

SUPREME HOOLIGANISM

By Chidi Anselm Odinkalu

In June 2020, Malawians took to the streets and judges joined the attempt by President Peter Mutharika to fire Chief Justice Andrew Nyirenda in order to enable him rig a presidential re-run. The people trusted the Chief Justice more than the president, so they got rid of the president in order to keep the Chief Justice. One month later, in Mali, an uprising began when an unpopular ruling party used the Constitutional Court to rob the opposition of its victories, eventually leading to the dissolution of the court and a military coup. Judicial immersion in political disputes is hazardous and judges called upon to do it have a clear choice to either resist importunities that compromise their authority or canoodle with the politicians at the risk of irremediable damage to judicial office. Nigeria's Supreme Court appears to have made its choice and the consequences are unflattering.

At the beginning of 2019, President Muhammadu Buhari procured the termination of a Chief Justice of Nigeria in a manner that manifestly flouted the constitution. A public long inured to the machinations of a judiciary many of whose senior members appeared to treat their judicial oaths with levity chose not to take notice. This denouncement was long in the making. On 18 January 2008, Nigeria's Supreme Court installed Chibuike Rotimi Amaechi as Governor of Rivers State in Nigeria's Niger Delta. Mr. Amaechi scored 6,527 out of 6,577 votes cast in the primaries organized by the then-ruling Peoples' Democratic Party (PDP) ahead of the governorship election on 14 April 2007. The party hierarchy duly forwarded his name to the Independent National Electoral Commission (INEC) as its candidate.

However, on 2 February 2007, the party withdrew Mr. Amaechi's name and asked INEC, then chaired by an alchemist called Maurice Iwu, to substitute in his stead one Celestine Omehia who did not participate in the primaries. Mr. Amaechi sued to challenge the substitution but while the case was pending, the party dismissed him from the PDP; INEC then organized the elections, declaring Mr. Omehia the validly elected governor of Rivers State. In a judgment of unprecedented audacity, the Supreme Court on 25 October 2007, sacked Omehia,



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affirming Amaechi as the winner in which he did not campaign. In reasons issued on 18 January 2008, Adesola Oguntade, the Supreme Court Justice who delivered the lead judgment with which all six other justices on the panel concurred, said: "the sum total of the recent decisions of this court is that the court must move away from the era when adjudicatory power of the court was hindered by a constraining adherence to technicalities. This often results in the loser in a civil case taking home all the laurels while the supposed winner goes home in a worse situation than he approached the court."

Olayiwola Aderemi, another Justice on the panel, added: "The judgments of this court must not be final only in name, but must

be seen to be really final in the sense that they have legal bite that makes the judgments truly conclusive. All issues that will make its judgments reasonable and conclusive must be clearly addressed by the Supreme Court. This court has a standing and rigid invitation to do substantial justice to all matters brought before it. Justice to be dispensed by this court must not be allowed to be inhibited by any paraphernalia of technicalities." Whether the Supreme Court has any memory of having issued these is now questionable. On 13 January, 2020, the Court issued a decision by which it declared as winner, the man who came fourth in the 2019 election for Governor of Imo State.

To arrive at that wonderment, the court relied solely on the evidence of a manifestly crooked deputy commissioner of police with a wizard's calling in conjuring up votes from ghosts. Invited to review an evidently perverse outcome the following month, a majority of the court framed the question as a challenge to their existence, making avoidable fetish out of an outcome that brought the court to manifest disrepute. One Justice, Chima Nweze, from Enugu State (not far from Imo State, the theatre of this judicial magic), dissented, warning with remarkable prescience that the judgment "will sooner or later haunt our electoral jurisprudence." The judgment accomplished more, however; Imo State promptly descended into anarchy under the rule of a Governor voted for exclusively by Supreme Court Justices none of whom will ever live near Imo State.

Yet, on 6 February 2023, the Supreme Court ruled that Ahmed Lawan, who did not participate in the only valid primary, was the APC's candidate for the Yobe North Senate seat. Conveniently disregarding its own decision 15 years earlier requiring the court "to do substantial justice to all matters brought before it", a three-person majority hinged its decision on the jaw-dropping premise that the lower courts lacked jurisdiction to question bare-faced robbery perpetrated against the winner because an originating summons was the wrong form of action by which to commence the proceedings. Chima Nweze, who dissented when the case affected his people in south-east Nigeria wrote the lead judgment this time while Adamu Jauro, the Supreme Court Justice from Gombe which borders Yobe State in north-east Nigeria, dissented.

The Supreme Court appears not to have taken any notice though. In Yobe North Senatorial Zone, in north-east Nigeria, Bashir Sheriff Machina emerged in May 2022 as the candidate of the ruling All Progressives Congress (APC) to fly its flag in the contest to represent the constituency in the Senate in the 2023 general election in primaries monitored by INEC. That seat also happens to be occupied by the current Senate President, Ahmed Lawan, who has been in the National Assembly since 1999. In June 2022, Dr. Lawan sought and lost the ticket of the party for the presidency. INEC did not monitor any other APC primary for the Senate in Yobe North, so no other person could have emerged validly besides Machina.

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Machina sued by originating summons because a Practice Direction by the Chief Judge of the Federal High Court in July 2022 required that. If he failed to comply, the Court would have declined his case. The Supreme Court punished him for complying with the rules of court applicable when he sued. To achieve that, a five-person panel of the court effectively overruled long-established precedent which only a seven-person panel can. A friend described the court's reasoning as "agricultural

jurisprudence"; and another complained that it felt like "a scene of profound judicial hooliganism." "Supreme Court Machinates Machina" was how one newspaper described it. In a 2009 book, , Obi Nwabueze, law professor and Senior Advocate of Nigeria (SAN), accused the Supreme Court of having played a "discreditable part" in denuding the courts and governance in Nigeria, citing the court's chronic failure "to appreciate that the question of who should rule Nigeria is not one to be decided by a perverse and narrow legalism, by the technicalities of the rules of evidence, practice, and procedure and by considerations of expediency."

Not done, on 8 February, the Supreme Court issued an ex parte order in an original jurisdiction suit initiated by three states concerning the implementation of Central Bank of Nigeria (CBN) policy. The claimants deliberately failed to join the CBN because they knew that if they did, the court would decline the case in its original jurisdiction. Much of what issues from the Supreme Court these days in these matters of high political salience cannot be explained logically. To many, the Court has become a danger to the rule of law as no one can sensibly advise anyone based on predictions of what a responsible court would do.

Fifteen years ago, Olayiwola Aderemi, sitting as a Justice of Nigeria's Supreme Court, warned that "democratic government and society as a whole can only function fairly and properly within a framework of laws, justly, fearlessly and fairly administered by men and women who have no obligation save to justice itself. . . . it does not, of course, mean that judges are licensed to do exactly as they like; quite the opposite. They must allow themselves to be guided by well-tested principles so fashioned that lead to justice." Could the Supreme Court be hard at work to ensure democratic government and society as a whole don't function?

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