

## An Examination of Nigerian Courts and Legal Justice

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## ABSTRACT

This work examines the moral character of Nigerian courts which is symbolized in their judgments. The result of the cases examined show that the judgments of the courts have positivistic inclinations even in cases where such attitude could not have justifiably solved the problem. The judgments were inspired by the philosophy of Hobbes, Austin and Bentham which hold that law has to faction as an instrument of justice. The legal justice that came out of those judgments paid no respect to the abstract principles of natural or moral justice and consequently was bereft of fair play, equity and righteousness and rather became instrument of oppression, intimidation and deprivation. In the case examined in the course of this research, the courts simply demonstrated that a law or statute cannot be declared void because in its opinion, the laws or statutes violated fundamental rights and principles or because they would produce injustice. They were judgments delivered in the spirit of Austin which is that a law is a law no matter its consequences.

Keywords; Nigerian, courts, judgments, law and statute

The Case of Aliu Bello and 13 Others. v. Attorney General of Oyo State

On 30<sup>th</sup> October, 1980 the High Court sitting in Ibadan convicted Nasiru Bello of the offence of armed robbery punishable under section 1(2) (a) of the Armed Robbery and Firearms (special provision) Act 1970 and sentenced to death. On 12<sup>th</sup> November, 1980 within the time prescribed by law, Bello filed his notice of Appeal against his conviction and a copy of the notice was served on the Attorney of Oyo State [1, 2, 3]. But while the appeal was pending, the Attorney General recommended to the Governor the execution of Bello. Consequently, he was executed on 5<sup>th</sup> September 1981 [4, 5, 6]. When the Appeal came up for hearing before the Federal Court of Appeal on 13<sup>th</sup> October 1981, the Solicitor-General of Oyo State informed the court of the inadvertent execution of Bello. The Federal Court of Appeal struck out the Appeal. Bello's dependants who are the appellants in this case were aggrieved by this premature execution instituted a suit in the High Court of Oyo State claiming one hundred thousand naira (₦100,000.00) as damage for illegal killing of their breadwinner against Oyo State government who is referred to as the respondents in the suit [7]. The claim of the appellants is based on the doctrine that 'where there is right, there is a remedy'. Bello's dependants had averred that their cause of action is that the

constitutional right of appeal of their bread winner was illegally terminated and the benefits they expect from the maliciously and/or malicious since he was fully aware of the pending appeal of the executed person, Nasiru Bello [8]. After considering the evidence of and submission of counsel, the learned trial judge held that the execution of Bello was wrongful because it deprived him of his constitutional right of having his appeal determined by the Federal Court under section 220 (1) (e) and, if need be, the Supreme Court under section 213(1) (d) of the constitution and that having regards to the rule in Baker v Bolton (1908) I camp. 498 approved in Admiralty Commissions v S.S Amerika (1917) A. C 38 at page 51, a person cannot recover damages in tort for the death of another person unless he brings his case within the ambit of the torts law, cap. 122, 1959 laws of western Nigeria, now cap 124 the laws of Oyo State of Nigeria 1978 (p.4). In other words, the court agreed that the killing of Bello was a violation of his constitutional right of appeal and therefore, of right to life but that Bell's dependants had failed to formulate their claim in accordance with the provision of the said Torts Law upon which a claim of damages may be made in a case of negligence. The trial court consequently dismissed the claim for

failure to satisfy this formal requirement and recommended to the government of the deceased of the deceased Nasiru Bello even though the court had dismissed the claim [8].

The rule of law in Baker and Bolton<sup>2</sup> in which the High court of Oyo State relied on is an early 19 century case. It was laid down that, in "civil court the death of a human being can be complained of as an injury. The rule emanated from the common law practice which does not allow action for trespass on facts which at the same time amounted to felony. The practice is based on the principle that the claims of the king supersede that of the citizen. For this reason, where a tort amounts to a felony, the injured cannot sue the Tortfeasor for damages unless he has been prosecuted. This is known as the rule in *Smith v Selwyn* (1914) 3 K.B.98. What this rule means in the case of Aliu Bello is that the action of Oyo State in killing Nasiru Bello is a felony, a criminal case and cannot be a civil cause. The rule makes it impossible for a plaintiff to sue a defendant for wrong committed by the defendant to the plaintiff, when that wrong consists in damage causing the death of a person in the continuance of whose life the

plaintiff had an interest. It is for this reason that the Oyo State Government had stated in its pleadings that the plaintiff had no cause of action [9].

Bello's relations were not satisfied with the decision of the trial court on both issues of liability and quantum of damages, hence their appeal to the court of Appeal, unfortunately, the decision of the Court of Appeal was not significantly different from that of the trial court. The court of Appeal upheld the statement of the rule of law in Baker v Bolton that under the common law no compensation or damage can be recovered for causing the death of a person by negligence of another person and that damage is only recoverable for such deaths under the Tort law. In other words, the claims of Bello's relations did not succeed because it was not based on accidental killing; it was based on illegal killing. Again, action for damages was not initiated by and in the name of the executors of Bello under section 4 of the Torts law after they must have taken out letters of administration. The court of Appeal consequently upheld the decision of the trial court on the issue of damages and dismissed the appeal [10, 11].

#### A Critique of the Case

A critique of the case reveals the following;

1. The judgment of the trial court and that of the court of Appeal were clear case of legal justice in which extra-legal considerations were avoided. The courts relied on the provision of the Oyo state torts law which was inspired by the rule in Baker v Bolton and its judgment was strictly based on that law. the court of Appeal did not give consideration to the fact that Bello was a victim of outright reckless, careless and malicious murder; that his rights were violated, his terminated, and that the future and wellbeing of Bello's dependants are now precarious. There was no denying the fact that Bello's died and that the government of Oyo State recklessly and carelessly caused the death as a result of negligence or in breach of statutory duty, and that Bello

suffered injury which should give rise to damages [12].

In spite of these weighty evidence and findings against the Oyo State government, the court went ahead and dismissed the case on the ground of inelegance of the pleadings of Bello's relations and inability to satisfy the requirement of forms. This is a clear case of the spirit of justice, residing in forms, formalities and technicalities rather than from its substance and real truth. The court of Appeal did not see its primary obligation as that of giving substantial justice. If the court had favoured moral considerations to the issues raised above, it could have arrived at the judgment that captures the factual situation of the case [6].

2. The legal philosophy of Hobbes was prominent in this case. For Hobbes, there is no law or justice outside the law made by the state. A citizen after all has no right in Hobbes legal philosophy outside the right not to kill himself, even though the state has the right to kill him. Oyo State Government demonstrated this fact in Bello's case. If Oyo State government had considered the moral implication of the bloody and malicious murder of Bello, it would have handled the matter differently and perhaps more humanly. The liberal legal philosophy of John Locke WOULD have favourably treated the case differently because in Locke postulations human right inheres in man at birth and the essence of the state is to safeguard those natural rights. An application of Locker's liberal philosophy would have indicted the role of Oyo state government as a failure of duty to protect life and a gross violation of Nasiru's right to live [7].
3. Although Oyo State government had pleaded that Bello's dependant had no cause of action because they did not plead their case in accordance with the tort law of Oyo State. Bello's dependants had pleaded their case in accordance with the universal maxim of *ubi jus ibi remedium*, simply put, where

there is injury there is remedy. If the court of Appeal was not bent on giving legal justice, it would have recognized this maxim as a higher and universal law over the torts law. The maxim is not only an English common law principle, it is a principle of justice of universal validity and available in all legal systems involved in impartial administration of justice. The principle enjoins the court to provide a remedy whenever the plaintiff has established a right.<sup>3</sup> The court ignores this maxim because of its resolve to interpret the law as it is without regard to its consequences. The court ignored the universalism and transcendentalism of the maxim of *ubi jus ibi remedium* because characteristically, the only law or order that has relevance for Austinian positivists is the one issued by the sovereign to its citizens to obey while he does not pay such obedience to any other person. The maxim *ubi jus ibi remedium* consequently has to be subordinated to Oyo State torts law. Although, the Supreme Court upheld the appeal of Bello's dependants, its judgment was also positivists. It was based on a different interpretation of the Oyo State torts law, and not from any moral, customary or equitable consideration [6].

The Case of Peter Obi V Independent National Electoral Commission and Others  
A summary of the facts of the above case is that on 19<sup>th</sup> April, 2007 the Independent National Electoral Commission (INEC) conducted election to the offices of Governors of state of the Federation of Nigeria. Dr. Chris Ngige was declared the winner in the contest in Anambra State and was subsequently sworn into the office on 29<sup>th</sup> May, 2003. Obi the plaintiff in the matter and who contested election to the office of the governor was aggrieved and challenged the declaration of Ngige by INEC (the respondent in his matter) in the election tribunal. The tribunal upheld the appellant's petition Obi and declared him the candidate validly and

duly elected as the government of Anambra State. Ngige appeal to the court of Appeal against the decision of the Election Tribunal and dismissed Ngige's appeal. Consequently, on 17<sup>th</sup> March 2006, three years after Ngige had wrongly and illegally assumed the office, Obi was sworn-in as the Governor of Anambra State.

The present matter arose when INEC started preparations for another governorship election against 14<sup>th</sup> April, 2007 Obi who is aggrieved that his mandate was snatched, commenced a suit in the Federal High Court against INEC by originating summons and sought the determination of the

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following questions: Whether having regard to section 180 (2) (a) of the 1999 constitution the tenure of office of a governor first elected as governor begins to run when he took the oath of allegiance and oath of office; and whether the Federal Government of Nigeria through the defendant (that's INEC) being its agent can conduct any governorship election in Anambra State in 2007 when the incumbent governor took oath of allegiance and oath of office on 17<sup>th</sup> March, 2006 and has not served his four years tenure as provided under section 180 (2) (a) of the 1999 constitution.

Obi subsequently requested the following relief's from the Federal High court. A declaration that his four years tenure of office as Governor of Anambra State began to run the date he took the oath of office and oath of allegiance, that is on 17<sup>th</sup> March 2006; and Injunction restraining the defendants by themselves, their agents, servant, assigns and privies or howsoever from in anyway conducting any regular election for the governorship of Anambra State until the expiration of a period of four (4) years from the 7<sup>th</sup> day of March 2006 when he, Obi's tenure of office will expire.

However, before the hearing of the suit commenced, INEC along with seven Other respondent raised preliminary objections contending that the federal High Court has no jurisdiction to hear the matter as it is an electoral matter. Obi applied to the court to invoke section 295 (2) of the constitution of the Federal Republic of Nigeria and refer certain question raised to the court of Appeal. The federal High Court reviewed the preliminary objection from INEC and the application for reference from Obi's suit for want of jurisdiction [7].

Obi now proceeded to the Court of Appeal and consequently requested the court to declare: That his four years tenure of office as Governor of Anambra State began to run from the date he took his oath of allegiance and oath of office being 17<sup>th</sup> March, 2006; to declare that the Federal Government through INEC cannot lawfully conduct any governorship election in Anambra State in 2007 in so far as i.e. Peter Obi as the incumbent Government has not served

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his four year term of office commencing from. when he took the oath of office and the oath of allegiance on 17<sup>th</sup> March 2006; and to grant an injunction restraining INEC from conducting any regular election for the governorship of Anambra State until his four year term of office expires from the 17<sup>th</sup> day of March, 2006 [8].

Peter Obi also sought the following reliefs from the court of Appeal: To set aside the decision of the Federal High Court to the effect that it had no jurisdiction to entertain the originating summons; To hold that the Federal High Court had Jurisdiction to entertain his suit; and to while granting the above reliefs to invoke the power of the Court of Appeal inherent in section 16 of the Court of Appeal Act and assume jurisdiction to entertain the suit.

It is important to note that Peter Obi's prayers in his originating summons are declaratory and injunctive. They are reliefs courts can grant at its discretion. However, at trial, the real issue for determination was whether the Federal High Court had jurisdiction to adjudicate on Obi's claim. While Obi contends that the Federal High Court had jurisdiction and that his claim was not an election matter, INEC and other respondents contended otherwise. After a prolonged legal argument the Court of Appeal finally rules as follows;

1.A thorough and communal reading of sections 184 and 285 of the 1999 constitution, particularly section 184 (a) (ii), which mandates the National Assembly, to make provision in respect of persons who may apply to an election tribunal for determination of any question as to whether the term of office of Governor or Deputy Governor has ceased, and section 285, particularly section 285 (1) (b), which vests the election tribunal with exclusive jurisdiction to determine whether the term of office of any person under the constitution has ceased, makes it clear that the election tribunal has exclusive jurisdiction on issues bordering on election and tenure matters. In the instant case the reliefs claimed by the appellant at the trial court. In the circumstance, the trial court rightly held that it lacked jurisdiction to hear and determine the case.

2. Where a particular tribunal has been specifically assigned by law to determine a question, it is not the business of another tribunal which lacks express powers to determine such questions to venture into the determination of the question. In the instance case, the election tribunal had the exclusive jurisdiction on election matter under section 184 and 165 of the 1999 constitution. In the circumstance, the trial court was right when it held that it lacked jurisdiction to hear and determine the appellant's suit on the ground that it was an election matter

within the exclusive jurisdiction of the National Assembly Election Tribunal.

3. Where an action is filed in a court that has no jurisdiction, it should be struck out and not dismissed in order to give the plaintiff another opportunity to file the action, if possible, in a court of competent jurisdiction or by way of amending the action to fall in line with the jurisdiction of the court it was initially filed. In the instant case, the trial court acted rightly when it struck out the appellant's suit for want of jurisdiction. The Court of Appeal thereafter dismissed Obi's case irrespective of its merit [9].

#### A Critique of Obi's Case.

Obi's case is another landmark case in which legal justice had sway. Obi worked hard for his victory in the polls; spent his time, energy and resources and won an election. A wrong person was installed in an office he had earned. The usurper who took his office spent a whopping three years out of Obi's four year mandate leaving only one year for the legitimate occupier. As a remedy to the injury inflicted upon him by Chris Ngige and INEC who otherwise had benefited from their wrongs, Obi approached the courts asking injunctive and declaratory reliefs. These reliefs are granted by the courts at their discretion to litigants who raised substantial issues of laws. He had the legal right to approach the courts where he is of the opinion that his rights are violated or that he has suffered some injury. His request was for the court to interpret section 180 (2) of the constitution to determine whether he was the person first elected. The Federal High Court and particularly the Court of Appeal failed or refused to entertain the matter on the ground that it had no jurisdiction and failed or refused to exercise the discretion to grant the injunctive and declaratory reliefs. It is important to note that Obi's case has merit, but the court was however. Nor concerned with the merit of his case because of want of jurisdiction. Jurisdiction is the power of the court to adjudicate over a matter before it [10].

Jurisdiction is however defined or circumscribed by law. It is central in the administration of justice. It is so important in the practice and

procedures of courts that wherever it is raised in proceedings, the court has to determine whether it has jurisdiction or not otherwise a trial without jurisdiction may be a nullity or an exercise in futility. So the only choice open to a trial court when it has no jurisdiction is to decline from going into the matter by striking out the suit. The court determines whether it has jurisdiction by examining the claims of the plaintiff. Because there are different courts with different hierarchies certain matters are exclusive to certain courts. That means that a court may have the power to adjudicate an action before it the exclusion of other courts. Jurisdiction is one of the regime rules through which courts filter or control matters that come into the judicial system and it is like other positivist rules deified to the extent that the merit or justice of a matter could be mindlessly sacrificed in the altar of this rigid rule... In consonance with its positivist's character, it emphasizes law and order and stability of the system and the merit or justice of any matter is of secondary importance. In invoking the issue of jurisdiction, the Court of Appeal was concerned strictly with the provision of the law [7]. Whether Obi was wronged, relegated to the background or whether he was entitled to remedy was of less consideration to the court. However, the Court of Appeal stiff-necked resolve to give legal justice is demonstrated by its failure or refusal to grant a declaratory judgment as requested by Obi. A declaratory judgment is discretionary and it is granted only when the court is of the

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opinion that the party seeking it, is, when all facts are taken into consideration, fully entitled to the exercise of the court's discretion in his favour. The only thing that is required of the court is to act judicially and judiciously. Obi raised a substantial question of law in his claims especially as regards the violation of his rights and a grant of the declaratory and injunctive reliefs would have provided him with equitable remedies where the strict application of the law will not adequately meet the justice of the situation. The Court of Appeal could have been guided by the notion of "Conscience", "Good faith" and "Reason". Any court that had imbibed the notion of good conscience, equity and reason will not fail to advert itself to Obi's predicament. At least the principles of *udii jus ubi remedium* could also have availed the court for the exercise of its inherent discretion as provided by 16 of the Court of Appeal Act. Consequently, Obi's rights and interests were sacrificed at the altar of jurisdiction bordering on technicality and formalism [10].

The two judgments of the court of Appeal and the Supreme Court analyzed in this chapter have illustrated the prevailing feature of judicial behaviour in Nigeria. Judicial interpretation in Nigeria is largely based strictly on the letter of the law. This judicial attitude was restated by the Supreme Court in the case of Obi's and Independent National Electoral Commission (Supra) when it stated as per Aderemi Jsc that;

*Our problem as judge should not and must not be to consider what social or political problems of today require; that is to confuse the task of a judge with that of a legislator more often than not, the law as passed by the legislators may have produced a result or results which do not accord with the wishes of the people or do meet the requirement of today. Let that defective law be put right by new legislations but we must not expect the Judex, in addition to all his other problems to decide what the law ought to be. In my humble view, he (Judex) is far*

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*better employed if he puts himself to the much simpler task of deciding what the law is.*

The above statement summarizes the prevailing attitude of Nigerian courts. A law is a law once it has been issued from or by a competent authority. If the law is bad, it is for the legislature to change it, otherwise the court will apply it as it. for this reason, a tribunal had in 1988 refused to declare a retroactive decree invalid and unconditional at least to the extent of the retroactivity of the legislation. Bernard Ogedegbe, Bartholomew Owo, and Lawal Ojuolape had to die for a crime they committed when the act was not a crime- the crime of drug peddling. They faced the firing squad and were killed in cold blood. It was justice according to strict letters of the law and perhaps legal positivism at its worst. In 1994, two journalists Tunde Thompson and Nduka Irabor published lists of prospective ambassadorial appointments and postings to various Nigerian embassies. The duo were arrested and charged to a tribunal for refusing to disclose their source of information. The issue was not whether what they published was the truth. It was immaterial that what they published was the published was the truth. Although, the presiding judge described the decree as 'draconian' the journalists were still sentenced to terms of imprisonment. The position of this research is that when a law is inherently irrational, when it is extraordinarily in conflict with reason and when it is offensive and utterly hostile to rationality and so emptied of substance as the case analyzed were, courts should not hide under the Austinian theory of positivism to enforce such a law.. It is necessary that the conception of justice should always be based on reason. The meaning of law will should not be sought exclusively in written texts. The very nature of law will definitely change if it was no longer seen or regarded as the very expression of what is just but simply as the will of those who govern [7].

Although, legislation has become the principle source of law, it is by no means the only source of law or the only means of knowing what the law is. The position of this research is that where

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any legislation could not lead to the required just legal solution recourse to other source of law in conjunction with legislation could produce a just solution. Legislation, therefore, should be seen by

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judges as a simple framework within which a judge could demonstrate his creative activity in the search of just solutions to legal problems [6].

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