



NIGERIAN BAR ASSOCIATION

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ADDRESS OF PRESIDENT OF THE NIGERIAN BAR ASSOCIATION – MR YAKUBU CHONOKO MAIKYAU, SAN, OON – DELIVERED AT THE VALEDICTORY COURT SESSION HELD IN HONOUR OF HONOURABLE JUSTICE MOJEED ADEKUNLE OWOADE, JUSTICE OF THE COURT OF APPEAL ON 19 OCTOBER 2022 AT THE COURT OF APPEAL, IBADAN DIVISION

PROTOCOL

1. I thank My Lord, the Honourable, the President of the Court of Appeal, Justice Monica B. Dongban-Mensem, CFR; the Presiding Justice of Ibadan Division of the Court of Appeal, the Honourable Justice M. A. A. Adumein, JCA; and My Lords the Justices of the Court of Appeal, for the opportunity to address this special court session being held in honour of the eminent jurist and distinguished scholar – the Honourable Justice (Professor) Mojeed Adekunle Owoade, Justice of the Court of Appeal (JCA), inarguably one of the best judicial minds ever produced by this nation, who served on the Bench of this honourable Court since the 8th of June 2006.
2. His Lordship, the Honourable Justice Mojeed A. Owoade was born on the 19th day of October 1952. Today being 19th of October 2022, is My Lord's 70th birthday, I heartily wish Your Lordship a very Happy Birthday with many happy returns! Living to be 70 is a privilege that only a fraction of the population gets to experience. I therefore join My Lord in thanking God who spared his life all these years and has brought My Lord to the blissful end of a successful career.
3. His Lordship has had a long and interesting career in public service, serving the fatherland in varying capacities, starting with brief stints as State Counsel in Kano and Oyo States Ministries of Justice, through the days in the academia, and finally culminating in a long sojourn on the Bench. His Lordship's contributions to the growth of the law in Nigeria cannot be ignored. As a law teacher, His Lordship – who was a senior Fulbright scholar, contributed immensely to the development of the law through several research, articles, and books. In 1991, His Lordship was invited to contribute to the International Encyclopedia on Criminal Law – Kluwer Belgium, the only Nigerian involved in that worldwide assignment. Many may not have known or can barely remember that His Lordship is a Professor of Law who was, prior to being appointed to the Bench, a Senior Lecturer and Head of Department of Public Law, Obafemi Awolowo University; Head of Department of Private and Business Law, University of Ibadan; Head of Department of Public and International Law, University of Abuja and the founding Dean of Law, University of Abuja. His Lordship undoubtedly made a mark, that cannot be captured in

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one document; not even the 18-page long Curriculum Vitae did justice to His Lordship's achievements and contributions.

4. As a Justice of the Court of Appeal, His Lordship's decisions were usually in-depth; concise; ratiocinative; and lucid, a testament to His Lordship's background in research. His Lordship approached adjudicatory functions philosophically, with dedication, dexterity; fearlessly and eloquently espousing the law with profundity – His Lordship's pronouncements will continue to resonate in the annals of our judicial system.
5. The judgements of the learned jurist, Justice Owoade, were always reflective of His Lordship's unflinching commitment to the attainment of justice above technicalities. His Lordship, simply put, is justice centric. In the case of *Thompson Uzoegwu & Ors v. Chief Christopher Ofili Udo & Ors (2013) LPELR – 21229 (CA)*, a preliminary objection was raised in respect of the appellant's failure to pay the appropriate statutory filing fees for the Notice of Appeal. The respondent argued that the court lacked the jurisdiction to hear the appeal on that ground. In resolving the issue and dismissing the preliminary objection, His Lordship, Owoade, JCA held:

“It is apparent on the face of the Court record that the Appellants filing fee to file the Notice of Appeal was assessed as N350 and the assessed amount was so paid. No litigant assesses himself before the payment of Court fees, Court fees are paid as duly assessed by Court officials. The appellant has paid the assessed fees, the appellant cannot be punished for the difference if any between a prescribed fee and an assessed fee. ...

And, secondly, that insufficient payment of filing fees if it exists will not invalidate the proceedings or oust the jurisdiction of the Court especially where, as in the instant case, the non-payment is not intentional by the litigant but rather traceable to the fault of the officers of the Court.

In my view, the type of technicality raised in the instant appeal should not be allowed to defeat nor even to affect the ends of justice. Truly, and as was pointed out by that great jurist, Oputa J.S.C., in the case of Aliu Bello & 13 Ors. v. A.G. Oyo State (1986) 5 NWLR (Pt.45) at page 886.

“The picture of law and its technical rules triumphant and justice prostrate may no doubt, have its admirers. But the spirit of justice does not reside in forms and formalities nor is the triumph of the administration of justice to be found in successful picking one's way between pitfalls of technicality”

6. The question of payment of inadequate filing fees and its impact on the jurisdiction of the court was a big issue at the time which resulted in conflicting decisions and the striking out of several appeals, particularly from the Port Harcourt Division of this Honourable Court, until a full Panel of the Supreme Court finally settled the issue in Nigeria Agip Oil Company Limited v. Chief Gift Nkweke & Anor (2016) LPELR – 26060 (SC). I was privileged to have been invited as *amicus curiae* in that Appeal before the Supreme Court.
7. The former Chief Judge of the United States District of Columbia in her address to the Bar Association of St. Louis titled Law and the Layman, said:

“There should be two cardinal objectives of Courts in a democracy. One is obvious: Courts must accomplish justice. The second [which is] often neglected is: Courts must convince those whom they serve that justice is being accomplished.” (Underlined for emphasis only)

One cannot read His Lordship’s decisions without finding these cardinal objectives of the Courts being satisfied therein. The decisions of His lordship, not only dispense justice, but they also go on to persuade the recipients that efforts have been made in the determination of the dispute to satisfy the demands of justice.

8. One of the greatest challenges in the administration of justice in Nigeria is the issue of inordinate delays in the court process. This is a source of the growing wariness of citizens with our justice system because the fundamental ideals upon which the concept of justice is founded is that it must be dispensed without delay, hence the saying that justice delayed is justice denied. Besides, speedy disposal of cases helps create the atmosphere for economic and social development of the nation and increases public confidence in the judiciary. On the other hand, justice may be sacrificed on the altar of speed. A decision of the Court in support of either of these two positions must persuade the recipients that the cause of justice is being served.
9. The learned Justice M. A. Owoode, JCA clearly gained mastery over this issue, and over the years, navigated through individual cases to strike the right balance between speedy disposal of cases and the need to ensure that justice is done, in accordance with the peculiar facts and circumstances of each case.
10. In the case of *Udokang v. State (2021) LPELR – 56071 (CA)*, the parties had failed to file written addresses within the time allotted by the trial court. On the day the matter came up for adoption, the court declined application to extend time and adjourn for parties to file their written addresses and instead adjourned for judgement. In finding that learned trial judge exercised his discretion judiciously and judicially, His Lordship, Owoade, JCA reasoned that:

“The learned trial judge had previously granted adequate time to the parties to file written addresses but the parties failed to utilize the opportunity afforded them to file their written addresses. It seems to me that the refusal of adjournment by the learned trial judge indeed for both parties must be seen in that prism and from that perspective.

In the circumstance, the contention by the learned counsel for the Appellant that the learned trial judges discretion to refuse adjournment was improperly exercised and/or that the Appellant was not given fair hearing ought not to be seriously countenanced.

First, the learned trial judge openly expressed the legal truism that justice delayed is justice denied and proceeded to rely solely on the evidence on record without an address from either of the parties to deliver its judgment. The procedure so adopted is neither in breach of the constitutional provision in

Section 294 (1) of the 1999 Constitution (as amended) nor in breach of the principles of fair hearing as alleged by the Appellant. ...”

11. Conversely, in *Olukondo II V Adefila & Anor. (2017) LPELR – 42353*, where on the day the matter was listed for mention, counsel for the appellant was absent and sought an adjournment on ground of ill-health through a letter with medical report attached. The court refused the application for adjournment and went ahead to hear the respondents’ application for interlocutory injunction in the absence of the appellant. His Lordship, Justice Mojeed A. Owoade, JCA, in allowing the appeal, after reviewing the facts as borne out by the records held that:

“On these facts, the critical question that arises in relation to fair hearing is whether a reasonable man viewing the proceedings could come to the conclusion that the Claimant/Appellant was given a fair hearing on the matter of the interlocutory application brought by the Respondents. I will answer that question in the negative.

In the first place, where an application for an adjournment is made to a Court, the Court should bear in mind the requirement that justice should be done to both parties and that it is also in the interest of justice that the hearing of a case should not be unduly delayed. It should grant the adjournment if as in the instant case, a refusal of the application is most likely to defeat the rights of the parties’ altogether or be an injustice to one or other of them unless there is a good or sufficient cause for such refusal. If otherwise, an appellate Court will not only have power but will be under a duty to review the ruling refusing the application. See: RASAQ A. SALU VS. MADAM TAWURO EGEIBON (1994) 6 SCNJ 223.”

12. I can go on and on to list and reproduce His Lordship’s erudite judgements and contributions, but time and space fail me. I can only say that His Lordship has most certainly left indelible footprints in the sands of our jurisprudence and will surely be missed on the Bench.
13. The India Legal Journal on 26 August 2021 published a piece titled ‘**A Day in the Life of a Judge (An Insider’s View)**’, written by Justice Kamaljit Singh Garewal. An excerpt from the piece reads:

“The judge holds a pen in one hand and a book in the other, and with these, he dispenses justice. To rich and poor alike, to under privileged condemned by the system, to women and children, to anyone who appear in his court with a petition. The entire judicial system is centered around a simple and straightforward pathway. It’s a lonely life. Judges have no one to discuss their cases with. After lawyers have said their bit and given a long list of references and left the court, the judge is finally alone. He would naturally be mentally exhausted but has no time to waste. When lawyers’ work ends, the work of judges begins. He has to get down to deciding the matter and writing his judgment. The solitariness of a judge’s life drives him to solitary hobbies like reading, gardening or walking. Judges begin to love solitude”.

14. This may not always be an absolute, but it gives an insight into the life of a judge and the sacrifices that come with the high calling on the Bench, one that My Lord has been making since 1997 when His Lordship was first appointed as a Judge of the High Court of Oyo State. Sacrifices that have not been acknowledged nor appreciated by our society.
15. This brings me to the reason I am here today. Being alive, by the grace of God, and available, I could not have been anywhere else today than here in Ibadan for this special court session in honour of His Lordship. We have spoken about the quality of the work of His lordship on the Bench. It is important to note that all the brilliance, intellect and resourcefulness of His Lordship would not have contributed to the attainment of justice if His Lordship did not serve with honesty and integrity. But His Lordship is a good man – a man with an excellent character who fears God, compassionate but firm. I personally saw all these virtues at play when I had the privilege of working with His Lordship, who was Chairman of the Independent Appeal Panel of the Legal Practitioners Privileges Committee (LPPC) for the 2021 SAN conferment exercise. In addition to the qualities highlighted above, His Lordship was prompt – daily arriving the venue of our sitting at least one hour earlier than the scheduled time, a habit His Lordship cultivated from the days in the University.
16. So, for me, and I say this on behalf of the Nigerian Bar Association, this Valedictory Court Session is to honour a man that personifies honour, excellence, integrity, honesty, and impeccable character. Therefore, it hurts when the Nigerian Judiciary is described, without any qualification, as corrupt, or the impression is given that the judges and justices of our courts, without any exception, can be compromised. These negative narratives have since pervaded the airwaves and dominated the psyche of Nigerians. But these negative narratives are not the true representation of the Nigerian judiciary. Unfortunately, we do not echo this truth with equal or more vehemence as the perpetrators of the negative narratives do.
17. The fact that there may be some bad eggs amongst us, and this I say for both the Bench and the Bar, does not justify the characterization of the entire judiciary and the legal profession as generally corrupt. The Judiciary and indeed the legal profession in Nigeria consist of distinguished men and women that have worked and are still working honestly, sincerely and with integrity, to contribute their quota in the development of this nation which can only be achieved by justice, and which only the courts and members of the Bar – as ministers in the temple of justice – are privileged and strategically positioned to provide.
18. The fact that the toe in a body is infected by cancer or has turned gangrenous does not make the entire body rotten. And if the toe is so infected, the way to save the body is to amputate the toe. That is what we must do as members of the legal profession; either on the Bench or Bar and we must speak loudly to the nation about who we truly are, to correct that negative perception. If we do not do so, it will be an abdication of duty on our part, and if we completely lose the confidence of the public, resort to self-help and the attendant chaos will be inevitable. We must break the silence!

19. So, I have come, using My Lord as one of the numerous examples of integrity, honesty, and excellence, to announce to the world that the Nigerian Judiciary is not corrupt! The legal profession in Nigeria cannot be compromised! If and where we find any proof of corruption, either on the Bench or at the Bar, we will not hesitate to call out whoever is involved and let the Law take its course in dealing with such person. I also call on our colleagues to do the same and resist any spurious characterisation of the Judiciary and the legal profession as corrupt by any person or group of persons.
20. On the issue of the welfare of judicial officers, at the official commissioning of the Body of Benchers Complex held on the 29 September 2022, His Excellency, Muhammadu Buhari, President, and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, referred to the efforts being made by the Body of Benchers on the welfare of judicial officers in the country. His Excellency, the President then said: *“May I restate my commitment towards this ideal. In similar vein, I have been intimated of the engagement of Consultants by the Body, through its Judiciary Advisory Committee, to amongst other things, come up with a peer review of the conditions of service of Judicial Officers in Nigeria with other countries and jurisdictions, within and outside Africa. I earnestly look forward to the completion of this peer review and the submission of recommendations, as this will assist us in review of the welfare packages.”* This statement coming from no other than His Excellency, the President himself is very comforting.
21. I will, in my engagement with the Honourable Attorney General of the Federation, in addition to the efforts being made by all the relevant stakeholders, call for an expedited consideration of any or all actions required to come up with befitting welfare package for all judicial officers in Nigeria. I will also commend to my Learned Brother Silk, the Honourable Attorney General of the Federation, the 2018 Report of the Committee on Review of Judicial Remuneration and Conditions of Service, which made extensive recommendations for improving the welfare of judicial officers. Of course, like I said previously, the review done in 2018 can only serve as a guide because the figures proposed therein will not meet the justice of the current economic realities.
22. We salute the courageous men and women that grace the Bench of the Court of Appeal and other courts in the country, who have continued to keep the wheels of justice running despite the difficult conditions under which their Lordships have had to work. May I reiterate the commitment of the Bar to the protection of the dignity and independence of the judiciary in the discharge of its constitutional duties. At the risk repetition, we will continue to engage with government and other relevant stakeholders in ensuring that immediate measures are taken to review the remuneration and conditions of service of Judges and Justices in service and for their comfort upon retirement. Knowing that the gratuity and pension of retired judicial officers are dependent on the salaries they received while in service, we shall make a case for such review to reflect in the pension and provision of medical allowances for retired judicial officers.
23. This Valedictory Court Session which marks the exit of His Lordship from the Bench, also signifies a further reduction in the number of the Justices of this Court. Commendably, My

Lord, the President of the Court, Honourable Justice Monica B. Dongban-Mensem, CFR by a letter dated the 28th day of September 2022, requested the Nigerian Bar Association to recommend suitably qualified persons for appointment to the Court of Appeal Bench to fill present and imminent vacancies, which is a total of 16 slots. We thank My Lord the President for the invitation extended to us to be part of the process.

24. The importance of the judiciary as the third arm of government and the last hope of the common man cannot be overemphasized. The challenges faced in the system of administration of justice in Nigeria include the issue of manpower at the Bench. We will do all we can to support the Bench even as we continue to advocate for and encourage the appointment of the best of us to judicial offices and an increase in constitutional limits in the number of judges and justices of the various courts. We pray and hope that the vacancies be filled with worthy replacements; persons that must have gone through a thorough and meticulous process of selection and appointment.
25. To everything there is a season, and a time to every purpose under the heaven – *a time to work and a time to retire*. His Lordship has spent the last quarter of a decade, serving the nation as a Judge, today marks the end of that long sojourn on the Bench, and the beginning of an equally long period of rest. I make bold to say that His Lordship acquitted himself creditably and deserves the rest that awaits. I pray His Lordship will enjoy retirement in peace and sound health and live long enough see children's children to the fourth generation. Amen.
26. The Nigerian Bar Association congratulates His Lordship on the excellent service record and glorious exit from the Bench. As we celebrate His Lordship, Justice Owoade for the sacrifices and contributions to the development of the law, we also celebrate the patience, support and sacrifices of His Lordship's immediate family and friends, who stood by His Lordship all these years. May God bless you all and send you helpers and support whenever you need them.
27. Finally, and once more, may I thank Your Lordship, the Honourable President of the Court of Appeal and Your Lordships of the Court of Appeal, for granting me audience to address this special court session.
28. I thank everyone for listening.



Yakubu Chonoko Maikyau, OON, SAN
President, Nigerian Bar Association