



**KEYNOTE ADDRESS AT THE
JUDICIAL REFORMS CONFERENCE,**

***“The Judiciary and the Challenge of
Satisfying Justice Needs of the 21st
Century: Putting Our Foot Forward”***

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Introduction

My Lord, the Chief Justice of the Federal Republic of Nigeria, Chief Justice Mukhtar, the Honourable Attorney-General and Minister of Justice, Mr Adoke, President of the Nigerian Bar Association, Mr Wali, Judicial colleagues here present, the Representative of the United Nations Office of Drugs and Crime, Ms Sisoko, the Executive Director of Access to Justice, Mr Otteh, esteemed speakers and guests, ladies and gentlemen, I greet you.

Again, I take this opportunity to congratulate the Chief Justice of the Federal Republic of Nigeria on being the first female Chief Justice of the Federal Republic of Nigeria. I also learnt that in April 2014, My Lord Honourable Justice Bulkachuwa was appointed as the first female President of the Court of Appeal, the second highest court in Nigeria. These appointments will go a long way to dispel the misconception that judicial leadership is the preserve of men. It poses a serious challenge to many countries like South Africa to work hard towards the realisation of its declared objective of ensuring that women occupy their rightful place even in the upper echelons of all institutions of importance.

Let me congratulate Mr Wali, the Nigerian Bar Association, United Nations Office of Drugs and Crime, Access to Justice, and all others who partnered with them, on a well organised conference. I am grateful for the invitation to deliver the keynote address at this august gathering.

The plight of Africa

I have for a long time now been deeply troubled by the sharp contrast between the enormous mineral and natural resources that Africa has been endowed with and the economic underdevelopment, the high levels of unemployment, poverty, infant mortality, HIV and Aids and illiteracy, to mention but some, that Africans have to contend with.

On my way here I was reading a book which, after outlining the wonders of Africa, heightened my concerns about this lamentable socio-economic state of affairs in these terms:

“Our great artist God has displayed these and other wonders in Africa. . . He hid more gold here, more diamonds, platinum, copper than in any other place on earth. Africa has enough arable land to feed a large portion of the earth. The continent has more hydroelectric potential than all the rest of the world put together, as well as abundance of coal and oil.

Wisely used by and for Africans, the continent’s resources could contribute significantly to new health and prosperity. Unfortunately, for too long Africa’s people have been enslaved, raped, abused, dismissed by prejudice or just ignored. Their rich resources have often been collected and used by others - even stolen - with little if any benefit going to the Africans. Instead their value has attracted foreign exploitation, enriching dictators and warlords, bringing bloodshed, starvation and even modern forms of black-on-black slavery.”

And Nigeria and South Africa rank high among those African countries that have just about all the mineral and natural resources necessary for a country to be an economic super-power. Sadly, we really have very little to show for it, having regard to the vastness of resources at our command.

The time has come to reposition Africa. For this is the era for the renaissance of our continent. And the organised profession as well as the Judiciary have a crucial role to play in repositioning Africa to emerge as an economic, political and human rights

force to be reckoned with. Granted we were colonised, many powerful countries and personalities owe their wealth to the unjust exploitation of Africa's abundant resources. And they continue to take advantage of our continent, through strategies so refined and sophisticated that they are made to look legitimate, reasonable and mutually beneficial. But by omission or commission we have also contributed to some degree, to this unacceptable state of affairs. We did so by contracting one of the deadliest and yet curable disease known as corruption, and it is spreading so fast, that it has reached the Judiciary in some countries.

Corruption

The love of money and obsession with fame and approval have caused and could cause many Judicial Officers to betray their all important mandate of administering justice to all persons alike, without fear, favour or prejudice. Former United Nations Secretary-General, Mr Kofi Annan, had this to say about the impact of corruption:

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the

rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish . . . Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aids and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.”

The challenges facing the Nigerian Judiciary were eloquently articulated by the former Chief Justice of Nigeria, His Lordship the Honourable Dahiru Musdapher. His Lordship raised concerns about the independence of the Judiciary¹, “in terms of funding, political manipulation of the processes of appointment and removal of Judges by some state chief executives and their respective Houses of Assembly; delays in the administration of justice occasioned, in part, by institutional limitations and incapacities; and corruption.”

The Chief Justice said further that:

It is regrettable that some state chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with

¹ Especially at the state level.

disdain. Sadly, the judiciary in several states still goes cap in hand to the executive begging for funds. By section 162(9) of the Constitution, any amount standing to the credit of the judiciary in the Federation Account is paid directly to the National Judicial Council (NJC) for disbursement to the heads of superior courts, including those at the state level. However, a significant part of the funding requirements of state judiciaries, especially in the area of the provision of infrastructure and welfare of Magistrates and other lower court Judges, remain the responsibilities of states. The plight of the state judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of Judges/security of tenure is the subject of political theatrics.

Delay in the dispensation of justice remains a major challenge due, in large measure, to institutional incapacities in the area of infrastructure (especially e-infrastructure), in-built delay mechanisms in the law, as well as failings on the part of some Judges, the official and private Bars, law enforcement agencies, litigants and witnesses.

Furthermore, the judiciary is sadly not insulated from the monster of corruption that is ravaging the society.”

One of the worst traitors of the legitimate aspirations of any nation is a Judge, who makes decisions, not because he or she believes them to be correct, but because he or she seeks to please a friend, a manipulator, a corruptor, a “constituency” or a lobby or pressure group. That is corruption of the worst kind. Corruption must therefore be dealt with mercilessly and speedily especially when committed by Judicial Officers. A Judicial Officer who was proven to have been

involved in corruption must never be allowed back into the Judiciary. That said, judicial independence would also help in the fight against corruption.

Judicial independence

The Judiciary that enjoys both individual Judge and institutional independence, has great potential to help create an investor-friendly climate, pave the way for a booming economy and sustain economic growth.

Courts exist to administer justice to all persons alike and without fear, favour or prejudice. And that would be seriously undermined if the Judiciary does not enjoy both personal Judge and institutional independence. This is so because it is that independence that enables Judges to defy or withstand extraneous influences.

The institutional arrangements must also be such as to reinforce judicial independence. The Judiciary must have its own budget that is enough to meet its needs. It must take full responsibility

for court administration particularly in relation to matters that are intimate to court operations, be able to determine the size of its support staff complement, set its strategic priorities and execute them as determined by the Judiciary itself. The Judiciary must never be made to look like an appendage of the Executive, dependent on it for the resources it requires to drive even its strategic programmes like case management, modernization, performance monitoring and evaluation. It must claim its rightful position as the third arm of the State. Whatever constitutional or legislative amendments might be necessary to realize this objective must be embarked upon.

I always admire the ease with which the Executive is able to increase its budget, build and install whatever infrastructure and information technology systems it requires. We would be a better continent if the same capacities were to be extended to the Judiciary with equal ease. I learnt a few days ago that the Federal Republic is likely to have 18 additional states. This is probably the right thing to do considering the size of the population of this country and the enormous governance responsibilities that go with it. I am optimistic that the budgetary

and infrastructural needs alluded to by former Chief Justice Musdapher will also find accommodation, in due course. Fortunately, to create the infrastructure and capacities necessary for a more efficient and effective machinery to be put in place, the Judiciary would require a fraction of the budget allocation needed for the creation of these states.

Traditionally, the Executive and Legislative Arms of Government were identified as the only real threats to judicial independence. And this still holds true. But there are other very real threats to judicial independence that we do not seem to be particularly concerned about, at our own peril. Membership of secret societies, the rich and powerful, foreign interests and the media that serves sectarian interests could be just as fatal to judicial independence. Judicial independence owes its existence to a number of factors, including the content and quality of our law degrees.

A sound foundation for the ideal Judiciary

Do we give our law students sufficient exposure to ethics and professional as well as judicial independence? Law students who were taught the basics of professional and judicial ethics would, barring exceptions, invariably become ethics-conscious legal practitioners and by extension Judicial Officers who abide by their oath of office or solemn affirmation. What about the organised profession. Are our professional codes of conduct adhered to? And to the extent that there are challenges, how effective are our enforcement mechanisms.

Adherence to ethical codes at the level of the organised professions largely inform the kind of Judges that the country can legitimately expect to have. Are we as practitioners chasing money at all costs or is it the course of justice for all and the efficient and effective justice system that we can all be proud of, that we seek to help create? How many incidents of professional malpractice or misconduct are reported annually, and how are they dealt with? Do we ever have evidently questionable characters appointed to high judicial office and when that happens, how do we as the profession and as the Judiciary react

to that? Do legal practitioners report Judges whom they know to be corrupt? Are they courageous enough to testify against them or are they always paralysed by fear?

Remember, if the well out of which we drink is polluted, the contamination also affects consumers of the content of the well. The process for the appointment of Judges is key to judicial independence and efficiency.

Judicial appointments

The judicial selection and appointment process is also very important. How do you identify candidates for high judicial office? How are they interviewed? Is it in private or is it an open process for the public to judge for itself? Is media coverage allowed or not? What is the composition of the body responsible for those interviews and what measures exist to safe-vouch the process from manipulation and corruption?

What is best for country A is not necessarily what would best serve the interests of country B. But transparency does help to

dispel some of the harmful misconceptions that secrecy tends to breed.

We must thus reflect on the effectiveness of our judicial appointment processes and review them as and when the need arises. At the end of the day, as I said, our concern should always be whether or not the interests of the nation and of justice are best served by a Judiciary appointed through that process. We should never shy away from effecting changes that would best advance the interests of our respective nations.

Tenure

When Judges have a short and renewable term of office there is always a risk that their independence might be compromised. This is so because this kind of tenure might give rise to a perception that they are likely to seek to please those who wield the power to renew or not to renew in order to brighten the prospects of the renewal of their terms.

Judges must have a long and non-renewable term of office and their retirement benefits must be good. The pursuit of a comfortable life should never be the reason for a Judge to corrupt himself or herself. The point is, that everything possible must be done to insulate Judges from corruption.

Remuneration

The remuneration packages of Judicial Officers must be at an acceptable level, of course regard being had to the economic muscle of a given country. Judges must be made very comfortable. Taking bribes and corruption are, but for the irredeemably greedy, the consequence of unsatisfactory remuneration packages. The justice needs of the 21st century are satisfied also by an efficient and effective court system.

Efficiency and effectiveness

An effective case management system best suited to the needs of a particular country must be found to help that country address the embarrassing delays that bedevil the justice system. This presupposes that we have adequate judicial capacity to cope

with the ever-increasing workload. For in many jurisdictions, Judges are too few for the workload. The number of Judges per court have remained unchanged notwithstanding the huge case roll that Judges have to grapple with. The 21st century requires an efficient and effective machinery to meet the needs of justice. Potential investors are partly attracted by an independent, efficient and corruption-free Judiciary that resolves commercial disputes without delay.

In 1985, the (American) National Conference of State Trial Judges adopted *Standard Relating to Court Delay Reduction*.

The Conference noted that:

“Justice delayed is justice denied. Delay devalues judgments, creates anxiety in litigants and results in loss or deterioration of the evidence upon which rights are determined. . . . Delay signals a failure of justice and subjects the court system to public criticisms and the loss of confidence in its fairness and utility as a public institution.”²

This of course applies to the overall efficiency and effectiveness of the system.

² National Conference of State Trial Judges, 1983-1984 - *Standards Relating to Court Delay Reduction*, American Bar Association, April 1985, p 5.

Accountability

Independence comes with accountability. I have heard of instances where Judges would plead independence when called upon to finalize cases speedily and render quality service. Judges are appointed to administer justice and to do so well. It is their responsibility to ensure that speedy and quality justice is accessible to all.

Apart from the judicial code of conduct that facilitate accountability, a lot of benefit could also be derived from setting norms and standards that would serve the same purpose, and standardise expected performance levels. This could deal with case disposition, the delivery of reserved judgments and the case management system to be followed for the betterment of court performance.

An effective performance monitoring and evaluation system exposes performance-related challenges long before the red bright lights, which warrant disciplinary steps begin to flash. This would then afford the leadership of the Judiciary the opportunity

to help colleagues sort out their problems before the situation that could bring the Judiciary into disrepute sets in.

Mechanisms must be in place to enforce discipline. When Judges appear to have failed to live up to the high ethical standards of judicial office, accountability dictates that steps be taken against them, to determine whether there is merit in the allegations levelled against them. But these must be transparent processes designed to unearth the truth and not to victimize Judges. Impeachment should not be easy to achieve so that Judges' tenure is not at the mercy of the Executive and the Legislature.

Court modernization

Court performance would be significantly enhanced by information technology.³ Delays are partly occasioned by

³ Former Chief Justice of South Africa Mahomed remarked as follows about the need for information technology:

“Africa itself is part of a geographically larger but technologically, economically, ideologically and jurisprudentially more interdependent and intimate world. Our continent should therefore influence and be influenced by the constitutional perspective and jurisprudential orientations of the entire world”.

witnesses who are in far-removed areas and are not able to present themselves to court on the date of hearing owing to circumstances beyond their control. I have seen video-conferencing address this with ease. And I also saw it save clients costs that they would otherwise have had to pay for the postponement of a case. It facilitates speed without compromising the quality of the trial.

Electronic filing enables practitioners to file documents at any hour on any day of the week wherever they may be. And on-and off-site electronic record-keeping protect court records from theft which has caused untold injustice in South Africa. Record of proceedings in criminal matters tend to disappear and shortly thereafter a notice of intention to appeal is filed. This has invariably resulted in the release of even people who had probably been correctly convicted and sentenced for serious crimes.

Electronic record keeping would not only secure the records from being stolen but would also address the inordinate delays in prosecuting appeals caused by the transcription of court records.

Judicial education

The role of properly structured judicial education programmes in strengthening the independence of the Judiciary and enhancing court performance cannot be stressed enough. For judicial education has proved to be a very important factor in the success story of well-performing jurisdictions.

Repositioning

That Judiciary must pay particular interest in the performance structures matters that constitute critical feeders to the court system. Institutions that have a key role to play in the performance of the Judiciary should not only be of particular concern to the Judiciary, but the Judiciary must also see itself as a key partner in ensuring that they are purpose-driven and well run, without blurring the lines.

I believe that a viable option to explore in this regard would be to set up a forum at a federal and state level comprising the police, prosecution, prisons, the organised profession, the department of health and all other structures that have a major role to play in court operations. That forum would provide a platform for all parties to raise whatever concerns they have about the impact that the under-performance of any of them has on the performance of others and where practicable find workable solutions to the challenges. That would address the failings, on the part of the official and private Bars, and law enforcement agencies, alluded to by former Chief Justice Musdapher.

Conclusion

In a world that is undergoing immense technological change, courts are called upon to deliver services against a backdrop of an increasing caseload, and inadequate and yet declining resource base. To cope with the justice demands of the 21st century, judicial independence, court modernization, the creation of additional judicial posts, the necessary infrastructure and the provision of the tools of trade, cleaning the system of rotten apples and performance monitoring and evaluation is key.

It should be borne in mind that the authority of the Judiciary ultimately rests on the confidence that the public has in the services it offers to the public.⁴ The need to build the justice system that has the capacity to deliver speedy quality justice to all, is therefore essential.

I THANK YOU

⁴ The Role of Information Technology in Modernising the Courts, Frederick Egonda-Ntende, Conference of the Southern African Judges Commission, Imperial Resort Beach Hotel, Entebbe, Uganda, 3-6 February 2005.