

**Mechanical versus dynamic justice:**

**The beatification of "snatch and grab-itocracy"**

*By Emmanuel Ogebe*

*The beatification of "snatch and grab-itocracy." Nigeria's analogue judiciary is not ready for the present much less the future. It is out of sync with the nation and the commoners whom it must serve. It has become an unwitting tool of state capture by a corrupt and conscienceless elite that is rapidly hurtling towards class suicide and anarchy. It is tragic that justices whose American colleagues looked at a man 30 years ago and seized his money from narcotic trafficking would look at the same man and see presidential material.*

*The story is told about a judge questioning Nigeria's parties in court:*

*Judge to APC: What was the name of the big Titanic boat that was named titanic before it sank?*

*Judge to PDP: In what month and year did it sink and how many survived?*

*PDP: It sank in April 1912, there were 706 survivors*

*Judge to LP: NAME EACH SURVIVOR*

It is an adaptation of an old joke about questions German soldiers asked Jewish prisoners to answer to regain their freedom but now used to illustrate the Herculean task before the petitioners in the election trial. Below are just a few observations on a mechanical justice that failed to deliver in a dynamic **s i t u a t i o n**.

My blood ran cold when I heard Justice Stephen Adah declare that the evidence of 80% of the Labour Party's witnesses was inadmissible and expunged for late filing. I agree that the onus placed on a petitioner filing within 21 days evidence from 176,000 polling units is near insurmountable. But the IREV upload of PU results was a revolutionary game changer that would have mitigated this challenge. It was a monumental mistake for the court to discount IREV uploads which would aid the petitioners and country validate voting veracity. However even in the 2007 election where evidence front loading was first introduced in the Nigerian legal system, Petitioners Ojukwu, Atiku and Buhari all front loaded their evidence along with their petition on time so how come, 15 years later, lawyers could make the same elementary error? As a lawyer of over 30 years, when I first saw the Labour Party petition was only 100 pages, my immediate reaction was "where is the evidence?" Just from the number of pages, I knew there could not possibly be any evidence contained therein. I will not gloss over glaring mistakes simply because I dislike the outcome. This is why we keep repeating mistakes in Nigeria.

That the court pointed out that LP's lead counsel Ikpeazu SAN had successfully argued against the same failure to timely file evidence in a prior case which he himself now fell afoul of, is telling. Nigerian lawyers tend to argue opposite sides of the same issue depending on the client and not on the settled law and this has complicated issues greatly.



A judge once rebuked late legendary lawyer Rotimi Williams because he had argued the opposite point of view in a different case before the same court the previous day! That the court said PDP's lead counsel Chris Uche SAN had written a glowing foreword to a book which canvassed that procedure goes to no issue because that does not mean he endorses everything contained in the book. I think the Bible is a great book and heartily recommend to all, but I do not know all its precepts and thus run afoul of it from time to time. To my mind, the court should have allowed the testimony of the witnesses given in court and the cross examination even if it disallowed their late-filed witness statements for the sake of equity and in the interest of Justice. In my defamation lawsuit against the Buhari

administration over the Chibok girls I sponsored to school in US, the Attorney General did not file FGN's pleadings or statement of defense till I came from US testified and was cross examined by them. After I closed my case as Plaintiff, they then rushed to the court seeking leave to file their defense. We opposed it because having discovered the entirety of my case, they were only now going to file their Defense one and a half years after the case began when it should have been filed within a month. Yet Abuja High Court Judge Abba Mohammed, now a member of the presidential election court, granted the FGN leave to file the pleadings late even after noting that they lied about not being aware of the case when in fact they had been participating for over a year. This was extremely prejudicial to my case. However, he said he did so "in the interest of justice." Why couldn't the petitioners' benefit from such magnanimity or mercy in the interest of Justice too? Rather, Justice Mohammed said the petitioner failed by not serving spreadsheets of election irregularities with the petition on Respondents. Yet if he had similarly denied FGN's late filing of its statement of defense after I had

presented my evidence, I would have won, and my case would not still be dragging in the high court six years later! I also submit that the subpoenaed witnesses should not be affected by the time-limiting requirement to file evidence with the petition.

Per a social media post, "In ABBA YUSUF v APC, an unreported case of the Court of Appeal, Kano in Appeal NO CA/KN/EP/Gov/KAN/05/2023 of 24 August 2023, it was decided thus: "Flowing from the catalogued statutory position of a subpoenaed witness, as a witness of a court, it will be incongruous and preposterous to hold that his statement on oath must willy-nilly accompany a petition. As a matter of fact, it will evince natural and human impossibility for such a court witness to file his deposition alongside a petition. The reason is simple. A subpoenaed witness appears in court on the invitation of a court on the application of a party. A subpoenaed witness cannot Suo motu present himself before a court." The beneficiary of the judgment was APC!" The court should have aimed to mitigate the situation. In my defamation case, Justice Abba Mohammed awarded costs against the FGN and allowed them to file late. I and the other parties have paid penalties to the court for late filing as is standard practice. There are less drastic sanctions than expungement of the evidence for late filing more so in a sensitive matter like this of national and international significance.

This unfortunately is one drawback to the reservation of objections till the end of the case because if these had been ventilated earlier, petitioners would have had an opportunity to rectify the infractions by a motion for enlargement of time and to deem as timely filed. It is important to note that the conclusion of the case is not that the allegations against Tinubu were not true. In summary – Tinubu had a Guinean passport and a fake university certificate but they were not tendered on time and had a drug forfeiture issue, which though it was tendered on time, wasn't a conviction. While it is unfortunate and inexplicable why the foreign citizenship and forged certificate were not filed timely, the court itself should have noted the gravity of the weighty allegations considering national interest. Curiously, the court said they took judicial notice of the fact that Peter Obi had Anambra State indigene ship, even though it wasn't an issue before them, but the court didn't take judicial notice of the fact that Tinubu has a Guinean citizenship even though the issue was before them.

A responsible court concerned for the integrity and security of the nation would not shut its eyes to sensitive evidence or explosive allegations of this nature. If they felt that the Guinean passport issue was smuggled in after the settlement of pleadings, they could have authorized extra time for the petitioners to respond to it. Note that the trial ended earlier than scheduled as the respondents didn't utilize all the time allotted to them. In fact, with the numerous SANs and lawyers in their retinue, taking them by surprise was not a serious capacity concern. After all, over a dozen SANs combined presented only one defense witness. The respondents' lawyers outnumbered the petitioners three to one. There were three sets of respondents' lawyers to only one set of petitioners' lawyers!

Indeed, the way Olanipeku SAN, counsel to Tinubu, deconstructed LP's Amazon Witness PW7 during cross examination one day after her bombshell testimony is the stuff of legends. Therefore, the court's failure to inquire into the gravity of allegations that a man who seeks to be president of Nigeria not only has a Guinean passport but lied about it on oath is a failure to protect national security and integrity. Sitting US President Bill Clinton lost his law license over the Monica Lewinsky Scandal not because he slept with the intern in the White House but because he lied to the investigators on oath about it. The sanction was to send the signal that a president should not set a bad example by lying to

the government.

**This is the problem with mechanical justice versus dynamic justice. At no point did the court show a concern for the safety of Nigeria from corrupt predators, fraudsters or charlatans which was the clear intent of the constitution and ancillary laws. There was scant effort to explore the mischief rule of what the drafters were trying to cure. All one saw was a mechanical and slavish adherence to the letter and not the spirit of the law thereby resulting in a catastrophic conclusion that criminality trumps constitutionality. It is worrisome that criminal-minded elements are more creative than adjudicators and so exploit this to their advantage.**

On March 10, 2017, the Supreme Court sacked a Benue State Rep member for submitting a to INEC. Delivering the lead judgment, Sidi Bage, JSC held, "This court... must take the lead, righting the wrong in our society..." "Allowing criminality and certificate forgery to continue to percolate into the streams, waters, and oceans of our national polity will only mean that our waters are and will remain dangerously contaminated. "The purification efforts must start now and be sustained as we seek, as a nation, to now change from our old culture of reckless impunity.

"The Nigerian Constitution is supreme. It desires that no one who has ever presented a forged certificate to INEC should contest election into the Nigerian National Assembly. This is clear and sacrosanct." His Lordship's statement reveals a lucid understanding of the role of the court as the conscience of the nation, the guardian of its morals and the defender of its values as expressed and intended in its laws. Judicial mechanics is operating the law narrowly without the big picture perspective while judicial dynamics is operating the law in light of the past, present and future of the society. A mechanic fixes the brake pads of a car, but an engineer addresses the kinetic dynamics of the car in toto.

Nigeria's analogue judiciary is not ready for the present much less the future. It is out of sync with the nation and the commoners whom it must serve. It has become an unwitting tool of state capture by a corrupt and conscienceless elite that is rapidly hurtling towards class suicide and anarchy. It is tragic that justices whose American colleagues looked at a man 30 years ago and seized his money from narcotic trafficking would look at the same man and see presidential material. The court did not protect national security, defend the constitution and uphold Nigeria's values but rather compromised national security, offended the constitution and overturned Nigeria's values. Now a man with a fake primary and secondary school, fake university certificate abroad, fake name and identity but real drug money laundering forfeiture is Nigeria's ruler thanks to a court who missed their date with history and duty to posterity.

**The message of the 800-page judgment is loud and clear – rules, regulations, law and constitutions don't matter. The court paradoxically threw out the petitioners' case because they did not follow the court's rules then upheld Tinubu's election despite his not following election rules. This is nothing short of an invitation to anarchy and lawlessness in all facets of life from primary school to university and the highest office in the land. Ironically, by discountenancing all the violations of law, the court undermined its very self both now and, in the future, – an existential stab of the sword of justice into its own heart.**

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