

SPEECH DELIVERED BY CHIEF T.J.O OKPOKO, OON, SAN ON BEHALF OF THE BODY OF SENIOR ADVOCATES OF NIGERA ON THE SPECIAL SESSION OF THE SUPREME COURT TO MARK THE 2020/2021 LEGAL YEAR/ THE CONFERMENT OF THE RANK OF SENIOR ADVOCATE OF NIGERIA ON 72 NEW MEMBERS OF THE BAR AT THE SUPREME COURT OF NIGERIA ABUJA ON THE 14TH DAY OF DECEMBER, 2020.

Protocol as established by the Honourable CJN

1. On behalf of the Body of Senior advocates of Nigeria, I welcome our new members and congratulate each and everyone of them for scaling through the rigorous tests in pursuit of this great Honour. Let me remind you briefly, that a Senior Advocate of Nigeria remains a member of the Nigerian Bar Association and has to respect the organized Bar and perform for the Bar, duties when called upon to do so.

It has been said that Lawyers who earn the Honour of being made Senior Advocates of Nigeria, fall into the class of aristocrats in the society. I therefore welcome these aristocrats into the elite class of lawyers who have attained distinction in the practice of law.

Permit me to quickly add, that the Honour conferred on you today, equally requires you to accept responsibilities to do justice to all, to respect and be honest with the Court of law, the Justices, the Judges and to your colleagues. I need not say more about this, because the Body of Senior Advocates – BOSAN has already taken you through an induction course. So, I welcome you once again.

2. In every one of the special court sessions of the Supreme Court to mark the legal year, each Chief Justice of Nigeria take pains to give statistics of cases handled by the Courts in the Course of the previous year. These statistics over the years, show conclusively that the number of cases getting to the Supreme Court docket keep increasing from year to year. Stakeholders attending these ceremonies listen to and hear the statistics but stakeholders do not appear to have considered the fundamental message in the statistics or considered any steps that can be taken to address the issues raised by the yearly reports. This is rather unfortunate.

2.1.1 The message from these Statistics from year to year shows, that the docket of the Supreme Court is overloaded and that the

Justices of the Court are over worked and over stretched. Yet there is no sign of any action to address the problem. This is a trend which ought not to be allowed if our nation is to get the benefits which the Supreme Court of any country is expected to provide.

In a situation where the Supreme Court is overloaded and the Justices are overworked, there is certainly the likelihood that the standard of adjudication may become the victims of a system which overworks the Justices and Judges.

The fallen standards in the intellectual quality of delivered judgements in our Courts in the past few years may have resulted from Judges and Justices being overworked and overwhelmed by the heavy work load of their Courts. In the case of the Supreme Court, the overloaded docket hardly leaves the Justices sufficient time to reflect on their Judgments after writing same or before reading same in open court as the Justice must immediately pick up another record for another appeal.

This stress and pressure on our Justices is further aggravated by the new trends of some advocates citing without discussion, myriads of judicial precedents where one or two may just be adequate. Our colleagues overlook the fact that in such circumstances, a hardworking Justice is compelled to bear the burden of reading rather repeatedly within the short timeline available to him, decided cases some of which may be entirely irrelevant in the case before them.

We do not seem to realize the fact that the human brain has its limitation. No matter how hard their lordships may work or attempt to work, stress and fatigue arising from overwork by reason of overloaded dockets of their Court must, impact the intellectual quality of their Judgements. It is therefore right that conscious efforts be made to reduce the workload of the Supreme Court Justices, so as to lessen the burden and this give their Lordships time to work and reflect on their work and so produce Judgements that will set out definitive statement of the law for the country.

2.1.2 Over the years, various sections of the legal profession have attempted to consider how the desirable end of reducing the workload of the Supreme Court can be actualized, but so far, no appreciable progress has been made. It has to be noted that a Supreme Court of a country is not a Court of factual disputation or a Court for experimentation. The Supreme Court as the ultimate Court in the Land is a Court for the declaration of what the law is at any particular time in the Country. If our Supreme Court takes this position, then of course, they will not have to be saddled with making decisions on facts or expressing belief or disbelief in evidence because these would have been taken care of in the trial court and intermediate Court of Appeal.

2.1.3 In the United States and Canada, the Supreme Court is not a Court to re hear cases on appeal and make finding of facts of I believe or I do not believe. Finding of facts are matters for the trial Courts at first instance hence the general view that appellate courts should have high regard for the view of the trial Judge who saw and heard witness testify at the trial.

Whether the trial Court was right in its finding of facts and whether the law was correctly applied to facts correctly found, is a matter for the intermediate Court of Appeal.

The Nigerian Supreme Court should not be playing the role of an intermediate Court of Appeal instead of its role as the Supreme and Ultimate Court of the land. The role of the Supreme Court as the Ultimate Court of the Land is and should be that of making authoritative declarations as to what constitutes the law on issues adjudicated upon by the trial Court and the intermediate Court of Appeal. The Supreme Court should not be involved in making findings of facts which the trial Court and the intermediate Court of appeal have considered and resolved.

Looking forward to the way out of the over loaded Supreme Court docket and overworked Justices of the court experience from our own Supreme Court and similar Court from other jurisdiction show that increasing the number of the justices of the Court is not and cannot bring about any viable solution to the problem of over loaded docket of the Supreme court.

There are two main ways by which the Supreme Court Justices can be relieved of their overloaded docket and really provide for the Nation, Judgements that will decide with certainty what is law to guide the Country and protect its democracy, and the right of Citizens and Residents.

2.1.4 The first is a review of the Constitutional provision giving a Litigant an open ended right to appeal to the Supreme Court on grounds based on complaints of error of law. How and when a complaint in a ground of appeal has been the subject of many Supreme Court decisions but the problem still lingers on. If the present provision of the Constitution is allowed to remain what it is, the Country may soon come to the point where the Supreme Court will be asked to decide cases of landlord and tenants, custody of children and matrimonial disputes as if it is a Court of first instance. The right to appeal to the Supreme Court should be limited to-

- a. Constitutional disputes involving Local Governments, States and Federal Governments or between Governments and Citizens where the complaint rest purely on the Constitution and or a Statute.
- b. Disputes as to violation of fundamentally entrenched rights under the Constitution
- c. Cases of disputes on title to land in respect where there are conflicting decisions of the Court of Appeal.
- d. Dispute as to the legality, validity and constitutionality of enactments by States and Federal Legislature and/or by local Government Councils where no evidence is required.
- e. Conflicts of laws made by a State and Federal Legislative Houses
- f. Case involving exercise of oversight functions by the Federal or State Legislatives in respect of private individuals or Corporations.

2.1.5 All other disputes between citizens whether corporate or human or Government should end in the Court of Appeal in the same way

as election appeal except election appeal arising from Presidential and Governorship elections appeal.

This is the first Legislative step to take to address the issue of overloaded docket of the Supreme Court .

3. The second point to address the issue of overloaded docket has to do with the reform of intermediate appellate system. One ground for the increase in number of appeals to the Supreme Court is the litigants' apparent dissatisfaction with many of the Judgements delivered by the Court of Appeal.

At the time the Court of Appeal was created, little attention was paid to the necessity to ensure that the intellectual content of the Judgements of the Court of Appeal Justices should rise above that of the trial Courts and be equal to or very close to the standards of the Supreme Court Judgements. If Judgements of the Court of Appeal attained the required standard, then even a litigant who lost in the Court of Appeal can readily appreciate the reason why he lost in such cases.

Although some litigants may still insist on taking a chance to the Supreme Court, a lawyer of honour and distinction can be relied on to advise his client that a further appeal to the Supreme Court is unlikely to succeed and advise his client to avoid wasteful exercise and cost.

The litigants' dissatisfaction with some of the Court of Appeal decisions contribute greatly to the multiplicity of appeals that go to the Supreme Court. It is necessary therefore to consider raising the standard of the Court of Appeal judgement because if the standards of Court of Appeal decisions are high, that in itself may cut down the number of cases where litigants may insist on an appeal to the Supreme Court.

The question then is how can this be tackled?

4. I was in practice before the Federal Court of Appeal was created and I know that some of the best of our Justices manned that Court and the Western Nigerian Court of Appeal. The Court of Appeal itself produced sound Judgements and many disputes ended in that Court but today, the position is different because the Court of Appeal is inundated with all sought of cases and is manned by Justices appointed from different backgrounds, the standard of some of their Lordships' judgements may continue to fall below acceptable standards. Honest stakeholders will attest to this fact.

To address the issue of decongesting the Supreme Court docket, one must at the same time consider the structural reform of the intermediate Appeal Court as an inadequate Court of Appeal system can only increase the desire of litigants to appeal to the Supreme Court. A single Court of appeal which now operates in Nigeria cannot successfully support the Supreme Court of our dream for the Nation.

5. The problems of inadequacy in the present intermediary Court of Appeal lies not on the product of corruption as many members of the public may erroneously think. The fault really lies on a faulty constitutional arrangement set up only one Court of Appeal for a Nigeria Federation of Thirty-Six States and FCT each of which state has its Executive, Legislative and Judicial arm of Government. The question to ask is why must these Thirty-Six federating States with diverse Laws, Culture, Land tenure, Chieftaincy matter etc be restricted to one Federal Court of Appeal for the determination of diverse disputes from the States. Let us examine the following the issue more closely.

- 5.1.1 Justices of the Court of Appeal are appointed from among the serving Judges of the State High Court and Federal high Courts including the High Court of the Federal Capital Territory, as well as The Sharia Court of Appeal and the Customary Court of Appeal of the States. Sooner or later Justices of the Court of Appeal will be appointed from the National Industrial Court into the one single Court of appeal. The question, is it right? My quick answer is that it is not.

- 5.1.2 Judges are generally appointed Justices of the Court of Appeal are those who have served for several years and are considered experienced trial court Judges with the necessary maturity to serve at the Court of Appeal. Their experience as trial Court Judge is a prime consideration for their selection.

- 5.1.3 The Federal High Court is a Court of limited jurisdiction in the sense that the subject matter in respect of which its Judges exercises jurisdiction are constitutionally set out in S.251.

- 5.1.3 The Federal High Court lacks jurisdiction to hear and determine Land cases, Contractual disputes, Divorce - Statutory or Customary including custody and care of children. It has no jurisdiction to determine ownership of land, land tenure or tenancy disputes or banking disputes between the banks and their customers.

The experience of a Federal High Court Judge, considered vital for the elevation to the Court of Appeal only covers subject matters in respect of which the Federal High Court has jurisdiction.

When therefore, a Judge of the Federal High Court is appointed to the Court of Appeal bench, he is immediately faced with appeals involving matters over which he has no foundation or experience.

His Lordship inexperience in the new field of Land cases, Contract, Customary law, Banking disputes, Matrimonial law and Sharia law will certainly affect the quality of his lordship's contribution to the Judgement of the Court of Appeal. Panel of which he is member. In this way, the advantage of appointing an experienced trial Judge as a Justice of the Court of Appeal is defeated.

Where justices from the Federal High Court are in a panel of 3 or 5 in a land case, their contributions as Justices in such matters which they did not deal at trial court becomes near zero. The result is inadequacy of the Court which increased litigants' dissatisfaction with the judgment.

- 5.14 The same scenario plays out in the cases of Justices of the Court of Appeal appointed from the State High Court and who as State Court Judges did not hear or determine Federal causes such as, Revenue disputes, Maritime dispute, Company and Management disputes, lately Industrial disputes and many other areas of Law.

Such Judges may be good in Land matters, Contractual laws because they dealt with such matters within the jurisdiction of the Courts from which they were elevated to the Court of Appeal, their performance in appeals from Court other than the Courts from which they were elevated must of necessity pose a major challenge to sound appreciation of the matters on appeal.

The present system of one Court of Appeal to serve 36 Federating State will produce Judges with limited or no experience in the areas they did not deal with as first instance Court judges. Such Judges may at the Court of Appeal, preside over, hear and determine cases of Customs and Excise, Company management, Commercial disputes, Taxation etc which they did not deal with when serving as State High Court Judges. They will become like fishes put in a desert and asked to swim on dry land.

So the system we have is one that allows Justices with little or no experience in the areas of law they did not deal with as judges at the trial Court for many years. At the Court of Appeal stage, such judges certainly will find difficulties in dealing with matters of custom and exercise company management dispute, taxation which they did not deal with while serving as justices of the High Court of State.

6. **SUGGESTED SOLUTION**

The solution to this problem lies in having two intermediary Courts of Appeal systems in the Country.

In order to ensure a successful reduction of the work load of our Supreme Court Justices and to enable our hardworking Justices to rise to the standard expected of the Court of Appeal and the Supreme Court of a nation, it is recommended as follow-

- i. The single intermediary appellate court system for the entire Nigeria of thirty-six states of diverse nationalities with different language, customs and traditions is unsatisfactory and unworkable. Such a system cannot help in reducing the docket of the Supreme Court and thus allow our hard working justice of our court to be at their best and do for the nation, what they know best.
- ii. States should have States Courts of Appeal to hear and determine appeals from the Judgements of the State's High Court or other Courts created in the State and election petition appeal in respect of State House of Assembly election and Local Government election. In this way, the States Court of Appeal will have jurisdiction over such State causes and matters and its Justice will be well equipped

with the necessary background to perform credibly at their best.

The State Court of Appeal in respect of such state causes and matters should be final Court of Appeal except appeals on ground of law alone in matters in respect of which jurisdiction is vested in the Supreme Court of Nigeria.

- (ii) There shall remain the Federal Court of Appeal, to hear and determine appeals from the Federal High Court, FCDA High Court, the National Industrial Court, the Court martial, election petition appeal involving election into National Assembly seats.

The Federal Court of Appeal shall be the final court on matters within its jurisdiction, save and except matters in respect of which jurisdiction is vested in the Supreme Court.

In this way, the workload of the Supreme Court will be greatly reduced and learned Justices saved from the unwarranted accusation of bias and favoritism.

My Lords – I congratulate your Lordships in the Supreme Court and your brother judges of the appellate trial courts for your service to the Country and the administration of justice.

DATED AT WARRI THIS 14th Day of December, 2020

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