

THE SENIOR ADVOCATE OF NIGERIA: A REBUTTABLE PRESUMPTION OF EXCELLENCE AND SCHOLARSHIP IN LEGAL PRACTICE? (A VIEW FROM THE BENCH) : PAPER PRESENTED BY HON. JUSTICE OBIETONBARA O. DANIEL-KALIO, JCA AT THE PRE-SWEARING INDUCTION PROGRAMME FOR NEW SENIOR ADVOCATES OF NIGERIA, ORGANIZED BY THE BODY OF SENIOR ADVOCATES OF NIGERIA, HELD AT LAGOS ON THE 1ST DAY OF DECEMBER, 2021.

Learned Gentlemen, let me begin by saying two quick things: first, I wish to thank the organizers of this program, the Body of Senior Advocates of Nigeria, for considering me worthy to deliver this paper. I must say that with the year coming to an end and the attendant activities as a result, the constraint of time puts one in a tight corner in terms of finding time to do justice to a paper like this. All the same, it is good to be here to share a few thoughts on the sub-topic: The Senior Advocate of Nigeria: A Rebuttable Presumption of Excellence and Scholarship in Legal Practice? (A view from the Bench)

Second, let me congratulate the inductees for scaling through all the hurdles and arriving at the cusp of a crowning glory to an illustrious career at the bar. To take the silk is not a mean feat. Not only have you satisfied the Legal Practitioners' Privileges Committee in terms of your integrity, attestation to your worthiness by judges, general knowledge of the law, and leadership qualities in the profession, you have also satisfied the Committee on the number of cases that you have concluded in the superior courts of this country. You have further impressed the Committee that you have the wherewithal in terms of size and quality of library, quality of office space and facilities, number of junior counsel or partners in chambers, number and quality of staff and also in terms of maintenance of proper books of accounts. Additionally, you have gone through other grueling scrutiny and interrogations. Indeed, you have survived them all and Deo Velente, you will soon be numbered among an exclusive pantheon of the creme de la creme of the Legal profession as you take the silk in a few days time. You have every reason to be proud.

The rank of Senior Advocate of Nigeria is much coveted. It is only conferred as the name implies, on a person who has practiced the law to a level that he can be considered as a Senior in the profession. The seniority here however, is not a function of the number of years at the Bar. Rather, it is a seniority attributable to the attainment of a higher standing or rank in the legal profession as a result of excellence. That high standing is not restricted to advocacy. It includes a high standing in academics.

Historically, the rank of Senior Advocate of Nigeria can be traced to England where they have the rank of Queen's Counsel or King's Counsel, depending on whether the reigning monarch is a King or a Queen. The first Queen's Counsel was Sir Francis Bacon who was also renowned as a philosopher, statesman, Attorney General and Lord Chancellor of England. He was given a patent over 400 years ago, in 1597 to be precise, which made him to enjoy precedence at the Bar. True to the name King's or Queen's Counsel, the first recipients were representatives of the crown. A lot has changed since 1597 but a lot has also not changed. That people of that rank enjoy precedence at the Bar has not changed; that they wear silk gowns has not changed; that they tend to handle more complex legal

matters has not changed; and that they charge a lot higher legal fees than other legal practitioners has also not changed.

In Nigeria, there are guidelines for the conferment of the rank of Senior Advocate of Nigeria. The guidelines issued by the Chairman, Legal Practitioners' Privileges Committee, the then Chief Justice of Nigeria, state clearly that the award of the rank of Senior Advocate of Nigeria (SAN) is a privilege awarded as a mark of excellence to members of the legal profession who (a) are in full time legal practice; (b) have distinguished themselves as advocates; and (c) have made significant contribution to the development of the legal profession in Nigeria. Although the rank is primarily for legal practitioners who have distinguished themselves as advocates, the Legal Practitioners' Privileges Committee, has power in exceptional cases, to approve the award of the rank to members of the legal profession who have distinguished themselves as academics by making substantial contributions to the practice of law through teaching, research and publications that have become major source of reference by legal practitioners', judges, law teachers and law students.

The sub-topic I am to address in this paper, if I may restate, is: THE SENIOR ADVOCATE OF NIGERIA: A REBUTTABLE PRESUMPTION OF EXCELLENCE AND SCHOLARSHIP IN LEGAL PRACTICE? (A VIEW FROM THE BENCH). The topic is in the form of a question. It asks whether there is a presumption that a Senior Advocate of Nigeria has excellence and scholarship in legal practice. Without batting an eyelid, I will answer that question straight-up in the affirmative. There is such a presumption, and I will elaborate on that, anon.

The sub-topic also requires the question to be answered from the standpoint or point of view of someone on the bench. That means that I am called upon to testify on what I know on the subject. This has to be so because a rebuttable presumption which in Latin is *praesumptio iuris tantum*, is an assumption made by a court that is taken to be true unless someone comes forward to contest it and prove otherwise.

I have said earlier that there is a presumption that a Senior Advocate of Nigeria has excellence and scholarship in legal practice. That presumption is not an empty one. It is predicated on Paragraph 19 of the Guidelines for the conferment of the rank of Senior Advocate of Nigeria which Paragraph requires that a candidate being considered for the rank, MUST and I must emphasize the word MUST:

- (a) demonstrate high professional and personal integrity;
- (b) be honest and straightforward in all his professional/personal dealings;
- (c) be of good character and reputation;
- (d) be candid with clients and professional colleagues;
- (e) demonstrate high level of understanding of cultural and social diversity characteristic of the Nigerian society; and
- (f) show observance of the Code of Conduct and Etiquette at the Bar.

The presumptions are also the presumptions that enure to every Senior Advocate of Nigeria, not just candidates being considered for the silk.

In the course of my 26 years on the higher Bench both at the High Court and now at the Appeal Court, numerous Senior Advocates of Nigeria have appeared before me in Court. I have done a quick peregrination down memory lane to see if in all my years on the bench thus far I have found any chink in the armor of excellence of the Senior Advocates of Nigeria that have appeared before me. Gentlemen, I cannot think of one. I have no evidence that rebuts their excellence.

Yes, while conducting matters in court Senior Advocates of Nigeria do engage in legal pyrotechnics where they do not give the opponent an inch especially in highly contentious matters and election petition matters, but even in those matters everything is done within the four walls of professionalism and ethics at the Bar. I have never seen anything that smacks of undignified behavior. I merely speak from my own personal experience.

Now, I am not saying that in every matter learned Senior Advocates of Nigeria are faultless. No one is perfect, even Homer nods-dormitat Homerus. Homer is acknowledged as one of the greatest writers of all time; a Greek credited to have written the epic poem Odyssey. That even Homer nods is an acknowledgment of the fact that even the best of us are not without their faults. That said, the faults that I can readily recall, have to do with processes filed in court. When faults in respect of such processes are pointed out, I also observe that the concerned learned silk in most cases, put the blame on Junior Counsel in Chambers. While it may be true that the faults are those of the Junior Counsel, it is the Senior Advocate that is conducting the matter that is under the spotlight and it is him that would have to carry the can. Such incidents of sloppiness are quite embarrassing and must be avoided. With regard to processes emanating from the Chambers of the Law Firm of a Senior Advocate of Nigeria, nothing short of a thorough job in the preparation of such processes is expected. Punctiliousness must be the watchword of Senior Advocates of Nigeria.

Apart from my personal observations, I have beamed my searchlight elsewhere to see if there is evidence to rebut the presumption of excellence and scholarship in legal practice on the part of Senior Advocates of Nigeria.

Since the duo of Chief F.R.A Williams SAN and Chief (Dr) N. B. Graham-Douglas SAN became the first Legal Practitioners to be conferred with the rank of Senior Advocate of Nigeria in 1975, there have been, as at the year 2020, 618 Legal Practitioners that have been conferred with the rank.

Paragraph 22 (1) of the Guidelines for the conferment of the rank of Senior Advocate of Nigeria, gives power to the Legal Practitioners' Privileges Committee to withdraw the rank of Senior Advocate of Nigeria from any person found wanting under sub paragraphs (a), (b) or (c) of the Paragraph. Paragraph 22 (2) of the Guidelines, gives power to the Committee to suspend a Legal Practitioner from the use of the rank of Senior Advocate of Nigeria. In all the 46 years since the conferment of the rank began, and to the best of

my knowledge, it is only once that the rank has been withdrawn. The incident that led to the withdrawal was an unfortunate one. Happily for the Senior Advocate concerned, the rank has been restored. Statistically therefore, the incident of rebuttal of the presumption of excellence and scholarship in legal practice is infinitesimal even from the standpoint of the the Legal Practitioners' Privileges Committee.

Personally, I have been impressed, not only by the excellence and scholarship of Senior Advocates of Nigeria, but also by their ethical standards and adherence to the Rules of Professional Conduct for Legal Practitioners. Several Senior Advocates of Nigeria have appeared in Courts that I have sat in over the years, including those who have been former Presidents of the NBA in the persons of OCJ Okocha SAN, Chief Wole Olanipekun SAN, Chief Bayo Ojo SAN and Okey Wali SAN and they all have acquitted themselves creditably. Their erudition and comportment are worthy of emulation.

I will end this paper with a short story and it has to do with the legendary Chief Frederick Rotimi Alade Williams QC, SAN, also known as Chief F.R.A Williams, fondly referred to as Timi the Law. Chief F.R.A Williams can justifiably be called an icon and doyen of the Bar. He was highly accomplished and extremely successful. He was a colossus in every sense of the word; one whom I once heard described as 'having the weight of evidence and the evidence of weight'. It was this legal Titan that arrived the city of Port Harcourt to argue a matter. On the bench was a young judge; relatively new on the bench. I was myself a judge at the time of the incident. I was not physically present when the incident I am referring to occurred as I was minding the business of my court. I got to hear about it from those present. After Chief Williams had addressed a legal point, the young judge made a rather rude remark when he told the great Chief Williams: "the age of Methuselah has nothing to do with the wisdom of Solomon." Upon hearing these words, Chief Williams did not respond to the remark of the judge. He simply carried on with his matter. This response or shall I say, non-response of Chief Williams became the talk of the town and his already legendary status became even more solidified as his stature became the stuff of folklore. As for what befell the judge, it is a story for another day.

Suffice it gentlemen, that I can say to you that I have no evidence to speak of in rebuttal of the presumption of excellence and scholarship in legal practice of Senior Advocates of Nigeria. The favorable presumption remains in tact and is not misplaced.

I will conclude by quoting the immortal words of John F. Kennedy the 35th President of the United States, in a speech he gave as President-elect to a joint convention of the General Court of the Commonwealth of Massachusetts on January 9, 1961: "for of those to whom much is given, much is required"

Gentlemen, much is required of you as you take the silk. I wish you all the very best as you take your place in the inner Bar.

Thank you for your attention.

HON JUSTICE OBIETONBARA O. DANIEL-KALIO

JUSTICE, COURT OF APPEAL