

Nigeria: He Broke the Old Order!

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In less than a decade, Africa has moved ahead of other continents in the recognition of women in judicial appointments with three Chief Justices of three African nations appointed as Chief Justices of their various Supreme Courts, namely the current Rwandan Chief Justice, Aloysia Cyanzaire in December, 2003 by gender friendly President Paul Kagame, the first Tutsi to become President since the Republic began in 1961 - others before him were all Hutus. In 2008 Rwanda became the first country in the World to elect a national legislature, majority women. Ghanaian Chief Justice Georgina Wood was appointed in June, 2007 and Sierra Leonean Chief Justice Tejan Jalloh in December, 2008, to hold the most lofty and sacred judicial office; all three Lady Chief Justices serving their countries honourably, historically the 'firsts' and adorably simultaneously.

Astounding history made on December 30, 2009 in the Supreme Court Abuja, under the eagle eyes of the Chair, Nigerian Bar Association, Section on Public Interest and Development Law, Joe Gadzama SAN, some NBA National officers and some NBA-NEC members present, by a diligent and dignified Kutigi GCON, CJN, a gentleman Judge mentored by Lord Denning, who administered the oath of office on his successor, the Hon. Justice Katsina-Alu CJN, another fine gentleman. Two Ministers, Justice and Labour, some Judges of all cadres from the Supreme Court to the High Court, lawyers, family members, the National Judicial Council, other Institutions, agencies and personalities witnessing it; change is coming to Nigeria.

Against this backdrop, we find amusing Chidi Odinkalu's opinion titled, 'Chief alright, but where is the Justice?' reproach our CJN for the adoring feat, and condemned it as politically incorrect. This rejoinder will attempt to speak to the law and morals governing the administration of Oaths in Nigeria and draw example from the American experience, on which our Presidential system is modeled.

Extrapolating from section 140(1) & (2) of 1999 Constitution of the Federal Republic of Nigeria (CFRN) 140(1) says: 'A person elected to the office of President shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed in this Constitution and he has taken and subscribed the Oath of Allegiance and the Oath of office prescribed in the Seventh Schedule to this Constitution.' S. 140(2) says: 'The Oaths aforesaid shall be administered by the Chief Justice of Nigeria or the person for the time being appointed to exercise the functions of that office.'

Throughout the length of the Constitution, there is no corresponding duty on the President to administer the Oath of office on the CJN as you find in section 140(1) and (2) supra compelling the CJN to do so upon the President being elected before he begins to perform the functions of his office. Meaning if the draftspersons intended the President to administer the oath of office on the CJN, they would have said it in at least a clause in

the 1999 Constitution but they did not because they were more concerned about the independence of the judiciary and the principle of separation of powers.

Other provisions harping on CJN's appointment in S.231 CFRN made no mention of the President administering the Oath of office on the CJN. Happily, judicial oath is found in s.290(1) and (2) of CFRN reproduced 290(1) says: "A person appointed to any judicial office shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed under this Constitution and has subsequently taken and subscribed the Oath of allegiance and the Judicial Oath prescribed in the Seventh Schedule to this Constitution." 290(2) "The oaths aforesaid shall be administered by the person for the time being authorised by law to administer such oaths."

S.2 and the second schedule of the Oaths Act additionally cited by the Justice Minister Aondoakaa SAN, as legal justification for Justice Idris Kutigi's call to duty, says either the President or the Chief Justice shall administer the oath of office on the CJN. Although it is not a constitutional requirement for the President to do so, the Oaths Act permits it. And if that was used by the Attorney-General of the Federation to resolve a political question, as angrily expressed by the objectors, may be the AGF is lucky. The view that a retiring CJN should administer the oath on the new accords with due process in my humble view for reasons earlier indicated.

In America, the Chief Justice of the United States' Supreme Court administers the oath of office on his successor, for instance, retired Chief Justice Warren Burger administered the oath of office on Justice William Rehnquist in 1986, former U.S Chief Justice who in turn administered the oath on the current Chief Justice John Roberts in 2005. It is a time honoured path to judicial sanctity and we commend the example laid on December 30, 2009 by Justices Kutigi and Katsina-Alu, following the U.S practice as supported by the Nigerian laws cited above. The objectors against this honourable path who wailed a deafening 'illegality' nothing but symbolised the tyrannical minority in the legal profession over the silent approving majority.

The tyranny of the minority should rather recall what happened in Pakistan in February, 2008 when 70 Judges were sacked for refusal to take the oath of allegiance under President Pervez Musaraff and were recalled subsequently after lawyers stood to defend the sacked Judges; and commend the CJN for doing what is right and breaking from the old order.

Chidi Odinkalu made heavy weather of s. 231(1) CFRN on appointment of a person to the office of the CJN, on whether the CJN's letter of appointment was written, signed, dispatched and received before his swearing in. Mr Odinkalu does not work in the Presidency, he does not clerk for Katsina-Alu CJN, he is not the Chief Registrar of the Supreme Court, and CJN did not complain that correspondence did not issue confirming his appointment. Placing a burden on the CJN to prove that his letter of appointment was appropriately issued and delivered post Senate confirmation is atrocious. Upon Senate confirmation, the rest become administrative and ceremonial. And to say that thereafter, the 'minions' in the Presidency were said to have signed the letter on behalf of the

President, diminishes as slaves, serious administrative workers in the Presidency and that is very disparaging indeed, an unfair characterisation.

Also surprising, was when the objectors said that the 'illegality in the CJN's oath taking could be challenged in court'. Anyone can go to court but they won't win. If they dissect the law, rather than politics which produces negative overlapping ripples, and not synergy, they would find that s. 4(1) of the Oaths Act provides that: "Nothing in this Act shall render, or be deemed to render or be deemed to have rendered invalid any act done or which hereafter may be done by a public officer in the execution or intended execution of his official duties, by reason only of the omission by the public officer to take any oath or to make any affirmation which the officer should take or should have taken or should make or should have made", thus conserving the lawful act of the CJN of December 30.

On this humble note I stretch forth my hands, from Washington D.C., on behalf of the esteemed silent majority of the Nigerian Bar, with profundity of humility and utmost respect; we congratulate the Hon. Chief Justice of Nigeria, both the retired and the new for a magnificent event.

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