



NIGERIAN BAR ASSOCIATION

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ADDRESS OF THE PRESIDENT OF THE NIGERIAN BAR ASSOCIATION, OLUMIDE AKPATA ESQ. AT THE SPECIAL SESSION OF THE SUPREME COURT OF NIGERIA TO MARK THE OPENING OF THE 2021/2022 LEGAL YEAR AND THE INDUCTION OF NEW MEMBERS OF THE INNER BAR.

PROTOCOLS

My Lord, the Honourable Chief Justice of Nigeria

My Lords, Justices of the Supreme Court

My Lords, President of the Court of Appeal and Justices of the Court of Appeal

My Lords, the Chief Judges and other Judges here present

The Honourable Attorney General of the Federation and Minister of Justice

Past Presidents of the Nigerian Bar Association

Learned Senior Advocates of Nigeria

My Learned Friends

Distinguished Ladies and Gentlemen.

1. It is with great delight that I stand before this distinguished audience made up of my Lords, the members of the Bar, and the persons so privileged to be worthy of call to the Inner Bar today. This event has held annually for many decades, but its essence has not lost its savour. That members of the Bar and the Bench sit once a year in the highest Court of our Nation to evaluate the progress made in the administration of justice in the past year and to set a target for the task ahead, bears witness to the positive evolution of this very important arm of Government and key feature of our democracy. Also, the fact that many office holders have stood here to speak also reminds us of the truism in the fact that positions are transient as we are all bound to leave the stage one day, but the institutions created by the provisions of our laws will continue to endure.
2. The tradition of this event has historically been two-fold. On one hand, we gather in anticipation of the state of the Judiciary address from the Chief Justice of Nigeria ("CJN") who is also the Chairperson of the National Judicial Council. On the other

NATIONAL OFFICERS:

Olumide A. Akpata **President**

Joyce Oduah, **General Secretary**; John Aikpokpo Martins, **1st Vice President**; Debo Adeyemo Kazeem, **2nd Vice President**; Mercy Ijato Agada, **Treasurer**; Olakunle Edun, **Welfare Secretary**; Raphael Nnamdi Anagor, **Financial Secretary**; Dr. Rapuluchukwu Nduka, **Publicity Secretary**; Uchenna Nwadialo, **Assistant Secretary**; Ferdinand Naza, **Assistant Publicity Secretary**

hand, we congregate for the conferment of the prestigious rank of Senior Advocate of Nigeria on persons who have been found so worthy by the Legal Practitioners Privileges Committee (“LPPC”).

3. Whenever we listen to the Chief Justice of Nigeria address us on the scorecard of the Judiciary in the past year, it often gives us reason to be grateful to the Almighty God and to the distinguished Justices and Judges of our Courts for their efforts in dispensing justice despite all the odds. It also assists us as the Bar to draw up our list of deliverables for the year and to identify areas where we can further assist the Judiciary in the administration of Justice. The Bar goes home, after the speech of the CJN, with a ‘to-do’ list which it ticks off in the course of the ensuing legal year.
4. In the last few months, I have used the privilege afforded me as President of the NBA, to deliver on behalf of the Bar, addresses at different fora which have dwelt on some of the very topical issues confronting the administration of justice in Nigeria. At the maiden edition of the Legal Year of the Court of Appeal, I did not mince words when urging our Justices to man their Courts against the invasion of those who are only intent on perverting the course of justice. I have also at some point called for improvement in the welfare of all judicial officers in Nigeria. At the recently concluded All Nigeria Judges Conference which was last month, I called on our Judges to take up the courage to confront the monster of judicial corruption tarnishing the image of the Judiciary. My Lords I remain firmly of the belief (and this is also the guiding philosophy of the NBA which I am privileged to lead) that the Bar must continue to advocate for a judiciary that works for all because of the very critical role that this institution plays in the affairs of any nation. It is a sacred duty we the Bar owe to posterity.
5. My Lords, the New Legal Year ceremony affords us the opportunity to appraise the events of the past legal year and its effects on the justice sector and administration of justice; issues concerning the Rule of Law; Independence of the Judiciary; the tripartite relationship between Bar, the Bench and the public; the regulation of the legal profession; good governance and other related matters. It also provides us a welcome opportunity to rededicate ourselves to those values and principles on which justice is founded including respect for the rule of law, upholding the Nigerian Constitution and other laws made thereunder, truth, honesty, incorruptibility, integrity, courage, the entrenchment of social and economic justice, etc.
6. It is in this regard that I must remind Your Lordships that the Judiciary in Nigeria is confronted by a myriad of challenges which have resulted in loss of confidence in the Justice Sector on the part of the public. There is, increasingly, the wide spread perception that the common man cannot get justice in our Courts. While we will

continue to confront and call out those external elements who we perceive to be responsible for some of the travails of the Judiciary, we must of necessity also embark on a measure of introspection; some soul searching of sorts, to determine if and how we may have unwittingly contributed to our current situation and explore corrective or remedial steps. In undertaking this soul searching exercise, Your Lordships are urged to bear in mind the fact that times have changed, and are changing, and we must therefore adapt to these changes. The template that was successfully adopted some decades ago may not necessarily work today. We must therefore be responsive and dynamic if we are to meet with the yearnings and aspirations of the society.

7. My Lords, this introspection we refer to must of necessity include taking another look at how Judicial officers are appointed. This is a foundational issue. In this regard, I make bold to say that there is nothing inherently wrong with appointing Magistrates, Chief Registrars, or indeed the children and relatives of past or serving Judicial Officers as Judges or Justices of our Courts, provided that they fulfil the Constitutional requirements for such Judicial offices. It is however problematic where such selection process is considered to be opaque, not objective and not open to scrutiny. We must borrow a leaf from other jurisdictions by further opening up the process with a view to ensuring that anyone aspiring to this high office is subjected to a rigorous, transparent and clearly defined process which will demonstrate his or her suitability for the office. This is the only way to silence the critics and restore the much needed public confidence in the process of selection of judicial officers. These reforms are critical to ensure that the Nigerian judiciary remains relevant and fit for purpose.
8. We must also take another look at the continuous training of Judicial Officers. We are of course aware of the good job that the National Judicial Institute (“NJI”) is doing in this regard albeit we must humbly call on Your Lordships to continue investing in the progressive training of judicial officers especially newly appointed ones. The beauty of knowledge is that it is never ending and in an ever changing world, characterised by continuous changes and transformation in diverse areas of the economy, our courts must continue to be equipped with the human and material resources to meet the needs of an increasingly sophisticated society.
9. In the same vein, we call on the National Judicial Council (“NJC”) not to relent in its efforts to rid our benches of corruption and to continue to seriously tackle the issue of the discipline of judicial officers. While it has always been the position of the Bar, that the process that is prescribed by law for investigating and disciplining errant judicial officers and to preserve the dignity that attaches to the office of judicial officers must be handled by the NJC to secure the independence of the

judiciary, the NJC must however continue to utilise and constantly oil the internal self-regulating powers vested in it by law to weed out the few bad eggs who give the judiciary a bad name. This is the only way to strengthen public confidence in the institution. As always, Your Lordships can rest assured of our utmost cooperation in this regard.

10. We shall also not cease to make a case for the need for a truly independent judiciary especially in a country such as ours. As the NBA has consistently maintained, the judiciary is of prime importance in the life of any nation, and an independent judiciary is crucial to upholding the rule of law in a democratic society. The concepts of the rule of law, consolidation of our democracy, protection of human rights, providing the enabling environment for foreign direct investment and economic growth etc., cannot be sustained without a reliable, effective and efficient Judiciary. This entails the provision of adequate funding that the judiciary requires to conduct its business, enabling the Courts to freely decide cases without external influence, and putting in place the mechanism to ensure that orders and judgments of our Courts are respected by all and sundry. Having said this, the Judiciary must also exhibit its readiness to embrace global best practices in the conduct of its affairs.
11. My Lords, let me now turn to the issue of the ignoble actions of some overzealous security agencies and their enablers in government who invaded the residence of the second most senior Justice of our Nation's highest Court. It is the most audacious affront on the sanctity and independence of the Judiciary in our recent history. The invasion, without any justifiable reason or motive, can be likened to the inglorious invasion of the Capitol Hill in the United States of America on the 6th of January 2021. The United States has very correctly viewed this invasion not just as an assault on members of Congress and of the Senate but also as an insult and assault on the integrity and institution of the legislative arm of the US government. It is for this reason that the actions of the invaders were not viewed simply as a protest but as an act of domestic terrorism.
12. The time is now to check every act of domestic terrorism in Nigeria and to bring to justice anyone who is found to have engaged in such. The institution of the Nigerian State and all the offices created by the constitution are bigger than any and every Nigerian. Those who are entrusted with the powers of the State must act within the bounds of their statutory powers. Any action that is not founded in law in a democratic setting must be viewed with extreme seriousness. In the seminal lecture of Hon Justice Niki Tobi JSC titled *"The Rule Of Law And Anti-Corruption Crusade In Nigeria"* delivered at the 9th Justice Idigbe Memorial Lecture, at University of Benin on 6th August, 2008, My Lord gave insight into the parameters for determining whether an executive action constitutes an abuse. He said and I quote:

“It is submitted that the arbitrariness of executive action cannot be determined in vacuo but in relation to a given case, considering the circumstances which lead to the exercise of the power. The consideration will ultimately depend upon the discretionary power of the Executive, if the enabling law gives such a power. While it is not always easy to draw a clean line between a discretionary power and an arbitrary one, (since they are both subjective) it is submitted that a discretionary power which is exercised *mala fide* or maliciously could be arbitrary.”

13. My Lords, the invasion of the residence of Hon Justice Mary Odili by persons claiming to act under the authority of the executive arm of government without any justifiable reason cannot but be said to be *mala fide*. That nocturnal siege on the home of Justice Odili was a subtle threat by power brokers to all the Justices and Judges of our nation that they are not above assault by marauders seeking to please their enablers in and out of government. This is why the Bar under my leadership vowed not to fold its arms while domestic terrorists desecrate the institution of our Courts. We understand that those who physically took part in the barbaric act are being investigated for possible prosecution, but our concern is not just about those who executed the invasion but also their enablers in and out of government that afforded them state resources and badges to conduct the invasion. Let me repeat again, the Bar will bring to justice every person who is found culpable in this unfortunate saga.

14. Let it also be known that our fight against impudence and impunity in the use of any statute-endowed powers is never a witch-hunt or an avenue to settle scores with anyone. The Bar is not in competition with any person or persons. To those who are alarmed, however, I bring you the words of the Scriptures in Philips Translation of Romans 13:3-4:

“The honest citizen has no need to fear the keepers of law and order, but the dishonest man will always be nervous of them. If you want to avoid this anxiety just lead a law-abiding life, and all that can come your way is a word of approval. The officer is God’s servant for your protection. But if you are leading a wicked life you have reason to be alarmed. The “power of the law” which is vested in every legitimate officer, is no empty phrase. He is, in fact, divinely appointed to inflict God’s punishment upon evil-doers.”

15. Our action in investigating the circumstances that led to the invasion has drawn different reactions from different sections of the Bar. We have received immense support and we are very grateful to well-meaning members of the Bar who gave

their nod to our actions in this respect. They are members who believe in the truism of the words of the Reverend Martin Luther King that injustice anywhere is a threat to justice everywhere.

16. My Lords, Distinguished members of the Bar, I recently called out some of our members whose actions appeared to sabotage the efforts of the Bar in defending the Bench. As I said then, the discordant tunes emanating from the Bar is particularly worrisome as incrementally, this makes the Bar appear irrelevant and ineffective in its traditional functions; whether in ensuring the discipline of its members, defending the Bench or even regulating itself.
17. It also bears repeating that the NBA is the umbrella body of all lawyers and is bigger than anyone in the profession; be it the President of the Bar, senior or junior lawyers. We must remain the mouthpiece of the Bench and defend their cause even with our last breath. We must not play politics with the safety, security, or welfare of members of the Bench, and we must at all times speak with cohesion as a body of lawyers in Nigeria. The relevance and strength of the Nigerian Bar has historically been in the unity of its voice. It must continue to be so.
18. My Lord the Chief Justice of Nigeria. My Lords, Justices of our Superior Courts (serving and retired), Learned Senior Advocates of Nigeria, Distinguished Ladies and Gentlemen, it is on that note that I must return to the second reason why we are gathered in this hallowed chamber. The conferment of the rank of Senior Advocate of Nigeria on persons who have been found worthy of adorning the Silk.
19. On behalf of the NBA, I heartily congratulate the 72 senior lawyers, who are today being conferred with the rank of Senior Advocate of Nigeria. This is a truly significant achievement. With this elevation, you are now officially leaders of the profession.
20. I should ordinarily have devoted more time to sing your praises for the great feat you have just attained but the enormity and urgency of the challenges confronting the legal profession today has constrained me to convert my eulogy into words of admonition. Whilst your distinguished practice over the years has earned you this exalted rank, I hasten to add that it has similarly donated to you huge responsibilities of working closely with the leadership of the Bar to salvage what is left of the profession. Your elevation is coming at a time when the profession and indeed the Justice Sector in Nigeria are beset with many problems. It has now become part of your responsibility to proffer solutions, to maintain and indeed improve standards.

21. In the context of the challenges facing the Bar and the Bench, your leadership qualities and roles will certainly give our Bar the hope of a brighter future. As you continue to be shining examples to junior colleagues under your tutelage, you are building a Bar that will be able to raise worthy men of intellect and character who will continue to shape the leadership of the Bar and the Bench in the future. Let those who will learn under you know what abuse of Court process is and why a legal practitioner should never use the processes of the Court to clog the fast-moving wheels of the administration of justice. Let integrity be your watchword. The brief of any single client is never worth your silk apparel. When the temptation comes, I trust you will always take the road less travelled. Your practice must be characterized always with winnings earned by honest toil.
22. There is also the economic implication of your elevation. Putting it starkly, in the past two years we have elevated approximately 150 new Senior Advocates of Nigeria without the necessary corresponding growth in the legal market. This invariably means stiffer competition for the commercial opportunities. If we do not do more to expand the frontiers, to create and advance new areas of specialisation or carve out niche areas, your guess is as good as mine as to what will be the fate of members of this profession whether they be of the Inner or outer Bar. It therefore means that as you are admitted into the Inner Bar today, you must wear your cloak of ingenuity and work towards creating additional opportunities both for yourself as well as your juniors. In the NBA you will find a worthy and willing partner in the regard.
23. Additionally, the challenges we face today requires not just your solidarity but your total commitment to saving the Bar from imminent collapse by supporting its leadership to confront and triumph over its teething challenges. If you were ever in doubt as to this obligation now thrust on you, the following words of Past President of the NBA, Chief T. J. Onomigbo Okpoko SAN, in his speech at a similar event, the induction of new entrants into the Inner Bar in 2016, should clear all such doubts.

“My emphasis today is, this distinction that has made you a Senior Advocate, is an asset which you must strive to hold and enhance for the remaining part of your life. It is not a matter of giving you an option. You have been adjudged to have achieved that distinction. Nothing short of that distinction will be acceptable from you henceforth. I must remind you that you do not cease to be a member of the Bar because you have been elevated to the inner Bar. You cannot remain a Senior Advocate if you are not a member of the Bar. To look down on members of the outer

bar or the Bar Association itself, is the highest mark of impudence on the part of every Senior Advocate. No one should take that status lightly.”

24. My Lords and distinguished members of the Bar, with reference to the admonition by Chief Okpoko, SAN quoted above, I have had cause since my assumption of office as the President of the Bar, to ponder on what can only be described as concerted attempts towards whittling down the influence of the NBA from different quarters. What is more regrettable is that in most cases, these efforts have the tacit and active support of lawyers. It is difficult not to draw the conclusion that ever since the NBA embraced true democratic principles by returning to universal suffrage, not a few have become disenchanted and have ostensibly sworn to decimate the Association that provided them with platforms to rise to where they are. Examples abound of this insidious attempt to denude our Noble Association and strip it bare of its essence, leaving only its carcass.
25. The first example of this is the Legal Practitioners Act Amendment Bill currently pending before the National Assembly and in respect of which we recently attended a Public Hearing. The Bill which contains proposed amendments to Legal Practitioners Act (“LPA”) including the very offensive definition of the NBA in the interpretation section as follows:

“NBA” referencing to NBA, Nigerian Bar Association and Association includes Incorporated Trustee of the Nigerian Bar Association or any other Body incorporated for the governance and management of the Legal Profession.

The point must be made that this version of the Bill which was sent to the National Assembly is different from the version with which I am acquainted and in which the NBA was simply defined as the Nigerian Bar Association.

26. Why are we contemplating the incorporation of another body to govern and manage the legal profession in Nigeria? Read against the backdrop of recent happenings in the legal profession, it is obvious to the discerning that this is a blatant attempt to create a division in the profession, to weaken if not extinguish the NBA outright.
27. Indeed part of the initial provisions of this Bill was the inclusion of the General Council of the Bar in the list of Committees of the Body of Benchers and the attempt to arrogate to the Body of Benchers, the power to takeover the running of the NBA where there is “crisis” in the Association and it is impossible or impractical for the NBA-NEC to undertake or continue the function of managing the affairs of the NBA. These provisions were undoubtedly designed to bring the NBA under

the total and effective control of the Body of Benchers. Thankfully the Body of Benchers subsequently stepped down these controversial provisions after the Bar stoutly resisted these proposals. However, there are many other provisions in the Bill that are problematic.

28. Another example is in respect of the Legal Practitioners Disciplinary Committee (LPDC) Rules 2006 made pursuant to the Legal Practitioners Act (LPA), the applicable procedure was that complaints received by the persons specified in the Rules were to be forwarded to the NBA for investigation, and thereafter NBA would forward the complaint and the accompanying document to the LPDC. In 2020, the 2006 Legal Practitioners Disciplinary Rules was repealed and replaced with the LPDC Rules 2020. One of the many far-reaching changes made by the 2020 LPDC Rules is that it has taken away NBA's critical role of investigating allegations against lawyers and complaints are now to be forwarded to the LPDC within 30 days of receipt by any of the persons specified in the Rules. Under paragraph 5 of the Rules, the critical role NBA played under the previous 2006 Rule is now to be played by a single member of the LPDC, who is regarded as the initial committee member. I am reliably informed these new rules were enacted pursuant to recommendations of some very senior members of the Bar.
29. There are far reaching consequences of this change to the workings of the LPDC and there is nothing to suggest that the NBA was consulted in the rule-making process. Meanwhile, as far as the general public is concerned, it is the NBA that they interface with and will continue to hold responsible for infractions by members of the profession.
30. I am sure everyone in this Courtroom today has heard of the widely publicised amendment to the Rules of Professional Conduct purportedly effected by the Honourable Attorney General of the Federation ("HAGF"). The purported changes made to the RPC strike at the heart of the NBA by threatening its source of income and also its ability to sanction its members. The purported changes also have the effect of neutralising the ability of the Association to punish its erring members who do not pay Bar Practicing Fees and also provide, rather curiously, that continuing legal education is no longer mandatory.
31. Right from when the story broke, our initial approach was to make efforts to resolve this with the HAGF, but our efforts have so far not yielded the desired results and we are left with no option but to approach the courts for a judicial determination of the issue. We are gratified that the HAGF himself very recently publicly disowned the purported amendment by informing Nigerians that the amendment

was not initiated by him and that a comprehensive investigation had been launched into the issue. Our position is now vindicated.

32. The question must however be asked: who is hell-bent on neutralising or destroying the NBA? The forgoing developments (and many others that I have not mentioned) are not only tragic but also most disappointing. They call to mind the popular Yoruba adage: "kokoro t'on je efo...ara efo l'owa!" We are however remain resolute in our decision to resist this onslaught from within. The Bar was here before its traducers and will be here long after they are gone.
33. I must state for the avoidance of doubt that the NBA is not against the reform of the Rules of Professional Conduct or the Legal Practitioners Act. Far from it! Indeed, we have been consistent in our messaging. As we prescribe corrective measures for the Judiciary, we must look inwards and fix the Bar. The legal profession also needs to redefine itself, especially in the area of the discipline of erring members of the Bar. Ethics has almost become a foreign word that is alien to many of our practitioners. We also need to deepen our knowledge base and provide top notch service to our clients who get more sophisticated and discerning by the day. We must look again at how the profession is regulated from the point of view of training, discipline etc. However, these reforms must be holistic and must accord with laid down procedures and, very importantly, must not be used as a ploy to denigrate, demean or undermine the Bar.
34. As I conclude, permit me to wish My Lord the CJN and our respected Justices of the Supreme Court here present a fruitful and productive legal year ahead. The Bar will continue to speak for the Bench on matters that concern its welfare and the discharge of the functions of your respective offices. We believe that in this new Legal Year, the Judiciary will live up to the aspiration of the Nigerian people in the dispensation of justice without fear or favor.
35. Finally, on behalf of the Nigerian Bar Association, I congratulate, once again, our very distinguished members of the Bar on the conferment on them of the rank of Senior Advocate of Nigeria by the LPPC.
36. I thank you all for listening.

OLUMIDE AKPATA

President