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## **Ideologies on display: A Nigerian Election Petition Tribunal ruling**

**Abstract.** The judiciary is an important arm of government which adjudicates in all matters in the society. The practice of democracy in Nigeria is unique, just as the nation itself is. The judiciary has played a significant role in molding the nation's democracy, particularly in its rulings on election petitions. This paper examines an important ruling by the Gubernatorial Election Tribunal in Osun State, Southwest Nigeria. Through this ruling, the judges stress the supremacy of the judiciary over other arms of government and they assert the status of legal practitioners. They also emphasize that the judiciary is an unbiased umpire, a 'cleanser', and the final resort of the masses. These ideologies are cleverly presented through grammatical voices, modifiers and imagery.

### **1. Introduction**

Since 1999, the judiciary in Nigeria has witnessed a degree of vibrancy it has not previously enjoyed. It has been the only arm of government that has lived up to the expectation of the majority of the citizens, and it has been enjoying the respect of the masses. Democracy still exists in the nation, thanks to the judiciary. The judiciary has shown some level of independence, as some of its rulings and actions have not favoured the executive, especially at the federal level, and to a great extent, the Nigerian judiciary has resisted undue interference from the political class.

Perhaps the nation would have been thrown into another round of avoidable chaos if not for the confidence most of the politicians have in the judiciary. It is this confidence that made aggrieved politicians decide to challenge the outcome of the April 2007 elections at various election petition tribunals, rather than protesting in the streets or taking arms, and taking the law into their own hands. Those elections have been adjudged the worst in the history of elections in the country, which were allegedly marred by widespread irregularities and rigging. The Peoples' Democratic Party (PDP) won landside victory at all levels. This was seen by the opposition, who see the nation drifting towards one-party state, as unhealthy for the nation's democracy. The opposition claimed that many Nigerians were disenfranchised and the results were determined before the elections.

As at February 2008, not less than five out of the thirty-six governors have had their elections nullified by Election Petition Tribunals; most of those governors are members of the PDP. Many senators and members of federal and state houses have also lost their seats. Bye-elections have been ordered in many states and constituencies. While some people are glad that justice is being done, some see the various rulings as unhealthy for the nation's democracy.

Another side of the story is that some members of the opposition have accused some Tribunals of being partisan, most especially those in the Southwestern geo-political zone, comprising Oyo, Osun, Ogun, Ondo, Ekiti, and Lagos States. In fact, the Action Congress (AC), a leading opposition party, has several times asked for the sack of the Tribunals in Osun and Ekiti States, alleging partisanship. Worse hit by the criticisms of the AC and other legal luminaries is the Osun State Election Petition Tribunal. The AC and some other critics have condemned unequivocally the ruling of the Tribunal on the application of the AC governorship candidate to have a foreign forensic expert as one of his witnesses. This is a ruling that has

engendered comments locally and internationally. There are lots of intrigues involved in this issue. Some of them are examined in this paper, by viewing that particular ruling from the lens of Critical Discourse Analysis.

## **2. Critical Discourse Analysis (CDA)**

Governance is about power. In a democratic setting, there is separation of power among the three arms of government, the executive, legislature, and judiciary. The power which each wields could come through both coercion and consent, but the Constitution is explicit about the power of each arm. Generally, the legislature makes the law, the judiciary interprets it, while the executive implements it. Implementation may involve the use of coercion at times. For instance, in Nigeria, there have been cases where some governors had to be forced by the police to vacate office after a court has ordered it. In most cases, when a court orders the vacating of a governorship, the President orders the Inspector General of Police (IGP) to enforce the order. If the president does not do this, the IGP will not act. A ready example is the case of former Governor of Oyo State (Southwest Nigeria) Senator Rasheed Ladoja, who went to court to challenge his unlawful impeachment by the state house of assembly. Even after the Supreme Court had ruled that he should be reinstated, it took the person who replaced him, Chief Adebayo Alao-Akala, some days to vacate the seat. The then-President, Chief Olusegun Obasanjo, had to issue an order asking the IGP to enforce the order. If there were not such a presidential order, perhaps, Ladoja would not have been reinstated. Thus, the so called separation of power is not absolute.

CDA is an approach that studies the relationship that exists among language, ideology, and power. It is political in intent, viewing social practices and their linguistic realization as inseparable (Caldas-Coulthard and Coulthard, 1996: xi-xii). It is interested in defamiliarization

or consciousness-raising, interpreting a text by working on the members resources (MR) of the society that has produced it (Fowler 1996: 5, 11; Fairclough, 2001:9). Simply put, CDA seeks to understand the relationships that hold between ideas and the social conditions of possible existence (Fairclough 2002: 102).

Discourse (spoken or written) is a complex of three elements, namely social practice, discursal practice (text production, distribution, and consumption), and text (Fairclough 1995:74; 1996:71). This complex has ideology at its centre. CDA conceives ideology as the ways people order and justify their lives, that is, 'how they live and represent to themselves and their relationship to the conditions of their existence' (Belsey 1980: 42). CDA involves a people's worldview, 'a conception of the world that is implicitly manifest in art, in law, in economic activity and in the manifestations of individual and collective life (Gramsci 1971:328); it is tied to action and judged not by its truth value but by its social effects (Fairclough, 1995:76). The effect of ideology is felt most when it disguises itself. This is done when ideology is brought to discourse as the background assumptions employed by both the text producer and the text interpreter (Fairclough 2001:71).

Language and society have an internal and dialectical relationship, as language is part of society. Thus, linguistic phenomena are social phenomena of a special kind, just as social phenomena are (partly) linguistic phenomena (Fairclough 2001:19). In this connection, language serves as the primary domain of ideology; it is both a site of, and a stake in, struggles for power (van Dijk 1996:102; Fairclough 2001:12).

CDA analyses a text by focusing on what is in the textual and discourse type(s) that it draws upon. It examines the experiential, relational, and expressive values of words and grammatical features, and the interactional conventions used. All these are used as cues to

activate elements of interpreters'/analysts' MR; which participate in a dialectical relationship (Fairclough 2001:92-93,118).

### **3 Analysis**

#### **3.1 Background to the text**

This text in question is the ruling on the application of the Osun State gubernatorial candidate, Rauf Aregbesola, to bring a foreign forensic expert, Adrian Forty, as a witness in his petition against the victory of the PDP gubernatorial candidate in the state, Olagunsoye Oyinlola in the election that took place on Saturday, April 14, 2007.

In 1999 when Nigeria returned to democratic governance after about fifteen years of military rule, all the six states in the Southwest came under the control of the Alliance for Democracy (AD), while the president, who is also from this zone, was from the PDP. But in 2003, the PDP (self-acclaimed to be Africa's largest political party) took control of the Southwest, except Lagos State, which the AD still maintained. In the 2007 general elections, the status quo was still maintained, but Lagos came under the control of the AC, a party made up mainly of aggrieved members of the AD and the PDP.

In the politics of Nigeria, the Southwest occupies an important position. It was in this zone that a state of emergency was first declared during that First Republic. It is a volatile zone. In the 1960s, it was given the derogatory name, the Wild Wild West. At present, election petitions in the zone assume various dimensions. The AC wants to wrest power from the PDP in the state through legal means. This is why it has gone to the extent of contracting a foreign forensic expert to serve as a star witness. The ruling of the Tribunal against the AC is a serious setback to its petition, because the witness was seen as the final means of consolidating its case.

### 3.1 Presentation of the tribunal's Position

The present text is a discourse in which the five-member panel of judges seeks to arbitrate between two political forces and their ideologies on societal issues. Language serves as a tool to achieve this. The Tribunal carefully presents its ruling in such a way that a third party will see it as unbiased.

Structurally, the ruling has three main parts: the prayer of the applicant, the order of the Tribunal, and its final ruling. Of the three parts, the last is the shortest, comprising just a sentence. The bulk of the ruling is devoted to the second part. The Tribunal explains its various orders and seeks to justify them.

The first part of this ruling states clearly the genesis of the case:

On the 22<sup>nd</sup> day of May, 2007, on the application of the petitioners/ applicants, this tribunal granted an order directing the 4<sup>th</sup> and 5<sup>th</sup> respondents (Independent National Electoral Commission) to make available for inspection by the petitioners/applicants' counsel or their appointed agents all polling documents, ballot papers and other electoral materials in their custody which were used for the conduct of the Gubernatorial election in Osun State held on the 14<sup>th</sup> April, 2007, for the purpose of enabling the applicants to maintain their petition against the Respondents. The documents and/or materials to be inspected were as contained in the enrolled Order of the Tribunal dated the same day.

*The Guardian*, Friday February 29, 2008:68

In this extract, the Tribunal indicates that the applicant sought an order and it was granted. This is strategically placed at the opening of the text. The fact that the tribunal granted that all important order in the first place implicates that it is ready to give fair hearing to the applicant. The order involves releasing all materials related to the election to the petitioner. This is to ensure that whatever irregularities INEC might have committed could be discovered and substantiated by the petitioner.

There are two other reliefs sought by the petitioner:

1. Leave and order of this Honourable Tribunal permitting the petitioner's forensic experts to inspect by way of machine/electronic scanning, all ballot papers which were

used for the conduct of the Governorship election in Osun State on April 14, 2007 in the following Local Government Areas: Atakumosa West Local Government Area, Ayedaade Local Government Area,, Boluwaduro Local Government Area, Boripe Local Government Area, Ede North Local Government Area, Ife Central Local Government Area, Ife East Local Government Area, Ife South Local Government Area, Isokan Local Government Area, Odo Otin Local Government and Ola-Oluwa Local Government Area.

2. Leave and order of this Tribunal permitting handwriting and forensic experts to conduct an inspection of forms EC8A, EC8B, EC8C, EC8D, EC8E and all forms and materials used for the conduct of the Governorship election in Osun State on April 14, 2007 in the aforesaid Local Governments.

*The Guardian*, Friday February 29, 2008:68

One may want to ask why the Tribunal went to the extent of listing all the local governments which the applicants wanted to investigate. Couldn't they have just indicated the twelve local government areas? Well, that is a choice but the Tribunal did not choose it. This was done to ensure a perception of clarity and plainness. They seem to want to prove to their audience that they have satisfied all the requests of the applicants, and therefore have treated them fairly. The local governments listed above are the strongholds of the PDP; the incumbent Governor is from Odo Otin Local Government Area. About half of the local government areas in the state are listed above — there are thirty local government areas in Osun State. (Some of the forms listed in the second leave and order sought are official forms of INEC; the results of the election are recorded in some of these forms.)

The Tribunal granted the requests:

The application was argued and granted on the 14<sup>th</sup> of August, 2007...

*The Guardian*, Friday, February 29, 2008:68

The Tribunal feels obliged to grant any prayer that is properly filed and argued. After presenting the orders sought and granted, it goes to the contentious prayers sought by the applicant. The Applicants filed a motion on notice praying for five things crucial to their case:

1. An Order granting leave to Petitioners/Applicants to bring and move the application outside pre-hearing session of the tribunal.

2. An Order granting the Petitioners an extension of time within which to seek leave to file, serve and rely upon in the prosecution of this petition additional documents and witness statement on oath of Adrian Forty who has been listed as a witness for the Petitioners as at the time of presentation of the petition.
3. An Order granting the Petitioners an extension of time within which to file and serve written statement on oath of Adrian Forty who has been listed as a witness for the Petitioners as at the time of filling the petition.
4. An Order deeming as having been properly filed and served the witness statement on oath of Adrian Forty and the accompanying documents referred to in the affidavit in support of this application and separately filed along herewith the necessarily fee having been paid.
5. And for such order or further orders as this Tribunal may deem fit in the circumstance of this application.

*The Guardian*, Friday, February 29, 2008:68

The Tribunal devotes so much time and space arguing its position. It makes recourse to precedents, such as:

In the case of WILLIAMS VS HOPE RISING VOLUNTARY SOCIETY [1982] ALL NLR [VOL.1]] the Supreme Court [per Idigbe JSC] stated that;

When a court is called upon to make an order for extension of time within which to do certain things [i.e. extension of time prescribed by the rules of courts for taking certain procedural steps] the court ought to always bear in mind that Rules of Court must prime facie be obeyed...'

*The Guardian*, Friday, February 29, 2008:68

He relied on paragraph 43 of the first schedule to the Electoral Act., 2006 and the unreported case of ATIKU VS YAR'ADUA suit NO. AC /228/2007 delivered by the supreme court on the 25<sup>th</sup> of January, 2008.

*The Guardian*, Friday, February 29, 2008:68

In reaction, the learned Senior Counsel for the 1<sup>st</sup> - 3<sup>rd</sup> respondents submitted that the Tribunal should not entertain the application now in the course of hearing the petition and that it should have been done at the pre-hearing stage. He relied on the unreported case of BUHARI VS INEC. CA/A/E/P/2/07 delivered on the 19<sup>th</sup> of November, 2007, by the full panel of the Court of Appeals where the court stated in respect of an application akin to the one at hand as relates to the witnesses who carried out inspection of documents.

I have listened to the argument of counsel on all sides and it is my view that what is sought to be tendered as deposition of witnesses are actually analysis of election



documents with opinion and legal conclusions of witnesses. They are not the makers of the documents and have no legal competence on them.

*The Guardian*, Friday, February 29 2008:68

In the Nigerian judiciary, judicial precedent follows the doctrine of *stare decisis* (*et quieta movare*), which the Supreme Court has redefined as ‘stand by decisions and the decisions of predecessors, however wrong they are and whatever injustice they inflict’ (Asein 1998:67). This doctrine operates differently in different courts. The Supreme Court, the highest in the judicial hierarchy, is not bound by the decision of any other court: however, it is loosely bound by its own decision. Generally a lower court is bound by the decision of the higher court: a lower court decision could also be used by a higher court but such a decision is not binding but persuasive. A court may depart from its earlier decision if such a decision is given *per incuriam* (given in error). If there are conflicting precedents from a court of equal standing, a lower court is free to choose any one it pleases; it may also choose the latest decision even if it was given *per incuriam*. Under the principle of *stare decisis*, *per incuriam* decisions are still binding on subordinate courts. A court is, however, free to depart from its own past decisions if made *per incuriam*, or wrong in law, or against the stream of authorities, or in the interest of justice (Obilade, 1979:115).

In Nigerian law, the Election Petition Tribunal is like a High Court. This means that the decision of the Supreme Court and the Courts of Appeal are binding on it. It is, however, not bound by the decisions of another Tribunal or High Court, because they are courts of coordinate jurisdiction. In the ruling under consideration, all the precedents cited are from the Supreme Court. Failure to follow these precedents is “an abominable act” (Asein 1998:83). The judges are aware that the Court of Appeal could overrule any decision contrary to the cited precedents.

In the Nigerian legal system precedent plays important roles. If the ruling in a particular case, even if it is in the remote past, took a particular pattern, subsequent cases follow that pattern. This is why people worry when a ruling seems to go against the popular wish. Precedent is so powerful in the Nigerian judiciary that even those who are not legal practitioners assume that similar cases must have similar rulings. A typical example in the current political dispensation in the country is the ruling of the appellate court in the case between Dr. Chris Ngige (of the PDP) and Mr. Peter Obi (of the All Progressive Grand Alliance). Both were gubernatorial candidates in Anambra State, Southeast Nigeria, in the 2003 General Elections. The INEC declared Dr. Chris Ngige the winner of that election and he was sworn in. But Mr. Peter Obi challenged his victory at the Election Petition Tribunal in the state and won. The case went to the Court of Appeal, the final court in gubernatorial election cases at the state level. That Court upheld the Tribunal's verdict, which declared Mr. Peter Obi the winner. He was sworn in, but this was about three years after the election, so Mr. Peter Obi went to the Supreme Court of Nigeria to seek extension of his tenure; that is, he should complete a four-year term, the mandate which the people of the state gave him. He won that case. He is currently the governor of the state. In the 2007 General Elections, there was gubernatorial election in the state. But the Supreme Court ruled that the governorship seat was not vacant. Therefore, that 2007 gubernatorial election in the state was null and void. It is in 2010 that a fresh gubernatorial election shall be conducted in the state. Because of this, some other governors whose mandates were recovered through the Courts of Appeal have assumed that their tenures began on the day they were sworn in. For example, Governor Olusegun Mimiko of Ondo State (Southwest Nigeria) will start counting his four years from Tuesday, February 24, 2009, instead of May 29, 2007. They no longer bother to go to court to seek extensions, because the precedent has been

established by the Supreme Court. This implies that the gubernatorial election will not take place in all the states of the federation in 2011.

In the present case, the judges cited these cases to justify their refusal to allow the counsel to Aregbesola to present a star witness, Adrian Forty. The judges did not want to allow what other judges disallowed. They conclude as follows:

Our reaction is to refer to the case of BUHARI VS YUSUF [2003] 14 NWLR [Part 841] 446 at 478 where UWAIFO, JSC in his lead judgment stated as follows:

“The jurisdiction of an Election Tribunal is of special nature such that a slight defect in complying with procedural steps which otherwise could be cured or waived in other proceedings could result in fatal consequences for the petitioner...”

*The Guardian*, Friday, February 29, 2008:69

They do not want to change the status quo (i.e., the precedents) as regards an additional witness not initially listed among the witnesses.

The ruling is the last expression in the discourse:

On the whole, the application fails in its entirety and we accordingly dismiss it.

*The Guardian*, February 29, 2008:69

This takes the form of a compound sentence. The first clause states the resolution of the application: failure; the second main clause states the ruling of the Tribunal, pursuant from the state of the application: dismissal. This presupposes that any application that fails does not deserve favour and should be thrown away like an unwanted child.

### **3.2 Representation of objects**

There is always an attempt by the judiciary to see itself as a unique institution, one populated by few privileged individuals who stand above others in knowledge. This is evident in the modifiers used for objects (living and non- living) related to it. This ruling is replete with qualifiers such as the following:

this *Honourable* Tribunal

The *learned* Senior Advocate

the learned Senior Counsel  
 the Hon. Attorney General  
 learned counsel

*The Guardian*, Friday 29, 2008:68-69

Lawyers often refer to one another as *learned colleagues*. Some of them claim others are only *educated*, while only they are *learned*. To be *educated* means to have had a high standard of education, while to be *learned* is to show and express deep knowledge, among other meanings. The judiciary, thus, indicate that they occupy a pedestal that even a professor or specialist in another field does not occupy, except he be a lawyer. This is probably because they handle cases involving any human discipline, and seek to acquaint themselves with the technicalities of such disciplines. Some people see this self-reference as sheer arrogance. The second modifier used above, *Honorable*, means deserving honour. Politicians, too, use this. But the question is how many attorneys or politicians actually deserve honour? Is honour earned or demanded? What are the qualities of one who deserves honour? Do we not have corrupt attorneys and judges? Do we not have legal practitioners who pervert justice? Since the present Hon. Attorney General of the Federation, Michael Aondoaka SAN, began office, there have been various criticisms of his coldness to the efforts of the Economic and Financial Crimes Commission (EFCC) to combat corruption, although he has severally claimed that he was being misinterpreted. Some of the actions and inactions of many people addressed as honourable make the modifier a mere and meaningless expression in such contexts.

Nonetheless, Nigeria is a title-conscious society. A single person may be addressed as His Excellency Otunba Dr. ...., Evangelist Dr. Pastor Prophet. ...., Alhaja Chief Dr Mrs. ...., and so on. Any moderator or master of ceremonies who wittingly or unwittingly refuses to mention all the titles (appellations) may incur the instant or delayed wrath of some people. Those who wish to be addressed in this way do so as a way of demonstrating their power and status in the society.

It is a way of distinguishing themselves from those who have not been so honoured by the society. This is why some “buy” chieftaincy titles and honorary doctorate degrees.

The title Honourable carries with it prestige and power. Not anybody can be called honourable in the society. Among the three tiers of government in Nigeria, the executive, the judiciary, and the legislature, the term is predominantly used by the legislature to refer to the legislators at the three levels of government: local, state and federal. The judiciary uses it to refer to some lawyers and judges. But a new dimension has been added to the use of this title recently. In February, 2009, the members of the Oyo State House of Assembly (Southwest Nigeria) openly criticized the use of the title by those who are not members of parliament, including councilors (who are members of the local government legislative arm). They also criticized commissioners for using the title Honourable, contending that it is their exclusive preserve. This shows that in Nigerian politics, the title Honourable is not just an appellation. It is reserved for only members of the political class who feel that they deserve some honour, by virtue of making laws which the entire society lives by, even if they do not have the constitutional power to interpret and/or execute the law.

The use of modifiers in addressing objects in this text shows a clear disregard for the intelligence and ability of the ‘others’, as seen in some of the expressions below:

RAUF ADESOJI AREGBESOLA & 2 ORS...

PETITIONERS/APPLICANTS VS

OLAGUNSOYE OYINLOLA & ORS...

RESPONDENTS

Adrian Forty

..The case of ATIKU VS YAR'DUA

*The Guardian*, Friday 29, 2008:68

No title was used with any of the parties mentioned above. Aregbesola was a former commissioner in Lagos State (Southwest Nigeria). Even if no title is added to his name,

the generic Mr. could have been added. Oyinlola is the incumbent Governor of Osun State; Adrian Forty is a foreign forensic expert; Atiku is a former vice president of the nation; while Yar'Adua is the incumbent president of the nation. In the same text, at the end of the ruling, the names of all the five judges in the panel are written with the title 'HON. JUSTICE'. This is a deliberate attempt to pitch the tent of the judiciary in a special terrain inhabited by only a special sort of people. More will be said about this ideological disposition in section 3.5.

### 3.3 Use of grammatical voice

The active voice is used for two main purposes: one, to refer to the actions of others, including counsels:

The learned Senior Advocate relied upon and adopted the process filed.

Source: *The Guardian*, Friday February 29, 2008:68.

The petitioners have canvassed that not to grant the application will deprive them of access to court and the right to be heard.

*The Guardian*, Friday February 29, 2008:69

Here the judges want to clearly state who did what. At times, when they want to refer to some of the steps they have taken, they use the active voice.

We have read the processes filed, considered the written submission inclusive the oral elucidations by counsel thereon. We distil one issue for the determination of the Tribunal as follows.

*The Guardian*, Friday February 29, 2008:69

But generally, pronouncements of the Tribunal are rendered in the passive voice:

All counsel Applications were afforded the opportunity to make oral elucidation on their processes.

... a total of Eighty [80] witnesses have been taken and cross-examined

*The Guardian*, Friday, February 29, 2008:68

The passive is a means of distancing the judicial officers; it is not their personalities that have given the judgment; it is their offices. The power they have to adjudicate is got through the Nigerian constitution. The passive is a way of letting the general public see the law at work and

not the judges. Even when the active voice is used, as seen in the final declaration, the collective *we* is used, which stands for all members of the panel, the judiciary, and the Nigerian constitution. The whole citizenry is aware of the fact that the judges represent the judiciary. This is clear in expressions like: “It is victory for democracy”, “it is victory for the judiciary”, “the judiciary has proven that it is the last hope of the masses”, and so on, which greet judgments that align with public opinion; and in such expressions as “the judiciary has betrayed the masses,” “this is rape of democracy,” and “the judiciary has betrayed the nation,” which are uttered when judgments are contrary to general expectations. In most cases, Nigerians do not focus on the individual judges concerned when making such comments but on the judiciary.

All the passive constructions used have their agents omitted. This is a deliberate way of obfuscating the agent. Agents are apparently assumed to be understood from the context. However, in the final declaration, they use the active voice with the non-inclusive *we* as subject:

On the whole, the application fails in its entirety and we accordingly dismiss it.

*The Guardian*, Friday, February 29, 2008:69

### **3.4 Presentation of judiciary ideologies**

This text embodies the basic ideologies of the judiciary, which are woven into the ruling. The overriding ideology of the text is the supremacy of the judiciary. This is predicated on the fact that the citizens see the judiciary as the hope of the masses. Whenever there is conflict among the citizens and among the arms and tiers of government in the country, the judiciary has always resolved it. The decision of the court must be obeyed by all and sundry, including the executive. Any president that fails to execute the decision of any court without challenging it in a higher court could be charged for contempt of law. Failure to uphold the constitution by the president is an impeachable offence. Even if an election has been rigged by the ruling party, the judiciary has the power to overturn that declaration. And the executive must obey the ruling. An interesting case

is the impeachment of Senator Rasheed Adewolu Ladoja (former Governor of Oyo State, Southwest Nigeria) in January 2006 by the State's House of Assembly, and the subsequent swearing-in of his deputy, Otunba Adebayo Alao-Akala. Ladoja challenged his unlawful impeachment to the Supreme Court level and won, so the President, Chief Olusegun Obasanjo, had no other option than to allow him to return to office, despite the fact that he did not favour that decision.

The judges in the ruling under consideration tacitly sustain the supremacy of the judiciary. They are the only ones that could allow or disallow a witness to appear in any case. A witness has evidence that could make the case tilt toward either the applicant or the respondent, but they may choose not to permit the witness to testify. This is what they have done in this case. Adrian Forty is a star witness, whom the Applicant felt had evidence that could prove its claims. They refused to allow him to testify because the Applicant disobeyed the order of the Tribunal. This is an unpardonable offence, as far as the judiciary is concerned. Nobody and no arm or level of government is constitutionally allowed to flout the court's orders.

This is the order:

3. IT IS FURTHER ORDERED that the following persons shall be at liberty to attend the said inspection at the Independent National Electoral Commission's office...

*The Guardian*, Friday, February 29, 2008:68

But according to the Tribunal, the Applicant did not comply with the order:

From the affidavit of the Petitioners and the proposed witness statement the inspection/examination of the documents were done in the United Kingdom, far outside the confines of the order of the Tribunal.

The Petitioners should not expect us to wink at such a conduct which is in breach of the order.

*The Guardian*, Friday, February 29, 2008:69

The judges see themselves as custodians and enforcers of strict obedience. Anyone who breaches an order will pay for it by having its request not granted. Let us look at the order more carefully:



The Applicants wanted to carry out forensic examination and they were ordered to do so *in* INEC's office. There is no INEC office in the United Kingdom. Could it be that the Applicants breached the Order deliberately, that they did not interpret it correctly, or that they considered the cost of bringing the expert to Nigeria? Whatever the reason, the Tribunal is not ready to display any mercy by winking at such disobedience because their orders must be obeyed strictly, as they state:

We can therefore, not exercise our discretion in their favour as orders of court are meant to be complied with strictly and not substantially.

*The Guardian*, Friday, February 29, 2008:69

The judges, perhaps, sensed manipulation. The analysis was not done in Nigeria, but in the UK. The contention of the Tribunal is that granting such a request will amount to encouraging deliberate disobedience. If Adrian Forty gives any evidence, it could affect the respondent and the judges might be seen as biased umpires, contrary to the ethics of their profession. The judges drew an important difference between strict and substantial compliance with court orders. Thus the judges create the impression that, at all costs, their order must be obeyed. Perhaps, the case of the Applicants would not have been dismissed if they had obeyed the order of the Tribunal.

The text stresses the need for whoever approaches the Tribunal to come with "clean hands":

The learned counsel for the 4<sup>th</sup> -1365<sup>th</sup> Respondents in reply submitted that the petitioners have not come to equity with clean hands and therefore should not be indulged.

*The Guardian*, Friday, February 29, 2008:68

Every application to the court is an invocation of equitable principles...It follows therefore that every applicant must come with clean hands otherwise he disqualifies himself from earning the court's favour.

*The Guardian*, Friday, February 29, 2008:69

The ruling gives some idea of what it means to come with clean hands:

It was contented by counsel for the 4<sup>th</sup>-1365<sup>th</sup> Respondents that the Petitioners had not approached the Tribunal with clean hands to seek equity on the basis that the affidavit in support of the application told lie about the presence of the deponent during inspection of documents...

*The Guardian*, Friday, February 29, 2008:69

It appears that the judges are religious. They want, it seems, to rid the society of uncleanliness; it is against the interests of the society to seek equity without clean hands (see Psalms 24: 4). They see any court application as invoking equity to action, and petitioners must be clean. The expression *clean hands* is thus symbolic. The judiciary sanitizes the system. In Nigeria, the citizens have much respect for the judiciary, especially in the present dispensation. This was the reason that, despite the call by some notable politicians that people protest the General Elections of 2007, which was described by many local and international observers as characterized by rigging on a massive scale, Nigerians did not heed that call. Many Nigerians prefer the judiciary deciding who wins and who loses to using violence and protest, which are unconstitutional means, to get what they want. To come with clean hands presupposes coming with genuine evidence, and to come in full obedience. Any petitioner who does otherwise “disqualifies himself from earning the court’s favour” (*The Guardian*, Friday, February 29, 2008:69). Aregbesola disobeyed the court’s order by carrying out the analysis in the UK (this has soiled his hands); therefore he is refused his request.

Thus, the court is also like Sango, the Yoruba god of thunder, who punishes any unclean person whenever he is evoked. This tallies with the symbol of justice: a blind woman holding a sword on one hand and a scale on the other hand. She uses the sword to strike those who make unclean application, to purge the society of such an element.

In order to show that they are learned, the judges educate their audience in the course of the ruling. The issues they expatiate relate to their institution and their expectations from the society:

There is a conflict of affidavit on that point. The general law is that it should be resolved by calling oral evidence. However, where there is a document which might help the court to resolve the conflict, the need to call oral evidence does not arise as the court will fall back on the document to resolve the conflict. See SEVEN UP BOTTLING COMPANY PLC VS L.S.I.R.V [2000] 3 NWLR [Part 650] 565 at 615E; BAWA VS FIPHENASE [2007]4 NWLR [Part 1024] 251 at 251-268 H-A.

*The Guardian*, Friday, February 29, 2008:69

This exposition on the tenets of the judiciary states what to do when there is conflict of affidavits. It is invoked to show that the law profession is principle-guided and caters adequately for whatever situation may arise in the course of advocating and adjudicating.

#### **4. Conclusion**

Before arriving at a final decision, many steps are involved. This may be the reason for the long preamble in court rulings. The judges will want the layman to understand how they have arrived at their decision. This task, at times, involves having to lecture the parties concerned and other interested parties about how they work through the evidences and the arguments of counsel. What some people may overlook, the judge will not want to ignore, because of the consequences (*stare decisis*) of such actions on the parties involved and future cases.

The discourse constituted by the published ruling reveals the ideologies of that institution, presenting it as a unique profession which warrants honour. In the text, the judges cleverly underscore the supremacy of the judicial arm of government. Its orders must be obeyed strictly not merely substantially. Thus the judiciary stresses its independence and autonomy.

It seems that in court rulings the judges strive to prove beyond reasonable question that they are not biased. This is very crucial to their profession, since once the counsels or the citizens lose confidence in them, they can seek to transfer their cases from them or even petition the

National Judicial Council. The judges are, therefore, in a constant struggle to ensure equity, maintain the ethics of their profession, and protect their integrity.

The judges are greatly influenced by the socio-political terrain in which they operate; they therefore pay great attention to detail. They execute their powers to the fullest, particularly on any issue relating to procedural tenets. They ensure that they are guided and guarded by the provisions of the constitution and foreground their ideology in their rulings.

This text shows that the judges adhered strictly to the doctrine of *stare decisis*. They hinged their ruling on the precedent set by the Supreme Court of Nigeria, that an Election Tribunal must comply with definite procedural steps to avoid fatal consequences. In sum, the judges present the Tribunal as an independent and autonomous, unbiased umpire and a sanitizer of the society.

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