DEMOCRACY TODAY AND THE RULE OF LAW: A PERSPECTIVE OF NIGERIA DEMOCRATIC SYSTEM: BEING A PAPER PRESENTED AT THE PEOPLES VOICE NATIONAL MERITORIOUS AWARD FOR GOOD CONDUCT ON 14TH MARCH 2006 AT HILTON HOTEL ABUJA BY: YUSUF O. ALI ESQ; SAN MCIArb.

INTRODUCTION

In this lecture, attempt will be made to define what is meant by Rule of Law and its features. We shall then go to define what is meant by democracy and the feature of true democracy, while the relationship or the common features between democracy and rule of law would also be examined, lastly a comparison will now be made as to whether the notion rule of law and democracy in Nigeria go hand in hand as they ought to. Thereafter conclusion will be drawn.

THE RULE OF LAW:

The Black's Law Dictionary, Sixth Edition defines rule of law as

> *"A legal principle of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition called a "rule" because in doubtful or unforeseen cases it is a guide or norm for their decision. The rule of law, sometimes called the supremacy of law provide that decisions should be made by the application of known principles of laws without the intervention of discretion in their application."*

DEMOCRACY

The same Black's Law Dictionary defines Democracy as

> *"that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy.*
>
> *Democracy could also be described as a political method, that is to say, certain type of institutional arrangement for arriving at political, legislative and administrative decisions. It is therefore a method by which the individual acquires the power to participate in decisions by means of a competitive struggle for the people's vote.....it is the competition for votes that is the distinguishing character of the democratic method...."*

In the words of a learned author, Democracy ensures meaningful and extensive competition among individuals and organized groups (especially political parties, either directly or indirectly, for the major positions of governmental power, a highly inclusive" level of political participation in the selection of leaders and policies, least through regular and fair elections, such as that no major (adult) social group is excluded, and level of civil and political liberties freedom of expression, freedom of the press, freedom to

form and join organizations sufficient to ensure the integrity of political competition and participation ..” (Diamond, 1988:4)

With this it could therefore be seen that the concept of elections or the vote and the processes associated with it are seen to lie at the heart of a system of representative democracy. The other elements are the guarantee of civil and political liberties and the existence of an institutional arrangement or government whose function it is to maintain the aforementioned elements through, among other things, the rule of law.

Without mincing words, it is evident that before true democracy can be achieved or practiced, the following ingredients must be present, the ingredients are absolute rule of law, liberty, right of dissention, fraud proof electoral system and ability to abide by the rules of the game.

It is therefore necessary at this juncture to high light on these ingredients of true democracy so as to see whether or not the present democratic system in operation in Nigeria as at today is in conformity with the tenets of democracy as explained above.

ABSOLUTE RULE OF LAW

As defined above, rule of law means the equality of all persons before the law or equal subjugation of all classes to the ordinary laws of the land administered by the ordinary courts. This therefore connotes that no man is above the law and that every man whatever his rank or status or condition is subject to the law of the land and the jurisdiction of the ordinary courts. Of course it could not be gain said, that though not the originator, A.V.

Dicey contributed immensely to the exposition of the principle of rule of law as we have it in the modern times. In practical parlance, the rule of law presupposes the following as enunciated by the Supreme Court in the case of ***Military Governor of Lagos Stat and Others vs Chief Emeka Odumegwu Ojukwu and Another*** per Oputa JSC namely

(i) That the state is subject to the law;

(ii) That judiciary is a necessary agency of the rule of law;

(iii) That governments, should respect the right of the individual citizens under the rule of law; and

(iv) That to the judiciary is assigned both by the rule and by our Constitution the determination of all actions and proceedings relating to matters in dispute between persons or between government or and authority and person in Nigeria.

The import and connotation of the term "Rule of Law" would be better appreciated if recourse is had to the observation of the Supreme Court in the case of **Apostolic Church vs. Olowoleni**. In that case, Obaseki JSC as he then was put the matter in proper perspective in the following eloquent expression:

> *"The Rule of law and the Rule of Force are mutually exclusive. Law Rules by reason and morality, force rules by violence and immorality."*

This presupposes therefore that law and morality are integral and indeed inseparable parts of Rule of law. It is also inferable from the same passage that Rule of law has no place for violence and immorality. The reason for

this is not far fetched. Both violence and immorality breeds rancor, acrimony and other terrible vices in the society.

With this exposition on the doctrine of rule of law, it could be seen that rule of law and democracy go hand in hand. Thus where there is true democratic governance, the governance must be tailored in its operation in accordance with the rule of law.

Where rule of law is absent, it would be apparent that true democracy is palpably absent in that society.

We shall now discuss the concept of the term Rule of law and link it up with the type of Nigeria's Democratic system as being operated presently while finally a conclusion would be reached as to whether democracy is in operation in Nigeria or not.

EQUALITY BEFORE THE LAW

This motion implies that no one is above the ordinary law of the land and that no matter high or low one is in the society, he must be treated equally. Thus a particular law under which a party is treated must also be used in treating the other party irrespective of the their status in the society.

From the foregoing, it is manifest that a person who is saddled with the responsibility of adjudication is expected to afford equal treatment and opportunities to litigants. Thus a judge handling a case must be careful not to be interested in a case which he is handling. He must not adjudicate on a matter in which he is interested. Thus a judge handling a case should not

be partial in his adjudicatory function and must be interested to hear both parties to the case irrespective of their status in the society before he reaches his decision.

It is another important precondition for real enthronement of rule of law that judges saddled with the responsibility of administration of justice must be impartial adjudicators. That is a judge should in keeping with the requirements of the provisions of section 36 of the 1999 Constitution avoid being partial. He should not put himself in an embarrassing position of being partial to one of the parties before him to the detriment of the other.

What we are trying to put through is that under the real Rule of law, on independent judiciary is an indispensable requisite of a free society. Such independence implies freedom from interference by the executive or legislative arms in the exercise of the judicial function, but this does not mean that a judge is entitled to act in arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it, and he should ensure that there is equal access to the law for the rich and poor alike as this is essential to the maintenance of Rule of law.

It is not in doubt that the judiciary which is a necessary agency of the rule of law has awe some powers granted by the Constitution. However, the judiciary could easily be reduced to a mere paper tiger and the powers meaningless if the agencies of the state (the executive and the legislature) who control the financial and physical resources, including the police and the military, refuse to make those resources available for the enforcement

of the orders given by the Courts. Therefore, for the judiciary to be able to command respect and honour, it is imperative for it not only to be seen independent, but truly independent. To earn this independence and integrity, the public or community must trust and believe that the judgments/decisions coming out from the courts and tribunals are not only in accordance with the Rule of law and due process, but that they are also fair, equitable, reasonable and transparent.

The question to ask ourselves at this juncture is whether Nigeria as a nation could be called a democratic Nation or in the alternative whether or not the doctrine of Rule of law is in practice in Nigeria.

Answer to this question cannot be proferred without x-raying what is common place in Nigeria as of today despite the belief that we are in democratic government. It is therefore after the x-ray of events in Nigeria that one can then conclude one way or the other.

It could not be gainsaid that Rule of law is a driving force for sustenance of democracy and where respect for the rule of law is absent in any so called democratic set up, such a set up cannot be perceived as a democratic set up but mere civil rule.

From the happenings in Nigeria in recent times under our own mode of democratic rule what we have been witnessing show that we live under the rule of men, not of law; that the constitution is just an old text that means whatever the current crop of judges says it does, that all rules are infinitely

manipulatable; that law is a business like any other; and that business is just the unrestrained pursuit of self interest.

There is equally no doubt that the rule of law in Nigeria as of today is different from what it is universally recognized to be and that we live under the rule of men and not of law.

LIBERTY

Freedom to move about unhindered except through lawful and legal means is so important that the makers of our Constitution in section 41(1) of the 1999 Constitution makes quite elaborate provisions for freedom of movement in the following words:

> *"Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exist therefrom."*

The case of ***Alhaji Shugaba Rahaman Darman vs Minister of Internal Affairs*** readily come to mind. This was the case of the majority leader in the old Borno House of Assembly in the second republic who was unceremoniously deported from Nigeria to Niger on the ground that he was not a Nigerian. The courts not only damnified the Federal Government in heavy damages but condemned in no uncertain terms the affront of the government on the provisions of the 1979 Constitution.

RIGHT OF DISSENSION

The right to hold contrary or opposite view is a sine qua non in the practice of democracy. Section 38(1) of the 1999 Constitution provides that:

> *"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observe.*

The various allegations of the muzzling of oppositions in many states of the Federation clearly demonstrate that many of our leaders have not grown out of the militocracy that pervaded our land before May 1999. Any democratic practice without a robust, articulate and viable opposition is not real democracy. As we approach 2007 we must allow others with different political and religious belief to express their opinions free from intimidation blackmail and arm-twisting.

FRAUD PROOF ELECTORAL SYSTEM

It is a fact of history that this country apart from the 1993 annulled presidential election has never enjoyed rancour free elections. The political problems in Western Nigeria in 1965 that festered and led to the collapse of the first republic had its origin in a troubled election.

The demise of the second republic in December 1983 had its root in the contentious elections of that year.

As if the political class learned nothing but forget everything, the 2003 general elections were marred by acknowledged irregularities. This fact was brought into focus in the celebrated case of ***Buhari vs Obasanjo (2005) 13 NWLR (Pt.941) 1*** where his Lordship Pats-Acholonu JSC at pages 299-300 of the report caught the essence of the matter in the following illuminating words:-

> *"While though the main appeal has failed due to what I ascribe as to the impossibility of satisfactorily proving nation wide spread of ineptitude, violence, intimidation and other acts of terrorization as well as other barefaced acts That literally chill the bones and would as William Shakespeare said in Macbeth ("make the sitteth heart knock at my ribs against the use of nature") some of the revelations that is, where the few evidence was led and proved, are blood cuddling. That in this day and age in this country that has been independent for 45 years we can still witness horrendous acts by security officers who ought to dutifully ensure peace and tranquility in the election process suddenly turning themselves into agents of destruction, and introduced mayhem to what ordinarily would have been a civilized way of exercising franchise by the people who are sovereign, is*

regrettable. I ascribe the nefarious activities of thugs and the few security officers and party men to lack of understanding of the philosophy and ethies behind election in a democratic state and lack of understanding of the dynamics of election It is scary to send policemen to processes. election places when they have not been properly tutored that in the exercise of their duty to maintain law and order in election areas, their allegiance is to the Constitution. Some of the evidence elicited are so disquieting that one would wonder whether we have learnt or infact can learn a lesson. Such inordinate and impetuous acts are despicable. Such mania to traduce all known civilized practices by the supports of the parties is reprehensible and condemnable. Some of the things that happened in 2003 election can be likened to what Macduff the Thane of Cowdar said when he saw the bloodied murdered King Duncan in Macbeth by William E. Shakespeare.

“O horror, horror, horror! Tongue not heart cannot conceive nor name

Thee.....

Confusion hath made his masterpiece Most sacrilegious murder hath broke open The Lord's anointed temple and stole thence The life of the building"

And when Lennox asked, "Mean you his Majesty"

Macduff answered

"Approach the chamber and destroy your sight

With a new Gorgon...do not did me See, and then speak yourself."

This country would not like to witness another gorgon in an election."

Need we say any more?

No one is under any illusion that no matter his good the electoral act and the rules to guide an election, the human agency is the must critical. The kind of blatant subversion of the electoral process that we had witnessed in this country in the past elections should not be allowed to repeat itself.

ABILITY TO ABIDE BY THE RULES OF THE GAME

The members of the political class lack the spirit of sportsmanship in election matters. The sheer number of election petitions that were filed after

the 2003 general elections is a pointer in this direction. Any politician that losses an election feels that it was due to rigging by the winner. It is high time the politicians lean to accept the fact that losing an election is part of the hazard of contesting. Winning at all costs is alien to democracy.

On this point, a feature article in the Wednesday July, 13th 2005 edition of the New Age Newspaper (page 1) is most instructive in this regard. The article was captioned: ***"One Law for the PDP, another for the rest of us,"*** which was written by a columnist who goes by the pen namely ***Pekuliameesi***. It posits that the ruling Peoples Democratic Party

> *"appears to be above the constitution and laws of Nigeria, although members of the party "pay lip service" to law, order, fair play and all such noble ideal, in practice they behave as it they have the right to re-write the laws of the country at will, that they choose which judicial pronouncements to obey and which to ignore; that have even taken time out at public fora to rail at judicial pronouncements if not at the learned judges themselves (for example the judiciary was vilified over the minority judgment in the presidential election tribunal which questioned the electoral figures in Ogun State where the president scored more votes than the number of registered voters (sic). Contrast that with the effusive praise that attended the final verdict of the Supreme Court which gave victory to the president)."*

This article indicates to us that ruling elites have degenerated to the level of total contempt for the law then it doesn't favour them, even as they miss no opportunity to warn the rest of us that the laws of the land must be obeyed at all times.

This ***Pekuliameesi*** also claimed that President Obasanjo has a long record of “selective obedience” of court orders and judgments. A typical example of this was the President's continued withholding of Lagos State council funds where he chose to interpret the Supreme Court judgment the way it suits him.

Colonel Ahmadu Ali, the National Chairman of PDP, according to the writer has gone on record as saying that “court judgments cannot reverse a decision taken by the party.” He states that if some excuses could be made for both the President and his party Chairman on account of their military background, what do you say of Ojo Madeukwe, the new (interim) Secretary of the party who asserted that nothing could stop the party from discountenancing the impeachment of the former Deputy Governor of Akwa-Ibom State by the House of Assembly even though the Constitution is clear that the House has the final say in the matter.

Turning his attention to Anambra State, Pekuliameesi claimed that because Governor Chris Ngige was not perceived as belonging to President Obasanjo's faction in the PDP, he has been made to go through all sorts of humiliation instigated by the same Federal authorities who are supposed to be fellow party members. On the day Anambra was set ablaze by the governor's opponents, the Federal Police looked the other way. Ngige went

to court to seek redress when his purported expulsion from the party was announced. The court declared that he was still a bona fide member of the PDP, but the PDP Chairman, Col. Ali, spoke for his party, “court or no court, Ngige remained expelled.”

Turning to Plateau State, Pekuliameesi recalled how the president declared a state of emergency in the Sate even when “more tendentious riots” in other parts of the north had been treated as “family affairs.” To him, Governor Dariye was not seen as an Obasanjo boy, otherwise some form of accommodation would have been found for him. The “deliberate demonisation” of Dariye on the eve of the expiration of the state of emergency as orchestrated to make it impossible for the governor to take back his seat. Contrasting this with the “feverish” attempt to rescue Ekpeyong from the impeachment noose in Akwa-Ibom even after the former deputy governor had been found guilty (by the house) of official corruption, he asked

> *“since when has the party's Board of Trustees become an appellate court to review the decision of state house of assembly?*

In addition to Pekuliameesi illustration are the recent happenings in Oyo state, the apparent partial role played by the Police when sometime in late December 2005 office of the impeached governor of Oyo State was vandalized, while the said governor was still very much in control of the

state affairs. The Police stood and watched the said office being vandalized by hoodlums.

As if this was not enough, undemocratically, less than 2/3 members of the House convened in an Hotel without the incumbent speaker of the house issued out a purported allegation of misconduct against the governor, the Acting Chief Judge of Oyo State despite being aware of a pending case, the case which he himself assigned and was made a party went ahead to inaugurate a seven-man panel to investigate the governor and the panel members despite being aware of the pending litigation sat for two and half days and wound up its sittings.

High Court of Ibadan where the panel was sitting was fully barricaded by the Police and the citizen of Oyo State that were loyal to the governor were not given access to the court promises.

Recently, the on going Constitutional Review Committee was taken to court by the interested members of the party which the committee is well aware of but instead for the Committee to exercise cantion because their function has become sub-judex, it felt unconcerned and went ahead with what it was given mandate to do.

Apart from all these, laws as it is in Nigeria of no today are not meant for that elites or the political big wigs to obey but for the less privileged in the society. The so called custodian of democracy who are equally supposed to be custodian of the Rule of law have abandoned the Rule of law for Rule of politics.

Judiciary is no more the hope of the common man, since when it is apparent these days that the people at the helm of affairs and who claim to be democratic in nature prefers rule of force which is alien to democracy to operate instead of the rule of law that is embedded in it.

CONCLUSION

There is no doubt that all the scenarios described above are just but little of what is happening in Nigeria of today, the country that is claimed to be democratic in its system. A country whose leaders do things that are exactly opposite to the doctrine of Democracy, we cannot but conclude that what we are witnessing in Nigeria today is far from Democracy but very close to civil rule, and that our political need to have change of heart by tailoring their governing style in line with the principle of democracy by upholding the rule of law which we had earlier said is a driving force for sustenance of democracy.

In this paper, we have exposed the qualities of democracy and the rule of law. We took a tour of the practice of the two in our land. The conclusions that recommend themselves to us are griping and pathetic.

The political class has shown an unwillingness to observe the rule of law and the tenets of democracy.

Elections are seen and conceived as a do and die affair not a means to acquire power to serve and better the lots of the average citizen. Any rule could be subverted as long as the ends justify the means.

The culture of tolerance, sports-manship, integrity, patriotism, selflessness and playing by the rules are still alien to the political class. Greed, winner takes all, religious bigotry, ethnicity, and nepotism are regularly deployed by the political class to acquire, remain and retain power.