THE ROLE OF LEGAL PRACTITIONERS IN THIS POLITICAL DISPENSATION: BEING A PAPER PRESENTED AT THE CORPS LEGAL AID CLINIC SEMINAR ON 9TH APRIL, 2003 BY YUSUF O. ALI ESQ; SAN

INTRODUCTION

Unarguably the position of legal practitioners in any civilized setting is a very high and challenging one. The society places an onerous task on the legal practitioner and views him as a person who should provide succour for the multifaceted problems of the community. This is especially so in a civil dispensation like ours where constitutionality has come to replace governance via decrees with its attendant negative consequences on the populace. It is therefore not a surprise that **"The Role of Legal Practitioners Political Dispensation"** In This has been chosen as the title of this seminar. A topic of this nature could not have come at any more opportuned time than now.

WHO IS A LEGAL PRACTITIONER

By way of reminder a Legal Practitioner is a person who is entitled to practice law in Nigeria as a Barrister and Solicitor. Section 2(1), (2) and (3) of the Legal Practitioners Act Cap 207 Laws of the Federation 1990 contain provisions pertaining to right to practice as a Legal practitioner in Nigeria.

THE CURRENT POLITICAL DISPENSATION

The current political dispensation is a trying time in the annals of Nigeria as a nation. Nigeria, as a nation has had three Republic which sadly were all truncated by military interventions. History books are replete with the facts and circumstances under which the three previous republics were aborted. A new dawn came on the 29th of **May 1999** when the Military lowed out of governance and handed over the reins of power to the civilian government of Chief Olusegun Ohasanjo. This was after some fifteen years of unbroken military rule at the centre. Expectedly Nigerians and friends of Nigeria have come to emphasize the need for the sustenance of Nigeria's new-found democracy. The role of individuals and groups within the polity has received beaming search light. The professional bodies especially have come to be recognized as indispensable tool in the quest for democracy sustenance in Nigeria. It is with this in mind that we shall attempt to discuss, albeit briefly, the role of legal practitioners in this political dispensation.

DUTY TO UPHOLD SUPREMACY OF THE CONSTITUTION

Section 1(1) of the 1999 constitution provides:

> "This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."

Sub-section 2 of the same section of the Constitution makes provision prohibiting the governance of the country other than in accordance with the Constitution. It also prohibits the control of the government of the country through extra constitutional means. Sub section 3 of section 1 enacts clearly the supremacy of the Constitution over any other law in Nigeria.

It behaves a legal practitioner therefore to support the actualization of these clear provisions of the constitution itself. A legal practitioner by this token has a duty to withhold support to any government that is put in place extra constitutionally. In the same way, a legal practitioner has a duty to ensure that decrees and such other laws that contain provisions designed to defect the supremacy of the constitution are not enacted.

This call is made more inevitable by the fact that it requires the professional expertise of lawyers to subjugate the constitution to some other laws especially decrees just as it requires deep knowledge of the law to promulgate decrees to give legal recognition to extra constitutional government and to oust courts jurisdiction in matters that are ordinarily actionable.

OBSERVANCE OF RULE OF LAW

Another fundamental duty of a lawyer in this political dispensation is to support the rule of law in every ramification. The rule of law pre-supposes the supremacy of laws of the land, its respectability, equality of all before the law and abhors arbitrariness and the rule of might. The rule of law envisages that all disputes and disagreement would be submitted to adjudication in

the courts of the land which shall be constituted in such a way as to secure its indepence and impartiality. Also inherent in the rule of law is the fact that litigants both individuals and government shall obey and respect the decisions of the courts of the land.

As rightly observed by Mohammed JCA in the popular case of **Ibrahim vs Emein (1996) 2 NWLR** (Pt. 430) 322 at 337 observances of the rule of law is a sine qua non for harmonious existence in the country. His Lordship succinctly put the matter in the following eloquent words:

> *"I am of the firm view that for a nation such as ours, to have stability and respect for democracy, obviously rule of law must be allowed to follow its normal course unencumbered. li for any reason, the Executive arm of government refuses to comply with court orders, I am afraid that aim is promoting anarchy and executive indiscipline capable of wrecking the organic frame work of the society. The corporate existence of Nigeria, it must be admitted postulates the principle of co-operation between the three arms of government (Executive, Legislature and Judiciary) Where these work together in the same Framework, then the rule of law shall prevail in that society. But where each selects to work in isolation and/or in utter disdain of the other, then havoc wrecks the society, Thus, by this unique position each knowing the limits of its powers and not to attempt to enter brusquely into the preserve of the other of ride rough shod of the powers of the other, then the rule of law has achieved its purpose which is ensuring respect of the law. It is only then that the government or authority by whatever name called shall rule by the principles recognized in civilized societies and bound by the pronouncements of the courts."*

See also the **Military Governor of Lagos State vs Chief Emeka Oduegwu Ofukwu (1986) 1 NWLR (PE, 18) 621.**

THE PECULLAR POSITION OF THE ATTORNEY GEVERIL

The Constitution on sections 150 and 195 provides for the office of the Attorney-General of the Federation and Attorney-General of State respectively. Sub section 2 of both sections 150 and 195 prescribe a minimum qualification for someone to be Attorney-General either at the Federal or

State level. By this prescription the Constitution has singled out the office of the Attorney-General for the purpose of prescribing a minimum qualification as there is no such prescription for the holder of other ministerial or commissionership appointments. By this token the responsibility and obligation placed on an Attorney General is by far above those of the ordinary members of the Bar.

At this juncture one cannot but quote the very erudite words of Mohammed JCA in the case of Ibrahim vs Emein (Supra) on the duty of an Attorney-General vis-à-vis the rule of law. His Lordship said:

> *"I must not drop my pen without deprecating the behavior of the Niger State Attorney-General, Chief Law office and commissioner for justice. He should not have forgotten his primary responsibility to the court as by his calling, he is an officer of the court. As a commissioner of a state, the Niger State Attorney-General, under section 174(c) of the 1979 Constitution is bound to advise the military Administrator generally in the discharge of his Executive functions other than those functions with respect to which the Military Administrator is required by the Constitution to seek the advice or act on the recommendation of any other person or body.*
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> *It is in conceivable to say for instance that a Governor or Military Administrator of a state will refer a court's ruling or statute for advice or interpretation to the commissioner of finance, as interpretation or offering legal advice are not synonymous with liquidity of cash. It must be referred to its rightful place and that is the ministry of justice. Any legally qualified person holding the esteemed office of Attorney-General cannot allow himself to be psychopathic. His own responsibility is to offer his candid advice accordingly to how he understand the issue involved uninfluenced by any consideration. It is then left for the Governor or Military Administrator to take whatever course he deems appropriate that will not in any way, shake the integrity, confidence and professional dexterity of the Attorney-General. And I think it is more honourable always in a situation where you cannot beat them, then you better bulge out instead of following them. I am not in anyway impressed by the role played by the Niger State Attorney General."*

Earlier in the leading judgment, Abdullahi JCA (as he then was) had observed at page 344 of the report thus:

> *"As for the Attorney-General, who clearly abandon his time, honoured role as the chief legal officer of Niger State and recklessly promoted a breach of the rule of law, possibly to keep his job, which from all indication he does not deserve to have in the first place. This court shall report his despicable conduct to the Bar Council through the appropriate channel for necessary disciplinary action to be taken against him."*

It is therefore the duty of all legal practitioners to advise their clients candidly with a view to entrenching the observance of the rule of law. This duty extends to all lawyers regardless of their standing or leaving Be it noted that the legal profession and indeed legal practitioners will have their relevance diminished greatly if the rule of law s eroded. Anarchy and disharmony will also overtake justice, fairness and orderliness in our society.

LAWYERS MUST STRIVE FOR THE INDEPENCE OF THE JDICIARY

Legal practitioners have a daunting task of clamouring for and ensuring the independence of the judiciary. It our submission that an independent judiciary is a condition precedent for the survival of democracy. For e survival of our democracy the courts must be dependent as much as practicable. There must be financial independence for judiciary. The judex must afforded a free room and environment to operate. Interference with the adjudicating functions of a judicial officer should be abhorred.

The 1999 Constitution has deliberately provided for separation of power in sections 4, 5 and 6 thereof. This being so, the courts must be afforded an enabling environment to function. Legal practitioners from the official Bar should not do anything that has the tendency to compromise the independence of the judiciary. Threats, intimidation and victimization should be discouraged especially by the official Bar. On the part of the members of the private Bar, anything that could compromise the independence of the judiciary and the integrity of the judex should be abstained from. Unprofessional and unethical belaviours that could affect or impair the independence of

the judiciary should be avoided. It must be borne in mind that legal practice would thrive and the practitioners better if independence and impartiality of the judex could be taken for granted.

LAWYERS MUST BE AT THE VANGUARD OF THE CALL FOR GOOD GOVERNANCE

The world over, lawyers have come to be seen as an articulate pressure group and have come to enjoy-considerable respect even in the dark days of the military. As the only. "learned minds" on earth who are presumed to know a bit of everything lawyers cannot afford to shierk the responsibility placed on them by their professional calling and social status in the society. The legal practitioners must avail the polity of their vast knowledge and experience. Their positions on National issues should be well articulated, widely circulated and promptly communicated. The legal profession should play the role of the mouth piece of the vast majority of down throdden Nigerians. Constructive criticisms of government policies and acts should be made by legal practitioners. Lawyers should see themselves as defenders of the rights of the citizenry regardless of creed, religion or status.

To be able to discharge this function creditably, it is our humble postulation, that lawyers should liase with and carry along other professional bodies or professionals with a quest to better the lot of Nigerians. This is so because a well co-ordinated common front of professionals will assist in achieving the desired result.

LAWYERS MUST BE INVOLVED AT ALL LEVELS OF GOVERANCE

Our recent experience has shown that Nigerians deserve better representatives and representation than what was witnessed and is till being witnessed presently. The axiom "round peg in round hole" is elusive for the time being. The reasons for this are many. Not far fetched--however is the fact that the quality of the operators of our democracy and those occupying sensitive offices in our society is regrettably less than average in most cases.

The challenge posed by the above depicted scenario is that lawyers cannot afford to be active participants in politics and by extension participants in the act of governance. The quality of the

lawmakers, at all levels especially, is a source of concern. Laws are being reeled out not necessarily because they are beneficial to the society but because it is palatable to the whimsical and capricious opinion of our lawmakers. The controversy surrounding the repeal bid, of the Anti-corruption Act is a good case study. It is our expectation therefore and a reasonable one for that matter, that if more lawyers are involver directly in---the act of governance at all levels, then some of the observed lapses could be rectified. The interest of our judiciary especially will be well captured for. It is therefore in the individual and collective interest of lawyers to be more involved in governance at all levels.

DUTY TO UPHOLD DEMOCRACY

it is regrettable that the truncation of the third republic has been partly attributed to the judiciary and indeed the legal profession in Nigeria. The correctness or otherwise of this assertion is not our concern for now as it is of no moment. The lesson inherent in this sad trend is that as practitioners, lawyers must see themselves as Nigerians having a bounding duty to uphold democracy and try to nurture it. Lawyers should exhibit some sense of Nationalism even in the course of discharging their professional duties. Lawyers cannot afford to be indifferent to the-mood of the nation. A corollary to this is to de-emphasise practices which could. unwillingly truncate Nigeria's democracy. The act of filing of court processes in circumstances that suggest **mala-fides** especially **ex-parte** applications for orders injunction in electoral matters should be approached with caution.

CONCLUSION

We have tried to identify and explain briefly the broad roles of lawyers in Nigeria's political dispensation. The roles identified are not in the least exhaustive, it is our belief however that if these identified roles are practicalised by members of the noble profession of law, our country, Nigeria will be a better place for all. Our profession would also be accorded its prime place in the annals of professions in Nigeria. The challenges are undoubtedly daunting but with zeal, determination and doggedness the aspirations will be actualized

Thanks for your patient listening and God Bless