

Their bags of conscience

Monday, 03 March 2008

By Okey Ndibe

Exactly a week ago, a five-member panel of presidential election tribunal unanimously upheld the validity of Umar Yar'Adua's "election" of April 21, 2007. That verdict is cowardly and is destined for infamy.

The most eloquent words uttered in that disgraceful courtroom last week came from Mike Ahamba, Muhammadu Buhari's lead counsel. He asked the justices to examine their "bags of conscience." His words will echo for a long time.

It isn't clear who wrote the judgment, but Justice John Afolabi Fabiyi read it—in a tortured and often faltering manner that did violence to the rules of English pronunciation. It was too embarrassing an exercise to behold. Apart from Fabiyi's troubles with the elocution of such everyday words as "collation" and "indictment," his air of impish levity left much to be desired. Here was a judge called to pronounce on the weightiest subject in the nation's current political life, and he thought nothing of interjecting tasteless asides, at one point comically asking the packed courtroom audience if it was tired.

Yes, those of us who expected the tribunal to have the legal wisdom and moral courage to tell speak truth from the bench were not only tired but also outraged. To us, the heart of the Ogebe tribunal's verdict was nothing short of

troubling, cowardly and decadent. The five justices had a stellar opportunity to imprint their names as champions of the law as a redemptive tool. Their historic duty was to save Nigeria from the trauma of last April's massacre of democracy. Instead, they offered Nigerians a judicial equivalent of INEC's fraudulent elections. When historians come to assess how Nigeria's democratic aspirations were torpedoed, Maurice Iwu's name may be bracketed with the name of these five judges who saw fraud and renamed it perfection.

One foresees Nigerians looking back on last Tuesday as arguably the lowest, most sordid, outing by the judiciary in the last four years. One suspects that, before long, the national memory will view this masterpiece of judicial cowardice as a turning point in Yar'Adua's transformation into the despot he is very capable of becoming. For this reason, it is important that we put on record those five judges who authored, or affirmed, this bizarre and misshapen judgment. They are James Ogenyi Ogebe, John Afolabi Fabiyi, Abubakar Jega Abdulkadir, Uwani Musa Abba Aji, and Raphael Chikwe Agbo.

This is not the place for a close judicial analysis of the verdict. Some non-lawyers may feel up to the task; I have no stomach for it. If the ruling is the face of the law, then God spare us from the law! Still, many legally trained minds, among them

Ayo Obe and Oziametu Akerele, have brilliantly dissected the verdict's manifold weaknesses.

It doesn't take a nimble legal mind to recognize the essential hollowness of the Ogebe verdict. It was shaped, it seemed, by the misconceived thinking that Nigeria would be cast into anarchy had the presidential election been cancelled. Nothing is farther from the truth. How could five judges not descended from an illogical place in outer space have contrived last Tuesday's judgment? How could a panel of judges not sworn to ignore indisputable facts have said, in effect, that the electoral commission's well-documented breaches of the electoral act were of no consequence? Only a tribunal with a disdain for the sanctity of democratic principles would have come up with such a bizarre ruling.

Those who care genuinely for democratic values ought to ponder the far-reaching negative impact of the Ogebe take on electoral fraud. The five panelists basically gave judicial blessing to a doctrine of the rigger's rights. This doctrine is that it is better to be the rigger-usurper than the complainant. Once you steal yourself into office, then you have excellent odds of manipulating the judiciary to validate your heist.

This is a recipe for disaster. It is bound to exacerbate political violence in future elections. Political desperadoes—and this is what most Nigerian politicians appear to be—can now plan on out-maiming and out-killing their opponents. They will out-rig and out-manipulate their way into office. They will try to hire the police, and even enlist soldiers, in their rigging schemes. They will buy electoral officials to announce results that have no bearing

whatever on how the electorate voted. The more unrestrained and shameless the rigging, the better for the rigger. After all, chances are now excellent that the rigger would be able to find a panel of five thoroughly blind and deaf judges to rule that the election was flawless. Nigeria will never lack for judges who take their annual vacations in Mars during election seasons. In the season of election petitions, these vacationing judges would return and, with a straight face, tell the world that the allegations of rigging are wicked acts of fabrication and concoction by sore losers.

After every recent election cycle in Nigeria, the rigged winners now habitually implore those they cheated not to "overheat the polity" but instead to petition the electoral tribunals. It happened in 1999, 2003 and 2007. This entreaty, which appeals to patriotic sentiment and pretends to have profound respect for the rule of law, is often part of the cynical calculation of those who steal elective posts. They try to talk their shortchanged opponents out of mobilizing protesters on the streets to reclaim stolen goods. They maneuver their disinherited opponents into the "trap" of tribunals that teem with judges that are susceptible to inducement. The riggers then deploy the resources of their illicitly acquired public offices to hire top lawyers and, often, to bribe their way to favorable verdicts.

The Ogebe panel's verdict has done a huge disservice to the image of the judiciary. For all the tribunal's haughty pretension of depending on the finer points of the law, its judgment came across as a political, not legal, move. It was as if the five panelists decided to cast a political vote for Yar'Adua. Their

invocation of the Bush vs. Gore verdict, in which the U.S. Supreme Court cast a “deciding” vote that gave Bush the disputed elections of 2000, struck me as revealing, shameful and silly.

What, exactly, was the point? If America’s apex court made a ruling that many American legal scholars still regard as a monumental mistake, why must the Ogebe tribunal be in a haste to borrow that controversial example? In a judgment that made light of serious violations of Nigeria’s electoral act, what business did Ogebe and co. have in dabbling in what the American Supreme Court did?

Ogebe and his fellows set out to give Nigerians a version of the perverse contention that no election anywhere is perfect. Iwu, former President Olusegun Obasanjo and Yar’Adua himself have advanced this argument. It is, in intent and conception, an untenable argument. No critic of Iwu’s has ever assailed the man for failing to conduct elections that rose to the heights of perfection. No; the man has been charged, justifiably, with conducting elections that were (intentionally, one must stress) designed to fail. If he had worked hard to give us a semblance of serious elections, but had met glitches in the way, no reasonable person would have arraigned him. But a man who set out to conduct an election so imperfect that it shocked his fellow citizens and foreign observers alike (and some of the beneficiaries of his treachery to boot) sounds dishonest when he argues that elections, by their nature, cannot be altogether perfect.

Unfortunately, the Ogebe tribunal has lent new gloss to that comical argument. It was one of the disturbing signs that the

tribunal was on a political mission. Did the tribunal members think for a second that the U.S. Supreme Court would have validated the 2000 presidential election if Al Gore had been excluded until the eve of the polls, or Bush had police officers and even soldiers intimidating Gore’s supporters, or some final results were announced before voting was over, or the electoral officials had failed to put serial numbers on ballots as required by law?

There are other reasons to hold the Ogebe verdict in grave suspicion. In the days before the verdict’s announcement, www.saharareporters.com had carried fairly detailed reports of efforts by the Yar’Adua camp to influence the outcome. A full day before the verdict, the website, quoting a source inside Aso Rock, reported that the judgment was going to be for Yar’Adua, that Aso Rock had obtained a copy of the judgment, and that Yar’Adua and cohorts were basking in jubilation. The site published an e-mail sent to some of the nation’s editors by Bolaji Adebisi, one of Yar’Adua’s political aides, recommending a list of pro-government elements to be solicited for responses once the tribunal’s verdict was read the next day.

In addition, www.saharareporters.com also reported that the Yar’Adua government had offered lucrative legal consultancy jobs to Emmanuel Ogebe, Justice Ogebe’s U.S.-based son, even though the young man did not possess license to practice law in the U.S. [Saharareporters.com](http://www.saharareporters.com) also reported that Musa Abba Aji, the husband of one of the justices, had been included on a list of business executives who had a breakfast meeting with Yar’Adua. To my knowledge, nobody in Yar’Adua’s

government has denied any of these serious allegations.

As I argued last week, even those who think Yar'Adua is doing a terrific job ought to want him to receive a true mandate. Despite the glee with which Fabiyi read the misconceived verdict, few people believe that he holds a credible mandate. Those who celebrate his "triumph" may come to regret the defective manner of his ascendancy. In 2003, many jubilated when Obasanjo cooked up his own landslide. They urged Buhari not to take his case to the Supreme Court. They asked Buhari to realize that God had chosen Obasanjo, and that he needed to take his grouse home with him and let the chosen one "move the nation forward." Today, many of those choirboys and girls are asserting that Obasanjo moved the nation backward. These former henchmen are calling their man a knave or worse. The lesson: you can't move a nation forward on the basis of fraud. And Yar'Adua's election was, is, and will remain fraudulent.

Nothing stands in the way of a "mandateless" Yar'Adua if he opts to morph into a despot. Attentive Nigerians have already got a foretaste of Yar'Adua's Nigeria. The Nigerian Army is close to officially becoming the Yar'Adua Armed Forces. In a statement last week, General Owoye Azazi, Nigeria's Chief of Defence Staff, accused some faceless elements of plotting to resort to violence in the wake of the tribunal's verdict. In a vein that suggested that the army had usurped the duties of the police, Aziza issued a stern warning to the enemies of "moving the nation forward."

That Aziza has not been summarily fired speaks volumes. The Azizas in our midst will continue their servile careers unless we, as citizens, insist on achieving a country where democracy is meaningful, where no man may hold office unless the people say so in a credible election. Enlightened citizens, including those who support Yar'Adua, ought to encourage Buhari and Atiku to take their case to the Supreme Court.

Professor Augustine Okey Okore: I had just finished writing my column when I received news of the sudden passing of Professor Augustine Okey Okore, who was just ending his term as Director of Studies at National Institute for Policy and Strategic Studies (NIPSS) Kuru. Professor Okore was one of Nigeria's brightest minds, and an exemplary citizen. I mourn his death.

Readers' Favorites

1. Nigeria's savaged children
2. The war we ordered is here
3. What I saw in Nigeria
4. Murder Incorporated
5. No Longer at Ease
6. My Vote for Andy Uba
7. Achebe, Soyinka, and the Nigerian Mess
8. My Biafran Eyes
9. My Father's English Friend
10. A female speaker's manly vices
11. The education of Umar Yar'Adua
12. The triumph of barbarism
13. Achebe's apt censure
14. Andy Uba Goes to War (1)
15. Andy Uba Goes to War (11): What OBJ taught Uba
16. Why I Take It Personally
17. Andy Uba's highest bid
18. The folly of the Nigerian elite
19. Fraud Incorporated
20. Etiaba's father, not mine
21. Our laughing president
22. Fayose and God's response
23. My 419 Call
24. A feud of three bulls
25. More reasons to ignore Soyinka
26. Who does Obasanjo work for?

Read or download more titles at

<http://www.okeyndibe.com>

About Okey Ndibe



Okey Ndibe is a novelist, poet, political activist from Yola, Nigeria. He is the author of *Arrows of Rain*, a critically reviewed novel published in 2000. Ndibe relocated to the United States in 1988, where he founded *African Commentary*, a magazine described as "award-winning and widely acclaimed." Ndibe is also a published poet, and a former associate professor of English at Bard College at Simon's Rock. He currently teaches fiction and African literature at Trinity College in Hartford, CT. Okey Ndibe is finishing his second novel titled *Foreign gods, incorporated*.

Speaking Engagements

To discuss a speaking engagement, please contact Okey Ndibe by e-mail (okey@okeyndibe.com) or by phone (860.306.7843).

PDF conversions done with Adobe Acrobat Professional 6.0 (US & International Patents) under license to All Hands Business Solutions, Inc.