

MESSING WITH THE SUPREME COURT

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Nigeria has had leaders of different shades and agenda. Some have come to mess with the people, for example Buhari messed with the people's rights and liberties, he brought to life the Orwellian Big Brother mystique, he also tried to discipline the society and his legacies can be seen today at Yaba Bus Stop where people still queue. Babangida came and messed up institutions, I confess that I have a love/hate disposition to Babangida because he was very forthright in his dishonesty, he was not a hypocrite, he never declared a war against indiscipline or corruption, he had a laissez-faire attitude to governance and to him tips, bribes and "settlement" were just ways and means to an end, our concupiscent society loved him: Igbo traders loved him and the Akinyeles of this world will die for him. No doubt about IBB remains a cult figure in the Nigerian polity; but I will never forgive IBB for his amoral assault on Nigerian institutions, he ravaged our universities and today the disaster that is our educational system can be directly attributed to IBB's messing around with that institution. IBB also attempted to mess with our minds and concept of politics by creating two government parastatals as political parties i.e. NRC and SDP.

I like Abacha, he was totally lawless, he was the state, very much like king Louis XIV who said "L'Etat cest moi" I am the state, the state is me; not necessarily in the Barkin zuwoic genre of government money in government money in government house". To Abacha anywhere an Abacha name was, was Nigeria and Nigeria was Abacha thus all the vaults in Switzerland, Liechtenstein, Cayman Island, Bahamas, Isle of Man etc. were all for him (Nigeria) and he ensured they never lacked. There is a deal for his family to return US\$1 billion to the National Treasury, but we hear that that is still just a tip of the iceberg.

Apart from stealing the National wealth and locking up fellow thieves in the banking industry, plus generally manhandling his political rivals like Obasanjo, Shehu Musa Yar 'Adua etc.; plus a few assassinations of personages here and there like Kudirat Abiola, Pa Rewane et al, Abacha was maybe, a bit harmless, except you consider his plans to perpetuate himself in office as harmful otherwise what he attempted to do was what Gowon also attempted to

do, and that is what President Aremu Okikiola Mathew Olusegun Obasanjo is also attempting to do.

Lest I forget, since the Gowon name has come up we may as well bring up the name of the only military leader whose tenure dignified humanity but nevertheless destroyed the institution of the Civil Service and ironically, unwittingly turned it into the vicious most corrupt institution in Nigeria today only second to political office holders under the present General Obasanjo regime. The beloved, heroic Murtala Mohammed was a crusader all his life, he was at times misguided like when he murdered all adult males at Asaba, but in later years and particularly as Head of State in circa 1975/76 he was the hero of young Nigerians as he determinedly set to rid this country of indiscipline and corruption “with immediate effect.” His tragic assassination was genuinely mourned by the youths and Nation at large. It was our National loss. Nevertheless he destroyed the Civil Service in his native good intentions.

Today we are in the Obasanjo years and he seems determined and programmed to destroy the Supreme Court as an institution. A review of Obasanjo’s pronouncements and actions on three cases which came up before the Supreme Court will certainly confirm this, viz:

- (a) The Resource Control or Littoral States Case
- (b) The Electoral Act/Local government Council Tenure Case, and
- (c) The Mohammed Abacha Case

I am using the laymen’s or better still the colloquial names of the cases. The Resources Control suit or Littoral States case is actually properly called Suit No. SC 28/2001: Attorney-General of the Federation Vs. Attorney-General of Abia State and 36 Others. I will not bother with the full citations of the other cases since the cases are all notorious even in the public domain. To know and appreciate the quantum of destruction of this veritable institution, it is important to properly situate the essence of the Supreme Court.

Professor Itse Sagay in the Preface of his seminal work, **“A Legacy for posterity – the work of the Supreme Court (1980-1988)”** described the Supreme Court of this years as follows:

“The Supreme Court as an entity has embarked on a policy of promoting the Rule of Law, the Independence of the Judiciary, Human Rights and,

indeed, Social Justice in our body politic, through its Judgments, Rulings and Pronouncements. Anyone progressive and socially conscious Judgments and Rulings of the Court in recent years is bound to have a feeling that these are testaments for posterity; judgments on specific issues and human problems, but which are at the same time establishing a profound code of conduct for social interaction between man and man on the one hand and man and government and its agents on the other hand. These Judgments have brought and are continuing to bring about a revolution in our social and political culture whose benefits have permeated all the social strata of this Nation..”

As a corollary Hon. Justice Nnameka Agu JSC as he then was in *Amaefule Vs. The State* (1988) NSCC Vol. 19 Part 1 669 at 701 stated that “a Court of Justice has always a bounden duty to prevent an improper use of its machinery, and will in a proper case summarily prevent its machinery from being abused or used as a means of vexation or oppression in the process of litigation.” And indeed so it ought to be, but what can a Court do when a President of the Federation who has sworn to protect and abide by the Constitution has chosen to undermine that Constitution and its institutions by deviously manipulating different organs and arms of government in a Machiavellian plot to serve a misguided sense of narcissistic messiahhood.

It is trite knowledge that to all intents and purposes the finally of a judgment of the Supreme Court can only be altered by the same Court in exceptional situations or by legislation which sometimes must go through the rigours of constitutional amendment; but we have a president whose Attorney-General instituted a case against 36 Attorneys-General of the component states and while the case was still being tried, the President publicly stated that whatever decision the Supreme Court proclaimed would be varied by him politically; thereby constituting his creation, and in this instance the Chief Tony Anenih-led committee into an appellate body to review the Supreme Court decision.

I had counseled in an article published on these pages long before the Supreme court passed its judgment on the “Resource Control suit” that the appropriate thing to do was for the government to adapt whatever political solution it had in mind into Terms of Settlement with the other parties, and this could have been filed before the Court as consent judgment of the parties. A long adjournment could have been sought by the Hon. Attorney General of the Federation to enable the parties reach mutual accommodation. The medicine

after death that is the Anenith Committee, is illegal, unconstitutional, a total insult and repudiation of the Supreme Court and provocative in its extreme. It is a political trap set to blackmail anybody who will challenge its legality as the real enemy of the littoral states, when it is clear that any rookie lawyer as the real enemy of the littoral states, when it is clear that any rookie lawyer who applies to a Court to make a declaration on the status and recommendation of that committee will succeed in declaring it illegal.

How dare the President who has sworn to uphold the Constitution undermine the supreme Court by propping up a committee to “review” the Supreme Court’s Ruling as a “Mega Supreme Court?” Under the Rule of Law, President Obasanjo can do either of two things, one is to set up a committee TO IMPLEMENT the decision of the Supreme Court or set up a Committee to present a Bill to the National Assembly to amend the Constitution in order to circumvent or alter the dictates and obligations in the judgment of the Supreme Court. When Mr. President Obasanjo decided to take the Littoral States and other states to court over is what now known as the Resource Control Suit it was clear to everyone that he wanted to use the Law to “deal” with the “Resource Control” agitators, a situation Hon. Justice Chukwudifu Oputa JSC as he then was had lamented in ***Nneji & Others Vs. Chukwu & Others (1988) NSCC Vol. 19 Part I 1115 at 1129 “as the sorry spectacle of Law triumphant and justice prostrate.”***

Another case in which the President has tried to mess around with the supreme Court is the “Electoral Act/Local Government council Tenure Suit,” where after the Supreme Court had delivered a Landmark Judgment which was epochal in its definition and resolution of what at that time was a major national political dilemma, i.e. the Tenure of Local Government Councils. The Supreme Court in a generally lauded decision ruled inter alia, that after three years the tenure of the Local Government Councils would expire by effluxion of time, thus there was nothing to be extended. Even the two chambers of the National Assembly who had misdirected assumed legislative powers over Local Government matters by extending the tenure of the serving Local Government councils had rightly succumbed to the Judgment of the Supreme Court, but no, not the Federal Executive under the leadership of General Chief Olusegun Obasanjo, whose Attorney-General, my good friend and learned Senior Senator Kanu Agabi SAN speaking the mind of the Government made so many so many statements which sought to undermine the effect and scope of the Supreme Court judgment. The contempt and disrespect which the Obasanjo Federal

Government has in the fact that even as you read this piece, the Local Government Councils in the Federal Capital Territory whose life had expired, thereby having nothing to extend, have had their “tenure” extended by the present Federal Government at Abuja.

The bizarre messing around with the Supreme Court is the ridicule and odium being heaped on that hallowed Court by what many consider to be a politically influenced decision in the Mohammed Abacha case. As a Lawyer, indeed a senior member of the Bar, I cannot believe that the decision of the Supreme Court was influenced by anything other than the conviction of the majority Justices. I agree with the Honourable **Abbot F. J. who said in *Ajidagba & Ors. Vs. Inspector-General of Police (1958) 3 FSC 5 AT 6*** that **“A decision to discharge an accused person on the ground that a prima facie case has not been made against him must be a decision which, upon a calm view of the whole evidence offered by the prosecution, a rational understanding will suggest: the conscientious hesitation of a mind that is not influenced by party, preoccupied by prejudice or subdued by fear;”** so, I say about this Supreme Court decision; as we Lawyers say; **“as the Court pleases.”**

But something terrible had preceded that Supreme Court decision, something so untidily handled that has cast its very ugly shadow or slur on the hallowed status and independence of that institution, and that thing was the **“Money for Freedom”** deal which the President informed the Nation he had entered with the Abacha family. Ordinarily, nobody should challenge the power of the President to enter such a deal, the Constitution which empowers him to grant a pardon also empowers him to enter such a deal; even if you question the propriety.

The untidy aspect of the conduct of Mr. President was that he was making all these statements while the matter was **sub judice**; if his government had decided to reach any accommodation with the Abach family all he needed to do was direct the Attorney-General of the Federation to enter a **nolle prosequi** and withdraw all charges against Mohammed Abacha.

A nolle prosequi would probably have raised the same hue and cry in some quarters and jubilation in some too, like the extant Supreme Court judgment; but it would have shielded the Supreme Court from politicization and suspicion thereby preserving the aura, dignity and invincibility of that Court, for as

Professor Sagay said in this same book (supra) ***“It is also crucially important for succeeding Supreme Court Judges to the exceptionally sensitive and conscious of the great strides the Court has taken in recent years and the high standard it has achieved. For it will be their bounden duty to maintain these standards even if they cannot improve on them”.***

Thus the battering of the image of the Supreme Court as either an institution that can be manipulated as in the Abacha Case, or ignored as in the Local Government Council Tenure Case or undermined as in the Resource Control Suit should be a scary legacy for the Obasanjo administration to bequeath, although the President carries on like Napoleon 1 (1769-1821) who said in a speech to the Corps legislative ***“france has more need of me than I have need of France;”*** in Nigeria it is not true; the only institution the jackboots of the military did not trample on or destroy is the Judiciary. Indeed General Ibrahim Babagida as President had said while swearing in Hon. Justice Mohammed Bello as chief Justice of Nigeria in 1987 that the Rule of Law was the ultimate guarantee of peace and stability in the Country; thus we find it reprehensible that a democratic government would wish to denigrate the Supreme Court to achieve ends that are not consistent with the promotion of the ideals of the Rule of Law.

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