



LAW, JUSTICE AND THE NIGERIAN SOCIETY

Essays in Honour of
Hon. Justice
Mohammed Bello

Edited by
I. A. AYUA

NIGERIAN INSTITUTE OF ADVANCED
LEGAL STUDIES, LAGOS



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and the
NIGERIAN SOCIETY**

**Essays in Honour of
Hon. Justice
Mohammed Bello, CON., GCON**



Honourable Justice
Mohammed Bello, CON., GCON
(Chief Justice of Nigeria)

NIALS Commemorative Series 1

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Preface

The Institute is greatly delighted to collect and publish this set of legal essays in honour of the Chief Justice of Nigeria, Hon. Justice Mohammed Bello, C.O.N., G.C.O.N, who is due to retire on December 18th, 1995. For eight years of momentous import to Nigerian history and the judiciary, the Hon. Justice Mohammed Bello was at the pinnacle of the Nigerian judicial pyramid. He came in and is leaving the judiciary in a political transition, spread across three administrations, that has seen many ups and downs. The pervasive political instability and economic downturn and the acrimony, crises and insecurity generated by them had once threatened the very basis of Nigeria's existence.

The Hon. Justice Mohammed Bello has thus had to steer the ship of the Nigerian judiciary in very difficult waters and has been much vilified. Yet, he has come safely ashore with great dexterity and unassailable dignity. He deserves any honour done him by this nation, its judiciary and the generality of Nigerians. Already two works chronicling his judicial career and biography have been published. But he deserves even more.

For us in the Institute, the Hon. Justice Mohammed Bello is a very special Chief Justice. While serving on the Supreme Court, he also concurrently offered service as the pioneer Chairman of the Institute's Governing Council for seven years. In that capacity, the learned Chief Justice was instrumental to providing for the Institute the solid foundation and exemplary management which has made the Institute the leading centre of excellence in legal research and scholarship in Africa that it was conceived to be.

As the apex institution for research into law and related subjects, the Institute has provided unparalleled leadership in the generation of legal literature, provision of continuing legal education, for both lawyers and judges, and the promotion and dissemination of research findings to policy-makers for national development. In all these, Hon. Justice Bello has given us strong support and guidance. He has personally honoured all our invitations for conferences, lectures, workshops, symposia, colloquia or other academic and non-academic functions.

It was in consideration of all these and his undoubted juristic competence of world acclaim that the Institute conferred its exclusive privilege of Honorary Fellowship on him at its first set of awards on 27th March, 1981. It is also for the same reason, that we feel constrained, against all odds, but in the best traditions of institutions of our standing, to publish these essays as an immortal momento to his many years of humble and meritorious service to the nation and close association with the Institute.

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TRIBUTES

WORLD JURIST ASSOCIATION AWARD

At the 17th World Jurist Association Conference at Montreal, Canada in August 1995, the Association which consists of judges, lawyers and law teachers from 90 countries awarded to Hon. Justice Mohammed Bello of Nigeria the only award to the Judiciaries of the world;

"In recognition and appreciation of his renowned contribution to world order under the Rule of Law, thus providing justice for the people of all nations and the international community."

WORLD JURIST ASSOCIATION CITATION

Upon presentation of the World Jurist Award to the Honourable Mohammed Bello of Nigeria:

For the distinction he has achieved through a notable and active career, and for the services he has rendered as Chief Justice of the Supreme Court of Nigeria, which have brought him renown as one of the leading jurists of the World;

For his outstanding contributions to the development of the World Jurist Association, and his contributions to the development of law, both in Private Practice and in positions of public trust and responsibility, which have marked him as jurist of the highest order;

In recognition of his virtues, talents and accomplishments and of his rightful position as one of the great jurists of the World, we honour him with the highest award the Association can confer upon a jurist. For his career of service and for his efforts to strengthen international law and legal institutions in the course of World Peace under the Rule of Law, the World Jurist Award is hereby presented to the Honourable Mohammed Bello.

Presented on this, the Seventeenth Day of August, Nineteen Hundred and Ninety-five.

Paul I. Gezo
President."

Tribute

by

Hon. Justice B.S. Bansi
(Chief Judge of Adamawa State)

Opening

"Judges should excel by doing the essence of justice which is to give a person what is lawfully due to him; to compel him to do what the law obliges him to do and restrain him from doing what the law enjoins him not to do."

- Mohammed Bello at the Sixth International Appellate Judges Conference in Abuja in 1992.

This opening quip from *In the course of Justice - Selected Papers and Speeches of Hon. Justice Mohammed Bello*, provides an insight into the history of his person. It was well-spoken by the sages of yester-years, that the history of humanity is a gigantic metabolism of individual life cycles.

My Lords, I have a confession to make. I am not competent, not even qualified to narrate the recorded events of this legal colossus - the Honourable Justice Mohammed Bello. Hon. Justice Muhammadu Buba Ardo of blessed memory, an eminent and distinguished professional colleague of the Chief Justice, would have done so with juristic excellence and exquisite. This confession is timely because when the Hon. Justice Mohammed Bello started his legal profession in 1956 as a Chief Magistrate, I was in class one in Primary School learning the A.B.C. of general literature.

Encomiums

In my sojourn on this earth, I have heard and read many encomiums about this great Jurist. I give you the following few examples:-

Chief Rotimi Williams, CFR; SAN said of him:-

"Here is a man (The Hon. Justice Mohammed Bello CJN) whose entire professional life was devoted to the service of his country and whose record of public service is clean and unimpeachable." 6-7-95.

Prince Emeka Obasi, Editor- In-Chief, Patrioni Books quoted of him thus:-

"Justice Bello, born in 1930 in Katsina, in what is now Katsina State never imagined he would be a lawyer. Engineering was his first love. At the Kaduna College, Zaria, now Barewa College where he enrolled for his Secondary School education, he worked assiduously to realise

his ambition. But he had reckoned without the consent of fate, which intervened and propelled him along an entirely different path to an entirely different destination in a fairy tale career of historic dimensions.

Justice Mohammed Bello is not an 'enigma wrapped in a paradox.' He is more like a T - square on a drawing board: plain, straight and simple. These characteristics define a man who evokes extreme emotions from a broad spectrum of the public. It is indeed a great irony, that a man so simple in disposition can also be the subject of great deal of misunderstanding.

Justice Bello was educated at the University College, Ibadan, Inns of Court, London, Chambers of Middle Temple, Harvard Law School, Massachusetts, USA. In 1966, the late Major General J.T.U. Aguiyi Ironsi, Head of State and Commander-In-Chief of the Armed Forces, appointed Bello to the Bench. Major General Hassan Katsina (of blessed memory), then Governor of the Northern Region had the duty of informing Bello of his appointment."

(A Profile - *In the Course of Justice*)

Hon. Justice S.M.A. Belgore, in his Foreword to *In the Course of Justice*, puts down these indelible words about the Jurist:-

"I have known Justice Bello for over thirty-four years and the most remarkable part of him that is unmistakable is his humility and forthrightness. He is never given to offensive language and whenever he feels strongly about a matter, he hardly conceals it but the language is always temperate and civilised. Those privileged to read his judgments will easily discern this trait of simplicity and high sense of justice in him. Reading these speeches therefore, one can perceive the mind of an intellectual, a jurist, a self-less leader and a visionary."

Recently, Alhaji Lema Jibril described the Jurist as a man of few, but profound words. Liman Ciroma, the retired Secretary to the Federal Government, observed at a Book Launch that the Jurist is a thoroughly bred Nigerian.

Muhammed Kamil of Malthouse Press Limited and Dr. Osman B. Bari testified in a Dedicatory Poem Foreword to *Rendez-vous* that the Jurist is a God fearing man like his parents.

I personally first met the great Jurist in 1968 at the Kongo Campus of Ahmadu Bello University when he and Hon. Justice Jones came to Preside over a Moot Court organised by the Faculty of Law. I was indeed encapsulated by his alertness of mind, brevity of speech, comportment and neatness of the suit he

wore that day. In that year, I made up my mind to become a Judge and I did so on 9-3-1987. Incidentally, it was also in March, 1987 that Justice Mohammed Bello was appointed the Chief Justice of Nigeria, since then I have been working with him very closely. I can now say these:-

In a humble way, Justice Bello is tireless in pursuit of excellence. On becoming the Chief Justice of Nigeria in March, 1987, he embarked on a tour of the States to know what the problems of the Judiciaries were. He realised early during his tenure that the problems of all the Judiciaries were many, but of most importance was lack of continuing education and infrastructures. He embarked on the former with all his might and his speeches during the seminars and workshops are very lucid and illuminating. On the creation of new States, he insisted on the erection of court houses at least to house the High Court, the Sharia Court of Appeal and the Customary Court of Appeal in the applicable States. The lean financial position of some States somewhat militated against this, but many indeed had their High Court buildings beautifully constructed.

At the international level, Hon. Justice Bello has left a mark of high scholarship, impeccable integrity and unblemished contribution to the development of jurisprudence that only history will give the full credit due to him. The highmarks of his personal standing in the world judicial circles was first, the hosting of the world Conference of Appellate Judges in September, 1992, the first in Africa and the most successful so far held. Over one hundred and twenty countries attended. As a result, the high demand for the expertise of Nigerian Judges all over the world continues on a greater scale than ever before; thanks to the personality and integrity of this great Jurist.

The second personal standing of Hon. Justice Mohammed Bello was the crown put on him in recognition of his distinguished career by the World Jurist Association on 17-8-1995 which he received in Montreal Canada at the biennial World Jurist Association Conference. The award is given to those adjudged to be pre-eminent in contributions to the rule of law in four categories: the Judiciary; Legal Practitioners; Law Teachers and service to the World Jurist Association. Our Chief Justice received the award for the Judiciary. The award was not only an award to his Lordship, but to this great nation and to all of us.

Despite all these shining qualities as Nigerians, My Lord, Hon. Justice Mohammed Bello, *nabtalih*. This is an Arabic word taken from the Holy Quran Sura Insan Chapter 76 verses 1 - 4.

In the Holy Quran the word "Nabtalih" means we try you. Nigerians always like to try and condemn their illustrious sons. There is a similar word in the Holy Bible with some slight difference in spelling, but the sound is the same. The word is "Naphtali," see Genesis Chapter 30 verse 8. It is the name of a person - the son of Rachael, one of the wives of Jacob.

"Naphtali" literally means great struggle. Hon. Justice Mohammed Bello has had great struggle with we Nigerians. Despite these shining qualities which the whole world acclaim, we unjustly condemn him.

In disapproving this kind of attitude, Hon. Justice S.M.A. Belgore of the Supreme Court said:-

"Despite the penchant of some Nigerians for pulling down people at the apex, Bello remains a legal and judicial colossus of our time undiminished by petty attacks on the judiciary by those who failed to rise above parochial desires."

I concur with his Lordship. I wish to add that time has come for all people of good will in Nigeria to rally together and fight the menace of persistent character assassination by persons of evil disposition in our society.

Career

I repeat. Hon. Justice Mohammed Bello remains a judicial colossus of our time. Any knowledgeable reader of the judgments of the Hon. Mr. Justice Mohammed Bello which have been published over the years in our law reports will readily agree that at all stages of his career, Mr. Justice Bello is a profound and erudite lawyer, a great and an illustrious jurist and one of the greatest World Jurists of distinction.

Hon. Justice Mohammed Bello is a living encyclopaedia. Any time I fly down to Lagos to discuss legal problems of the State with him, he always has the answers and the authorities at his finger tips.

He is a Jurist of courtesy and conscientious service. An active torch bearer and strong advocator of equality of opportunity for men and women. He is a brilliant Jurist.

I give you a few examples.

Yunusa Atanda Saibu, a Moslem made a will under the Wills Act. Rasaki Yunusa, an heir by Moslem law was deprived by the will of some of his inheritance under Moslem law. He sued to have probate of the Will set aside. The trial court presided over by His Lordship held that the will was valid only in so far as it did not clash with the Moslem law of inheritance. His Lordship succinctly summarised the findings as follows:-

1. That a Moslem of Northern State of Nigeria is entitled to make a will under the Wills Act 1837, but he has no right to deprive by that will any of his heirs, who are entitled to share his estate under the Moslem law, of any of their respective shares granted to them by Moslem law.
2. That in the case of a will of movables, the testator must comply with his personal law, i.e. the native law and custom of his

particular locality, unless such personal law is repugnant to natural justice, equity and good conscience or incompatible with any law for the time being in force which does not deprive any person of the benefit of the personal law of the testator; and

3. That where the testator is a native within the meaning of the Land Tenure law and the will concerns immovable property situated in the Northern States of Nigeria, the testator must comply with the native law and custom, relating to devolution of the place where the land is situated."

On the facts before his Lordship, he set aside the probate of the Will. His Lordship was reversed by the Supreme Court, but the position of the Moslem law still remains the same - that a Moslem cannot make a will under the Wills Act of 1837 to deprive an heir of his share in the estate. He can make a will but subject to the limitation highlighted. See *Timothy Tanloju Adesubokun v. Rasaki Yunusa* (1971) NNLR 77.

Another example is at the Supreme Court in the case of *Akinsanya v. UBA Ltd* (1986) NSCC Vol. 17 pt 2 page 968 at 1000 - 1004. His Lordship expressed a view that it is no longer necessary for lawyers to spend time debating the fine distinction between the *final* decisions and the interlocutory decisions and not rely on the two tests as advocated in the previous decisions of the Supreme Court. The distinction between "final" and "interlocutory" decisions is no longer a trap in our legal system. It is still a trap in England. I urge upon all lawyers to read the judgment of his Lordship in that case.

Yet another contribution of Justice Bello to the development of the law is in the area of *locus standi*. The principle of *locus standi* deals with the issue of whether the person or party who is coming to court has real stake or interest in instituting the case. This principle checks the multitude of professional litigants into our courts. His Lordship propounded the rules that regulate *locus standi* in civil cases. See *Senator Adesanya v. The President of Nigeria*. It should be noted here that *Fawehinmi v. Akilu* (1987) NSCC pt 2. p. 1269 - 1271 lays down a liberal set of rules for *locus standi* in criminal cases.

These are procedural matters which constitute mind-boggling problems in the legal system, but which are now made simple by his Lordship for the benefit of the lawyers.

Finally, on jurisdiction of courts, his Lordship recently made a great statement in a case between members of the Pro-Democracy and the defunct Interim National Government. He said:-

"Jurisdiction is the key to enter the court."

Tell No. 31 of 2nd August, 1993.

Tribute

by

Livy Uzoukwu, Esq.

*(Hon. Attorney-General and Commissioner for Justice,
Imo State)*

From the uncontradicted evidence before me, my Lord, is an epitome of gentility, a paragon of humility and an embodiment of simplicity. As a man of robust constitution, he is cool, calm and collected. Indeed, he is humane and urbane. He has a splendid gift of humour.

For many Nigerians, he personifies a rare example of unrushed haste and of grace under attack. This erudite and quitenssential judge is also a good manager of men and events. His unquestionable probity is complemented by a heart that has been expanded by benevolence.

My Lord, you have a firmness of spirit that is seldom downcast by disappointment, and never swayed by panic.

For thirty years, you ran a judicial race; eight of them as Chief Justice of Nigeria. You completed the distance and made a good success out of it.

My Lords, distinguished ladies and gentlemen, permit me to end my judgment by calling in aid, the CJN's daily prayer to God Almighty which is:

Guide us along the straight path,
the path of those on whom thou has bestowed thy favours;
those who have not incurred thy displeasure,

Qur'an Suratual Fatihah, verses 6 and 7.

Bello had the greatest opportunity to bring men to man the Supreme Court Bench. He believes in balanced and spread, but whether this was co-terminus with intellectual power and moral integrity, history will tell. But he is a democrat who needs more than a left-handed compliments from his peers, his subordinates and all who have had anything to do with him in his long years of glorious public service.

Tribute

by

Justice A. Idoko

(Chief Judge

High Court, Makurdi, Benue State)

It is healthy for a nation to take the most profound pride of a lawyer who had exemplified, in his public and private life, the loftiest ideals of his profession, and of a judge who had contributed indelibly to the jurisprudence of his country. That should be the evocative attribution to the Hon. Justice Mohammed Bello, retiring Chief Justice of Nigeria. The influence of Justice Bello on the nation's judiciary compels one to say that he has encouraged learning, honour, courage and devotion that were born long ago in the common law world. It is because few men have done more than Justice Bello to foster these great traditions of the common law that it is fitting to express these words to pay an affectionate tribute to his memory.

In opinions notable for their learning, logic and persuasive charm of language, Justice Bello had spoken his heart even though he would tread a lonely course. Bello stood at all times to vindicate those inalienable rights of the individual to life, liberty and the pursuit of happiness that have been the bedrock of the common law and the foundation of any democracy. Bello's vast and varied store of learning, his unflagging industry and his accommodation to hear other viewpoints, all contribute to his great influence on the judiciary; but far ahead of them I place the integrity of his mind, constraining him always to be on guard against arguments which behind the cloak of logic might conceal a subtle appeal to personal likes or dislikes; his complete absorption in his work; his selflessness, his independence restrained by his respect for the opinion of others, and the wisdom which springs from these qualities. At the AJC and NJI meetings, you will find these qualities glaringly demonstrated. I appeared before Justice Bello several times when he was on the high court bench Kaduna and saw that no lawyer would ever fail to receive rebuke if through laziness or carelessness he did not prepare his case well; unless he knew there was nothing more to generate in him, in which case he would treat him with an uncanny calmness.

My Lord Bello has a passion for justice and he knows that justice can be attained only where those responsible for the enforcement of the law obey the mandates of the law and where courts which administer the law will sanction no abuse of the law. Where there was wrong, he could express his sense of outrage

in stirring words but his indignation is always restrained by reason. He is not a man who could accept lightly a conclusion that the law ordains a result which conscience rejects. There are some ideals and traditions of law developed in the course of centuries, cherished by generation after generation of liberty-loving lawyers, and enforced by generation after generation of liberty-loving judges, which are of incalculable importance. Justice Bello has an undeviating hold on such ideals of law. His opinion on *Adesanya's case* makes him a stickler to precision on the doctrine of *locus standi*. He would not inch-out even though it was the Constitution of the country he was construing. His conservative approach to legal and constitutional interpretation is a drawback on his vast learning and broad view of things. Justice Bello has through many of his judicial opinions demonstrated his clarity of mind but has not removed the incrustation which time has built around some long-held principles of law which are to be exposed under a Constitution-based democracy.

Bello has left a great legacy to the Nigerian judiciary. He began the scheme for the continuing education of the personnel of the judiciary which has now been concretized into an Institute - NJI - by Decree with a body formulating the policies for the training of judicial staff from bailiffs to the highest person in the judiciary. The effect of the training by the Institute has been enormous in terms of performance and effectiveness. The fact that we have such an Institute to be copied by some other nations of the world that have made such inquiries is a tribute itself to the sagacity of this benign Chief Justice in seeing the need and taking the steps to put his views into action.

Throughout his long judicial career, Justice Bello saw himself as a trustee "who is held to something stricter than the morals of market place. Not honesty alone, but the punctilio of an honour, the most sensitive, is then the standard of behaviour." He developed that standard of tradition and principle of life that is unbending and inveterate. Bello's gentle nature has in it no acquisitiveness; he does not sue himself as a measure of value; he has a self-effacement which has in it a power greater than the power of him who rules over a city. He is wise because his spirit is uncontaminated. He knows no hatred or envy or jealousy or ill-will. It is this purity in him that I so much revere, more than his learning, his acuteness and his fabulous industry.

Justice Bello gave to this country the service which only men, steadfast in principle and guided by conscience, can give. He could not compromise where principle was involved. He could not abandon his standards of right; he could not reject what he believed to be true. He loves his country. He believes that our Constitution is the bulwark of freedom of action and speech and conscience without which life is not worth living. Here lies the reason for the influence which this lovable, modest, unassuming Chief Justice exercises on the nation's judiciary.