan, Sagamu etc. I did all of that, under the watchful eyes of *Oga*. And *Oga*? I saw two sides- the Lawyer and the family man.

'Oga': Legal Icon and Colossus

In the field of law, **Chief Idowu Sofola, MON, SAN**, was an icon and a colossus, looming larger than life. A gentle, soft-spoken, and unassuming man, you are likely to have encountered, without knowing it. He worked assiduously and packed a lot into a rich, fulfilled life, garnering professional accomplishments, including, amongst many others, the preferment with the Senior Advocate of Nigeria rank in 1989. Chief was also at one time, the Chairman of the Body of Benchers, and the first Nigerian, the first African, and indeed, the first black man to become the Secretary General of the International Bar Association.

Away from the rank and file of titles and professional accolades, I saw *Oga* up close and personal in his private life. He easily exuded the virtues of integrity, humility and leadership. A typical day in the office, was not complete without him issuing a letter of introduction or rendering some other form of assistance to a job-seeker, or someone else in need. He was a man of the people. He genuinely loved his people, and his Ikenne 'homestead'. Weekends never saw *Oga* in Lagos. He was sociable, and equally made out time to find a balance between work-life and socials.

I remember court appearances as a junior to *Oga*. Going to the Court of Appeal, Lagos meant many things for me. We would make it back to the office (then at 5th Floor, Elephant Cement House, Alausa-Ikeja), but not without first stopping at the Island Club for lunch, richly interspersed with colourful anecdotes of the Lagos of old, law practice in the 60s, and 70s (Chief was a Court Registrar before travelling abroad), and how grateful he was for the pupillage and fatherly care his brother, the much-more famous Kehinde Sofola, SAN, gave to him.

And when it came to courtroom advocacy skills, he delivered his blows almost without being seen. He didn't wear a particularly serious mien; just soft-spoken and disguisedly empathetic to the man in the box; he did not barrage and harass witnesses being cross-examined. Yet, he effortlessly extracted all he wanted; and that devastatingly played out, time

CONTINUED ON PAGE 15

The Use of Social Media Within the Legal Profession

In this article, **Adetola Ayanru** discusses the use of social media within the legal profession, and the need for Lawyers to be professionally aware of what is expected of them, when they utilise this medium. She advises that the NBA and other regulatory bodies within the legal profession in Nigeria, ought to follow the example of the International Bar Association, in developing a set of principles to guide legal practitioners on their use of social media

Introduction

Social media are web-based and mobile technologies that turn text communication into active dialogue (International Bar Association Principles on Social Media Conduct for the Legal Profession).

The influx of several social media applications, such as Facebook, Instagram, Snapchat, as well as professional applications, such as LinkedIn, raises concerns on the need to be professionally aware of what is expected of legal practitioners.

This consideration is important, because the use of social media provides a platform where legal practitioners can promote the administration of justice, as a result of the opportunity to engage the public in legal practice and debate; and as professionals, we need to be mindful of our online activities, because they penetrate professional contexts and relationships, in addition to providing an access to a large audience and real time resources.

Guiding Principles

The International Bar Association's Legal Practice Committee and Bar Issues Committee, have developed a set of principles to guide practitioners of the legal profession on their use of social media, which are discussed as follows:

Formulating Policies

The Nigerian Bar Association and other regulatory bodies within the legal profession, should consider formulating and adopting principles/limitations on the use of social media, in a professional manner. Law firms are encouraged to participate, by submitting contributions for this purpose. Law firms are also encouraged, to develop guidelines for their employees on personal and professional use of social media, which may be included in letters of employment and also by consistent training to educate them on the risks that may be involved with the wrong use of social media.

Confidentiality

One of the key principles within the practice of the legal profession, is the issue of confidentiality. It is taken for granted, that a Lawyer can be trusted



with private and confidential information. Therefore, a social media platform is not where a lawyer is expected to reveal a client's data or information, expect when in accordance with professional, legal and ethical obligations.

An example is, when information which can temporarily locate a Lawyer geographically, can be used to link professional involvement with a client. This may be disadvantageous, especially when the client does not seek to publicise his use of legal advice.

Maintaining Public Confidence

In abiding by the Rules of Professional Conduct (*Legal Practitioners Act, CAP 207, Laws of the Federation of Nigeria*), legal practitioners are expected to ensure that their conduct offline, matches their conduct online. Offline, a person has a level of independence over their affairs. However, the situation is not the same online, because activities are more likely to be exposed to a wider audience. It is important for this to be considered in the use of social media, because it has the tendency of portraying the key

characteristics of an individual, which may include both positives and negatives. Legal practitioners ought to be aware of this risk, in the pursuit of their personal social lives online, in order to portray a legal practitioner that can be trusted by current and potential clients.

Integrity

Legal Practitioners are expected to have a very high standard of integrity, in all their dealings, including online. They are enjoined to consider the impact the negative use of social media could have on their professional reputation, especially because of the little or lack of control over other people's social media activity. An example is, when content goes "viral". If the content is fictitious and with malicious intentions, it will be difficult to repair the damage to the reputation such content may have caused. This also extends to comments or content made unprofessionally, which may damage public confidence.

Independence

Legal practitioners must maintain a high level of professional independence, offline and online. Legal practitioners are expected to not be subjected to external pressures in maintaining their independence. Social media platforms where visible, links to clients, judges and other legal practitioners, should be considered before creation, to avoid professional implications of these public links under certain circumstances.

Responsibility

Most social media websites/applications have privacy settings, which members of the legal profession are advised to access, in the use of their professional and private accounts with social media websites/applications. However, this

does not automatically mean that the information shared/accessed will be protected.

It is also possible that, members of the public may rely on information published by a practitioner on a particular topic as legal advice, thereby unintentionally creating a retainer and possibly, assuming liability to third parties. It is advisable therefore, to always clarify the capacity in which the content is being created, and whether or not it should be relied upon as professional advice.

Also, legal practitioners need to consider the propriety of a medium for the dissemination of certain types of information. Factors such as context, potential audience, and nature of the message contained in the information, should be considered by the practitioner before dissemination. As a standard, the type of information a legal practitioner cannot say in front of an offline audience, should not be disseminated online.

In addition, the Rules of Professional Conduct lists some rules on advertising, touting and publicity (*Sections 33,34 and 35 of the Legal Practitioners Act, CAP, Laws of the Federation of Nigeria*). These should also be adhered to, with regard to online content.

Conclusion

With social media being deployed by legal professionals in different parts of the world in the administration of justice, it is important for the Nigerian Bar Association to ensure that structures are put in place to promote the use of social media in a professional and responsible manner, without impeding on the guaranteed freedom of expression.

Adetola Ayanru, Senior Associate, S. P. A. Ajibade & Co., Lagos

"LEGAL PRACTITIONERS ARE EXPECTED TO HAVE A VERY HIGH STANDARD OF INTEGRITY, IN ALL THEIR DEALINGS, INCLUDING ONLINE. THEY ARE ENJOINED TO CONSIDER THE IMPACT THE NEGATIVE USE OF SOCIAL MEDIA COULD HAVE ON THEIR PROFESSIONAL REPUTATION, ESPECIALLY BECAUSE OF THE LITTLE OR LACK OF CONTROL OVER OTHER PEOPLE'S SOCIAL MEDIA ACTIVITY"



We Hold Your Brief

TOBI SONIYI

Dear Counsel,

My nephew who is based in Scotland, will be coming home for his traditional marriage next month. Initially he sent some money for the preparations, but in our conversation on the phone yesterday, he told me that one of his friends in Scotland had informed him that it is now illegal to spray money on celebrants at parties in Nigeria.

He therefore, requested that the new Naira notes we had already procured for that purpose, be used for something else. I don't particularly like the idea of spraying money at parties, because I think it is ostentatious, and can attract thieves and robbers. But as for being illegal, I could not really verify that, which is why I am sending you this mail for clarification on the legal position on this.

Kindly, enlighten me on this.

Mrs. K.E., Eket, Akwa Ibom State.

Dear Mrs. K.E.,

The idea of 'spraying' money at parties is one of the old cultural practices in Nigeria, that has refused to die with time. Over the years, it became so pervasive, that the

Government had to do something about it, for the obvious reason that the act of spraying, results in the defacing of the currency notes used.

For this reason, the Federal Government passed a law by an Act of the National Assembly in 2006, which makes spraying not only illegal, but punishable under the CBN Act 2007. Specifically, Section 21(3) of the CBN Act 2007 provides that "For the avoidance of doubt, spraying of, dancing or matching on the Naira or any note issued by the Bank during social occasions or otherwise howsoever shall constitute an abuse and defacing of the Naira or such note and shall be punishable under Sub-Section (1) of this section."

The said Section 21(1) provides for punishment of not less than six months imprisonment or a fine of not less than N50,000 or both. Selling of new notes to be used for spraying at parties, is also an offence

However, the authorities have not been efficient in enforcing these laws as they should.

and again in his masterful weaving of pleaded facts and evidence during trial proceedings. All of this only became more evident, at the final address stage. He made no fuss, about his achievements or status anywhere. Quietly advocating slightly above a whisper, but getting loudest ovation (for his results) in the long run. They just don't make them that good anymore.

JANG v DARIYE

Despite advancing in years, it was a delight to watch Oga rise majestically to cross-examine for hours on end, several witnesses called by the petitioner in the **JANG v DARIYE** election petition in 2003. In the wake of legal skirmishes that followed the 2003 elections, I was a junior in the team ably led by Chief Idowu Sofola, SAN, to defend the election petition brought against the return of Governor Joshua Dariye as Governor of Plateau State. As was characteristic of most elections petitions, our team was comprised of hard-working lawyers from different law firms, who had all been briefed to conduct the defence. The contestant to the seat, who had lost and brought the elections petition, was Air Commodore Jonah Jang (rt.d.). Incidentally, he later went on to become the Executive Governor of Plateau State, after Dariye's term in office. The hearing of his petition lasted for weeks. If there was ever a time I saw the indispensability of forensic advocacy to

applying the rules of evidence, that was it.

There was a long line of witnesses for the petitioner. One after the other, various provisions of the Evidence Act came to play in destroying their credibility, puncturing their testimonies and rendering inadmissible, various pieces of evidence sought to be tendered. I recall very vividly a witness (for the petitioner) who gave a 'graphic illustration' of looting in a polling booth which - we were to discover - was many miles from where he voted. He seemed cocksure, in confirming that he actually voted at the polling booth under question. He swore that he saw the returning officer stuff the box with already marked voters' cards! He however, buckled under cross-examination (by Oga), when he 'innocently' admitted that he learnt of the alleged malpractices from a 3rd party!

The petition hearing lasted for about 8 weeks, and the team, led by Oga, with the equally formidable assistance rendered by others such as Chief Robert Clarke SAN, and Mr. Joseph SAN, were all lodged in the Plateau Hotel, which we returned to daily, to analyse the evidence led at the day's hearing and make preparations tirelessly through the night, for the days ahead. In between all that, I would run to my room, and a few times try to make it back to spend time with Oga in his own chalet. Most times, he would be the one to look after me, and find out how I was faring. And, of course, handing out generous sums as pocket

money, while ensuring that I was appropriately remunerated for my services as a junior. The heaps of knowledge acquired in those 8 straight weeks, was more than enough recompense, and I eternally remain grateful to Oga.

In 2014, I was midway through editing a galley proof of his biography (set to be released to mark his 80th birthday), when I realised there was a gap lurking in some recollection. I went back to Oga to fill in the details. He gave me a long, probing stare before launching into the details. I had never seen him that overwhelmed with emotions, and thus could understand his wanting to keep details out of the book. Looking back though, all I can say is that his resolve to do so, much against the grain and despite the positive reflection on his person which the narrative could have availed him, was a study in benevolence. Oga was generous in spirit, and kind in heart.

While accepting Oga's death as the inevitable destiny of all mortals, I cannot help but note with a rueful smile, that he went as quietly and gracefully as he lived. At 83 plus, Oga was still attending his law office. He did not buckle to old age. Raging against the dying of the light, he made death seem so unimportant. And then quietly, true to his genial nature, went gently into that good night. May his soul find rest with his Maker.

Folabi Kuti, Partner, Perchstone & Graeys, Lagos

LEGAL HUMOUR

Q: Did you hear about the lawyer hurt in an accident?

A: An ambulance stopped suddenly.

Q: How many lawyers does it take to change a lightbulb?

A: None, they'd rather keep their clients in the dark.

Q: What do lawyers do after they die?

A: They lie still.

Q: How can you tell a lawyer is lying?

A: Other lawyers look interested.

Q: Why should lawyers wear lots of sunscreen when vacationing at a beach resort?

A: Because they're used to doing all of their lying indoors.

Q: What happened to the banker who went to law school?

A: Now she's a loan shark.

Q: Where do vampires learn to suck blood?

A: Law school.

Q: How do you define double jeopardy?

A: When a lawyer calls in her partner.

Q: What do you get when you cross a librarian with a lawyer?

A: All the information you need, but you can't understand a word of it

Q: What's worse than pleading guilty to murder?

A: Getting jail time and getting robbed-- hiring an attorney to defend you.

Q: What do honest lawyers and UFOs have in common?

A: You always hear about them, but you never see them.

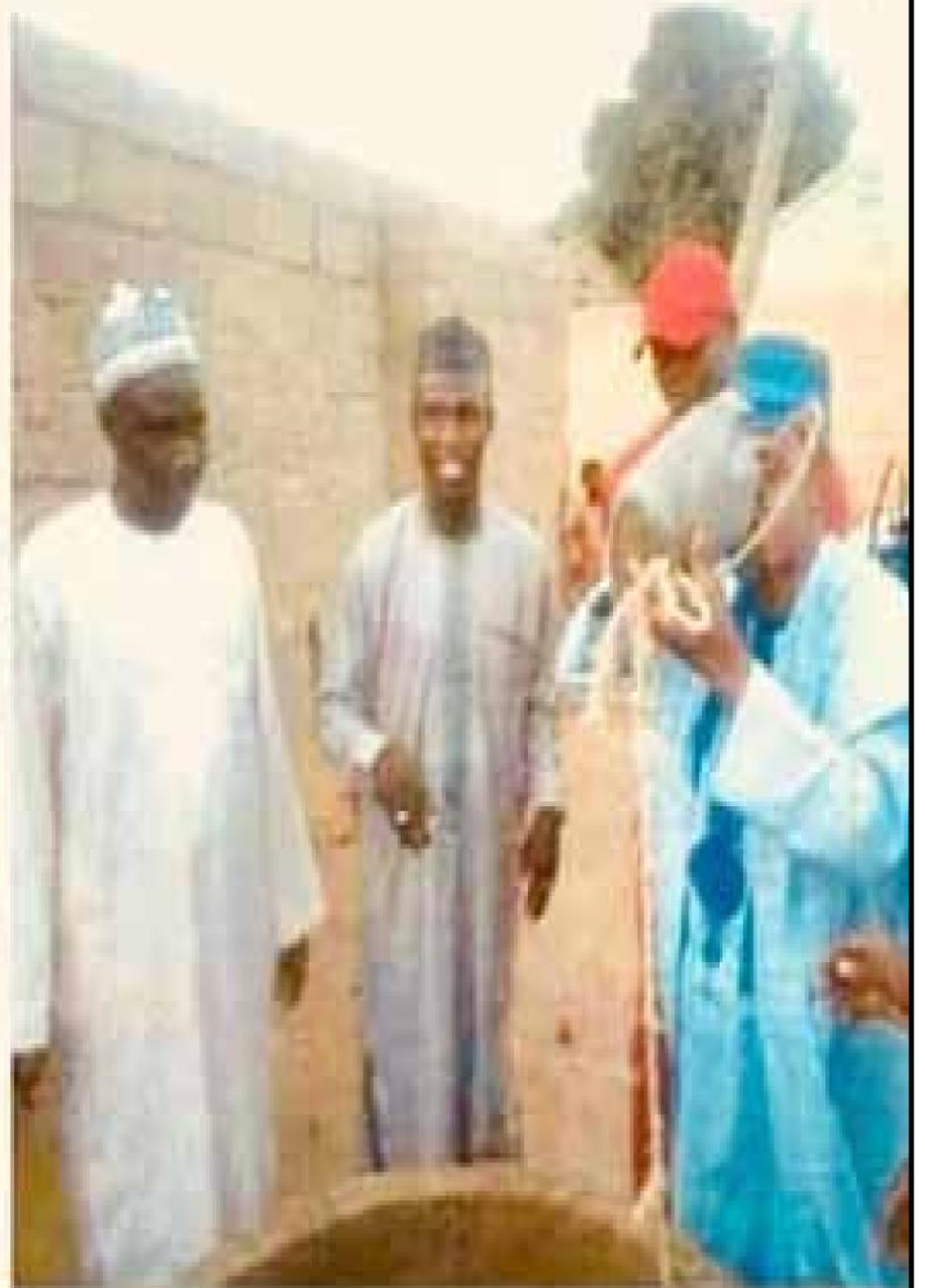
THE PASSING OF A LEGAL ICON: CHIEF IDOWU SOFOLA, MON, SAN

CONTINUED FROM PAGE 13

PAST AND PRESENT

Pic. 1: Nigeria in August 1960

Pic. 2: Nigeria in February 2018



How could a state that commissioned pipe borne water in 1960 be commissioning well water in 2018!