

THE CHALLENGES AND PROSPECTS OF ADVOCACY IN NIGERIA.

BY

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INTRODUCTION

I accept pleasure and without any reservation the invitation of the Editors to contribute this articles in honour of a man of distinction. That I decided to write on Advocacy is an acknowledgment that the object of this collection of essays is an outstanding Advocate. He is an advocate per excellence and is also the father of many advocates.

An advocate is the most misunderstood professional. He is the envy of many and scorn of others. It is therefore necessary to attempt a discourse on his duties, obligations, rights, challenges, expectations and prospect. This is what I have attempted in this essay.

It is apposite to attempt a definition of who an advocate is as it conjures in the mind of an ordinary person as that who has the oratory power to persuade eloquently and is blessed with “sugar coated” mouth. This is rather pedestrian as an advocate is supposed to be a hardworking and industrious person with an organized mind as well as that person with an ability to understand human nature.

According to John Burke in his law Dictionary¹, an advocate is one who pleads the cause of another in a judicial tribunal, barristers or solicitors.

Elizabeth A. Martin in her concise Dictionary of law defines an advocate as the one who argues a case for a client in court. Advocacy as seen by Chief Richard Akinjide SAN² is as follows:

Involves telling a story in a systematic fashion. It must be cogent and compelling; over use of particular words or phrase have a deadening effect. Instead of the court being impressed by the key evidence and submission, the words or phrases repeated would be ringing on the ears of the judge. It is often helpful to mark out the essentials in your brief with a highlighter pen. The best presentations are often notable for their clarity and simplicity I am not suggesting that advocacy should be a performing art. It is party science and party art. A bit of each.”

In some jurisdictions a distinction is drawn between a barrister and solicitor in that it is only the barrister that can physically appear before a court to argue a case, while the solicitor

will take the brief from the client. In Nigerian, as soon as one is qualified to practice law, he is a barrister and solicitor of the supreme courts of Nigeria and thus qualifies to argue a case in any of the courts of the land.

While some people see an advocate in the positive light of assisting a client in redeeming his or her rights by his powers of persuasion and eloquence and thus see legal practice as a divine profession to save executive lawlessness, others see these attributes of an advocate in a client are murderers and cut throats, highway robbers and burglars and draw home the point.

Swift in Gulliver's Travels referred to the Bar to which all advocates belongs as a society of men bred up from their youth in the art of that black is white according as they are paid.

A story was told of a shipwreck on a shark-infected sea. There was a lawyer among the crew. Everyone but the lawyer was afraid to swim ashore. The lawyer did swim ashore the fact being that when the sharks saw him, they formed a guard of honour as a mark of professional courtesy. They had seen a fellow shark. It means in some quarters, advocates are regarded as sharks.

It is equally the belief of some people that lawyers make money out of trouble and plenty trouble out of money.

Be that as it may, it is pertinent to reiterate that as an advocate, one is trained in the best of tradition to be honourable, honest and reliable in all fields of endeavour one may find himself. An advocate has a whole set of a subject of a creed of professional ethics which ought to guide his approach, his conduct, his candour and the totality of his professional life.

An advocate involved in the prosecution and defence of cases has a duty to perform within the best of the traditions at the bar to the glory of God and service to humanity.

Three different types of advocate have been identified by chief R. O. A. Akinjide SAN. City practitioner, high street practitioners and country practitioners all of them he define as.

The city practitioners are the super elites of the profession. To this class, nothing but the best is acceptable. This class wants to be comparable to their counterparts in England, France, Germany and USA. They update their knowledge on regular basis by attending international law conferences and operate within an up to date well-stocked law library. They are very ambitious, innovative and are determined to succeed. The high street advocate is midway between the city and country practitioners. He is competent but not overly ambitious. His law library is average. He is pleased with himself. The country practitioner is happy in his chosen

world; he is satisfied with his bread and butter law practice.

ROLES/DUTIES OF THE ADVOCATE

The advocate, by the position it has pleased the creator to put him, is expected to perform some roles, which are as varied, the same notwithstanding the chosen aspect of the practice one may wish to be involved in.

DUTY TO THE SOCIETY

An advocate is supposed to play the role of the gauge or barometer of the society, to act as the watchdog to ensure that the fundamental rights of the citizens may not be capable of protecting himself from the oppression of the power that be. An advocate must ensure that there is justice, equity and fairness within the system he lives, he does this by being the champion of all good causes, by using his knowledge of the law to defend the defenceless and by continuously fighting to ensure that the society is changed for the better.

Sir Adetokunbo Ademola CJF at the first every Annual General Conference of the Nigeria Bar Association put this position in proper perspectives when he said:

“Now that you members of the Nigeria Bar Association have for the first time met in conclave, it is not surprising that the minds of many of you should turn towards the future of

this country ... by your action and by your ingenuity, the Bar can certainly wield a great influence shaping the future of this great country. The greatness of any country is with the legal system. I am sure the minds of you member of the Bar turn toward the stability of the country and its legal system.... And I need hardly remind you that your role is that of the watchdog of the nation... you have a first duty to serve your country...”

It behoves an advocate to deny himself for the good of the society in which he belongs as well as serve as a defender of the cause of the defenceless. An advocate in this regard is depicted by the stance of Eskimo, a noble advocate who when in 1772 prosecution was brought against tom Paine because he published a book titled “The rights of man” which brief was sent to Erskine to defined. The then Prince of Wales to whom Erskine was legal adviser viewed Erskine’s acceptance of the brief with disfavour and cancelled Erskine’s retainer. Erskine was not perturbed and issued a statement that:

“From the moment that any advocate can be permitted to say that he will not stand between the crown and subject arraigned in the court where he daily sits to practice. From that moment the liberties of England are at an end”

DUTY TO THE COURT

An advocate has a very high duty to the court where he practices and this role is far more important than the one to his client. An advocate is first a minister in the temple of justice before being a counsel to his client.

The rules of professional Ethics⁵ enjoined thus:

It is the duty of the legal practitioner to maintain towards the court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance”.

Rule 3(a) equally provides that:

“During the trial, the legal practitioner should always display a dignified and respectful attitude towards the judge presiding not for the sake of his person but for the maintenance of respect for and confidence in the judicial office.

An advocate has a duty to be honest and respectful as well as ensure that the authority of the court is not in anyway undermined by the litigant who is his client. He should at all times assist the court to ensure that justice is done in the case and should not mislead the court to give a wrong decision.

This duty has been put across succinctly in the case of MAGNUSSON KOIKI⁶ where it was held:

The advocate as a minister in the temple of justice owes both their clients and

the court a duty albeit a professional duty to assist the court in the course of their advocate. They should also make available to the court their prolific legal expertise”.

On this point the case of MEEK FLEMING⁷ is also important. This was a judgment that marred and eventually ruined the practice of a brilliant and top flying advocate Victor Durand QC. The story was that Victor Durand was briefed to defend before a judge and jury, a case of assault and wrongful imprisonment brought against the Metropolitan Police. Chief Inspector Fleming was central in the case and key witness. At the time the writ was issued, Fleming was a Chief Inspector but at the time of trial, he had been demoted a disciplinary board to Station Sergeant for being party to an arrangement to practice a deception on a court of law in the course of his duty as a senior Police Officer. That was known to the defence assumed full responsibility was taken not to make known to the court.

Under cross – examination Fleming was asked:

“Q” You are chief Inspector and you have been in the force, you told us since 1938”

“A. Yes, that is true”

That answer was a lie, victor Durand did not correct this at the trial Victor Durand paid dearly for deliberately misleading the court with his practise.

DUTY TO THE PROFESSION

Part of the duties imposed on an advocate is to ensure that the integrity, nobility and status of the legal profession are at all times maintained and protected. Since this is the only profession we have posterity will not forgive us if we do not keep the good virtues intact.

Rule 21 has enjoined all advocates to uphold the honour of the profession as it provides inter alia:-

Lawyers should expose without fear or favour before the proper tribunals corrupt or dishonest conduct of the profession. And should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trail of a cause in which perjury has been committed owes it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities, the lawyer should aid in guarding the Bar against the admission to the profession of candidates who are unsuitable by reason of their moral character or insufficient qualification. The lawyer should strive at all times not only to uphold the honour and to maintain the dignity of the profession but also to improve the law and the administration of justice”⁸

In leaves much to be desired to discover these days, some advocates who are engaged in fraudulent practices in the bid to make ends meet. There are reports in the

dailies frequently indicating advocate who are arraigned for Advanced Fee Fraud (419) and other despicable offences.

It seems the Disciplinary committee of the Bar has to get itself overhauled to ensure that the trend is nipped in the bud.

Another interesting issue in this area is the encouragement that some colleagues give to touts in the practices of law. Rule 37 pointedly discourages this idea by providing:

“no lawyer shall permit his professional services, or his name to be used in aid of or to make possible, the unauthorized practice of law by any lay agency, personal or corporate”

It is disheartening to note that this rule is obeyed more in the breach than in compliance and this is not best for the profession. Some colleagues will encourage their clerks, secretaries etc to register as practitioners at the corporate Affairs commission, Abuja. The same is equally true of practitioners who will encourage non lawyers to draft agreement to which they will append their signatures for a paltry sum. It must be known that these attitudes will naturally affect the status of the profession in the eyes of the ordinary people.

DUTY TO CLIENTS

The basis of one’s existence as an advocate is the brief of the client whom one is representing. It is therefore important that the advocate should discharge his to him diligently,

efficiently, reasonably, effectively and on the whole courageously and fearlessly.

In ordinary parlance, he who pays the piper dictates the tune and to an extent it is applicable with regard to the advocate and his client but this should have a limit since the client does not possess the technical know-how of the job. The advocate has a duty to keep confidence of his client in accordance with rule 26 which states⁹

(a) It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment and it extends as well to his employees, and none of them should accept employment which involves or may involve the disclosure or use of these confidences either for the private advantage of the lawyer or his employees or to the disadvantages of the client without the client's knowledge and consent and even though there are other available source of his full duty to his former new client.

b. If a lawyer is accused by his client he is not precluded from disclosing the trust in respect if the accusation. The announced intention of a client to commit a crime is not included within the confidence which he is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened.

In rationalizing the need to share the confidence of the client, advocate must believe his client as espoused by learned scholars that:

“A thesis has been propounded on the other side more extravagantly and certainly more impossible of fulfilment that is that an advocate is bound to convince himself by something like an original investigation that his client is on the right before he undertakes the duty of acting for him. I think such a contention is ridiculous and impossible of performance and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him he would be usurping by which I mean the judicial function whether that function is performed by a single man or by the composite arrangement of a judge and jury which finds favour with us very little experience of course of justice would convince anyone that improbable stories are very often true notwithstanding their improbability.

It is imperative for an advocate to be diligent in the prosecution of the case of his client in view of the authority of the counsel in the conduct of the case which authority is all embracing as indicated in the judgement delivered by Eso JSC (as then was) in the case of ADEWUMI v PLASTEX LTD when he said.

Once a counsel appears in court in a case and announces his appearance the court assume he has the authority of his client for the conduct

of his counsel. Indeed happily, that has never been the case. It is not for the court to start an enquired into his authority and the court never does... Apart from that and his accord with common sense apart from the profession he has full control over the conduct of the case.

DUTY TO COLLEAGUES

An advocate has a duty to his colleagues who are his learned friends and must not allow any sentiment with respect to the case he is handling to affect the camaraderie, the friendliness and the comradeship that naturally belongs to an advocate to be lost on him. Honourable Justice Eso admonished thus:

The lawyer could be cross while examining his learned friend's witnesses and why not after all, this examination is known as cross examination. But even then during the case and after, his friendliness with his learned friend continues.

Rule 16 of the professional Ethics has further expounded this duty as it provided inter-alia that:

a. Clients not lawyer are the litigants whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanours towards each other or towards suitors in the case.

b. A lawyer should adhere strictly to all express promises to and should adhere in good faith to all agreements implied by the circumstances or by local custom, when he knows the identity of a lawyer representing an opposing party he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to be avoided. In the trial of a cause it is unethical to allude to the personal history of the personal peculiarities and idiosyncrasies or cause delay and promote unseemly wrangling should also be carefully avoided.

Any advocate who indulges in sharp practice would soon discover that the tacit ostracism by his fellow members is too great a price to pay for any short lived advantage he might have gained by abusing the fraternity at the bar.

DUTY TO HIMSELF

An advocate has a duty to himself in ensuring that he presents himself in a respectable manner before the court, the client and the whole world. As an advocate, dressing is of utmost importance. He must be neat as this depicts his personality which creates a lasting impression in the mind of those meeting him for the first time.

It should be noted that in an advocate generally, who is saying what, is of importance

as much as what is being said. The personality and appearance of a lawyer is a reflection of the mental ability and stuff he is made of.

An advocate must exhibit seriousness in court and should always strive to convey the impression that he is in earnest and not just playing a part.

It does not do credit to an advocate to depict the mood of being engaged in a casual conversation in a club where little regard is paid to any serious issue. The court is a business place and to that extent, all efforts must be geared towards ensuring that nothing short of that is given to it. Hon. Justice Oputa¹² underscores this point when he said:

A good and ideal advocate should stand erect in court, a figure of perfect dignity and should speak with conviction and an air of seriousness..... He should know his case so well that he can present it without meandering through his file. Thus he will carry conviction. His case will appear alive and real”.

As a member of the noble profession, an advocate has a duty to observe what is called the “Cab-rank doctrine” which means that you cannot refuse a case for which you are properly briefed for which you are available and within your professional expertise. Advocates have been likened to cab drivers queuing in taxi-rank, he cannot refuse to carry a passenger when it is his turn simply

because he does not like him, his race, his colour, his religion, his sex, or his politics.

On the whole, an advocate must have a perfect carriage, strong character, amiable personality, good conduct and on the whole possess a good communication skill. He must be honest, upright, above corruption and stand by justice at all times.

PROBLEMS OF ADVOCATES

As seen earlier, the society has imposed a lot of duties on an advocate for which there is a corresponding right of walking take within the society in which he belongs.

NON AVAILABILITY OF BOOKS AND OTHER ACCESSORIES

Given the biting economic condition being witnessed in Nigeria, there is a dearth of practice books which is the stock in trade and tools of advocates. As admonished by CHIEF AKINJIDE SAN, a city practitioner has well stocked library alas, that is fastly becoming an impossibility in Nigeria especially for young advocates. The need for a moderate, befitting and well equipped library cannot be over emphasised but the situation in Nigeria now has posed a problem on the advocate as he has to run from pillar to post of meet the demands of his profession. The astronomical prices of books and other accessories used by the advocate due to the parlous state of our economy have contributed to this problem.

ILLITERACY

The advocate is faced with the task of convincing his clients and others about his roles in the society. Given the level of literacy in the Nigerian society, the work of the advocate is made more confounding because in presenting his case, he will have to use them as witness and this calls for thorough understanding of the personality of the people he is dealing with.

MILITARY RULE AND OUSTER CLAUSES

As it is agreed that military rule is an aberration, their intervention is a clog in the wheel of progress of the rule of law, justice and fair play with respect to the promulgation of decrees with ouster clauses. The decrees are designed to hamstring the courts to intervene in matters that are ordinarily justifiable.

This naturally will affect the smooth sail of the job of the advocate. The problem is even compounded by the promulgation of such decrees midstream when the case would have commenced and thus shatter the hopes and aspiration a counsel may have in the case have cause to argue elsewhere that:

“it is our contention that to insert ouster clauses in a written constitution is the highest disservice that can be done to a democratic government and a serious derogation from sections 8 and 10 of the

universal Declaration of Human Rights, 1948, which provide that it is an inalienable right of every human being to have access to the courts or judicial tribunals”.

The same position was canvassed by Chief Gani Fawehinmi ¹³ in a paper delivered in Ibadan when he enthused as follows:

“These ouster clause also breach section 7 of the African character on Human and peoples rights (Ratification and Enforcement) Act, 1983 No. 2 of 1983”

it cannot be gainsaid that ouster have constituted a nuisance to our judicial system such that the work of an advocate is made all the more difficult as his clients may be in a cauldron to which he himself as counsel may be rendered helpless and hopeless.

DISOBEDIENCE TO COURT ORDERS

As a corollary to the issue of ouster clauses, the job of an advocate is equally made difficult by the disobedience of courts orders on the part of government and other litigants, but more arduous if government is the other party.

This attitude has been variously condemned by the courts and it is gladdening to note that our courts have not shied away from taking a very firm and decisive position on the issue of disobedience of court orders.

In the case of GOVERNMENT OF LAGOS STATE V OJUKWU ¹⁴ Hon justice Kayode Eso declared as follows:

“I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act flouting the order of the court, the contempt of the court is by the executive. Under the constitution of the Federal Republic of Nigerian, 1979, the Executive, the legislative while it lasts and the judiciary are equal partners in the running of successful government... the organs wield those powers and one must never exist in sabotage of the other or else there is chaos. Indeed there will be no federal government. I think for one organ, and more especially the executive, which holds all the physical powers to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the constitution it is to uphold. Executive lawlessness tantamount to a deliberate violation of the constitution. When the Executive is the military government which blends both the Executive and legislature together and which permits the judiciary to co-exist with it in the administration of the country, then it is more serious than imagined”.

DIFFICULT PRINCIPALS OR JUNIORS

Since no advocate is an island unto himself. It is natural that an advocate will have to relate with colleagues in his office and in the course of the performance of his duties in the form of juniors, associates or principals.

If an advocate is the principal, then he may be faced with the problem of juniors who make avoidable mistakes which if care or proper care is not taken, may cost the advocate the case. The junior may be lazy not ready to learn or careless. As a junior in chamber, an advocate may equally be faced with problem of the principal who is naturally expected to provide experience and expertise. If these are lacking in the principal, this will rob in on the junior and may affect him for a long time in his practice.

PROSPECTS

For every duty there is a corresponding right and for hard handwork there is reward as this is a normal cause of events in any human endeavour.

If an advocate is hardworking, industrious, resourceful and lucky, he is bound to reap the fruits of his labour by way of fame, money and influence.

The advocate has the opportunity to rise to the peak of the profession by becoming a member of the inner bar and adorned with the respected silk gown. This attainment has its own

privileges which include sitting at the inner bar, mentioning his case out of turn, acknowledgement in any judicial function to mention a few.

The hardworking advocate equally has the rare opportunity of transforming to an opinion and leader in his community, people will respect him for his integrity, abler him for his handwork and identify with him as a successful and accomplished person

CONCLUSION

In concluding this paper it is apposite to call on all advocates to be determined and be dedicated to their chosen profession, practice the profession as it should be, religiously follow the rules and hold high the very lofty ideals of the founding fathers of the profession and embark on the raising of the standards of practice.

History is usually benevolent to those who move their country forward while it is cruel to the degenerate.

One can hardly do better in concluding a paper of this nature than to quote the immoral words of the epitome of international legal knowledge, the late **Judge Teslim Olawole Elias** when he declared:

“Never before in the long history of human history has law had to face a more challenging situation than that in contemporary Nigerian.

The prevailing social and economic forces call for a type of lawyer who is at once a social engineer and an analyst, a prince less and plumbers, capable of appreciating the values of existing institution and mores, and yet ready to make a dynamic contribution to the maintenance of a proper balance between the need for stability and the need for change. Law and society should engage in a continuous dialogue both as to the choice of means, and so to the end in view. In Nigeria law can fulfil the role of stimulating economic growth and social well being elevate the moral tone of the community, foster a spirit of unity among the diverse ethnic groups, an become a common law for the country under which no man is oppressed, it will have made an important contribution no man is oppressed, it will have made an important contribution in the world of ideas for the cause of human betterment”.