

Nigeria's Federal High Court: A Scandalized Court

-By Chidi Anselm Odinkalu-

On 7 June 1911, the High Court of Australia decided [a very interesting case](#). It arose from a publication issued two months earlier, on 7 April 1911, by a newspaper called *The Mercury*, published from Hobart, in Tasmania. Under the title "A Modest Judge", the newspaper took aim at Mr. Justice Higgins, a senior judge of the High Court of Australia who was also the first President of the Commonwealth Court of Conciliation and Arbitration. According to the records, in a case presided over by Justice Higgins in the Court of Conciliation and Arbitration, a lawyer, Mr. Starke, accused a labour union of impunity, alleging that "they are encouraged... by the Government of this country." On hearing this, Justice Higgins prohibited the lawyer from uttering such words. When counsel protested his right to vigorously advance the case of his client, the judge retorted "You are not entitled to speak disrespectfully of those above us." Here was the jurisprudence of *Kabiyesi* articulated with forceful clarity more than three quarters of a century before it arrived in Ligali Ayorinde's High Court of Lagos in 1989. This was the factual background to the article that was to become the centerpiece of the proceedings in the High Court of Australia in which the newspaper said of Mr. Justice Higgins that he was "we believe, what is called a political Judge, that is, he was appointed because he had well served a political party. He, moreover, seems to know his position, and does not mean to allow any reflections on those to whom he may be said to be indebted for his judgeship."

The Attorney-General of Australia charged the newspaper with the crime of "scandalizing the judiciary." Dismissing the charge, Samuel Walker Griffith, Australia's inaugural Chief Justice, who presided over the proceedings, had this to say: "I am not prepared to accede to the proposition that an imputation of want of impartiality to a Judge is necessarily a contempt of Court. On the contrary, I think that, if any Judge of this Court or of any other Court were to make a public utterance of such character as to be likely to impair the confidence of the public, or of suitors or any class of suitors in the impartiality of the Court in any matter likely to be brought before it, any public comment on such an utterance, if it were a fair comment, would, so far from being a contempt of Court, be for the public benefit, and would be entitled to similar protection to that which comment upon matters of public interest is entitled under the law of libel."

The crime of "scandalizing the judiciary" has largely fallen into disuse. It assumed that the people who scandalize courts were always others rather than judicial staff, or even judges themselves. In Nigeria, the people most likely to scandalize the judiciary these days sit in most cases as judges and magistrates. In her first official act as the 18th indigenous occupant of the office on Monday, 30 September, at a special session of the Supreme Court to conduct the annual ritual of inducting the latest set of Senior Advocates of Nigeria (SANs), new Chief Justice of Nigeria (CJN), Kudirat Kekere-Ekun, warned that under her watch, obedience to court orders will be "non-negotiable. No individual or institution, irrespective of their standing, will be permitted to treat the judgments of our courts with levity or disregard. The Judiciary stands resolute in ensuring that the sanctity of our legal decisions is upheld."

Regrettably, Madam CJN labors under the misapprehension that it is always possible or easy to know what the order is that is to be obeyed. The joke is that court orders these days are so lucrative that many judges make them – in good old Nigeria-speak – double-double. Responsibility for this sorry state lies mostly with the Federal High Court. The ancient city of Kano now has two Emirs, one state and the other federal after a rogue Federal High Court judge decided to take chieftaincy into the federal realm.

Edo State has two Deputy Governors too. By dint of the judicial labours of Peter Lifu, a judge, the Federal High Court also attempted to impose two separate dates on Rivers State for the conduct of Local Government elections after Chigozi Igwe, a judge of the High Court of Rivers State, had issued a considered decision setting 5 October as the date for the election. Rivers State Governor, Sim Fubara, acknowledged Peter Lifu's hard work by [handing him the moniker](#) of "that justice that gave that fraudulent judgment." This is not the first time the Federal High Court will gratuitously constitute itself into an appellate forum to review without benefit of the records of proceedings and with the practiced ill-will of a political hit-job dressed up in judicial robes, decisions of State High Courts. Nor is it the first time that the Federal High Court will convert itself into a court of unlimited jurisdiction that it is not at the expense of a State High Court which, under the Constitution, is indeed the only court of unlimited jurisdiction.

This Federal High Court has become the place where the law falls into disrepute and Lady Justice suffers repeat rape. This has become the routine of the Federal High Court under the leadership of its current Chief Judge who enables a notorious line up of judges of the court who clearly seem to be able to habitually scandalize the judiciary without consequence. This Chief Judge of the Federal High Court favours them with the species of cases that lend themselves to pay-as-you-go judicial dispositions that can only originate in the bedrooms of their favorite politicians. Not even the Inspector-General of Police who must provide the steel behind the orders of courts in Nigeria, has much regard for them. The most charitable that can be said of Kayode Egbetokun is that he is a political IGP. For most of his professional life, Mr. Egbetokun has been the *Aide-de-camp* to the man who now occupies the presidency. Even as IGP, the habits of a lifetime as ADC die hard. In his current office, he now heads the uniformed, armed wing of the ruling party. In that role, his brief is to make his principal happy. If a court order gets in the way of that, it is for CJN Kekere-Ekun to worry about that. The people who have the gumption to call out such conspiracy of conceit become the butt of a line-up of professional hirelings defending the habitual malefaction of those who supervise judicial malpractice as standard procedure. One example of such faceless hirelings is the fly-by-night entity that calls itself "Global Network for Justice and Equity." There's the even more risible "Centre for Reform and Advocacy". Others are plainly disreputable. One of the more enthusiastic among that species, a lawyer, has a quite shameful rap sheet with the Legal Practitioners Disciplinary Committee. It reflects the sad state of the judiciary whose orders CJN Kekere-Ekun swears by, that such are the only specimens these days that can now be counted upon to speak up in defence of the authority of the branch of government that she must lead. Some lawyers, judges and politicians would like to see the new CJN shut down all criticism of judicial malfeasance, requiring them all to go to the National Judicial Council. Regrettably, she cannot do that without bringing manifest disrepute upon herself. "where criticism [of judges] is wrong or misguided, one should have the confidence in the strength of the institution to demonstrate by its conduct that it serves a valuable function and does its job well." Above all, that is very much like insisting that Martin Luther, instead of posting his 95 Theses on the gate of that church in Wittenberg as he did, must hand them to the Pope. Surely, there would have been no Reformation to speak of. Meanwhile, we await the next judicial scandal of a pre-destined order on Rivers State to be issued by the Federal High Court.

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