

Reject Justice James Ogebe

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By Okey Ndibe

Justice James Ogebe does not deserve a seat on the Supreme Court. Hear ye, hear ye: Justice Ogebe is very far from being a good candidate for elevation to the nation's highest court. For the Senate to approve his rise to the pinnacle of the judiciary is to further exacerbate the crisis of confidence in which the Nigerian judiciary is mired. Justice Ogebe's recent controversial ruling has everything to do with the perception that the Nigerian judiciary lacks the moral wherewithal to pronounce fairly on the vexed questions of national life.

On February 26, Ogebe and four other members of the Presidential Election Tribunal wrote their name into judicial infamy by returning an inept verdict in a petition filed by Muhammadu Buhari and Abubakar Atiku challenging the "election" of Umar Yar'Adua as Nigeria's President. In upholding the legitimacy of the latter's "mandate," Ogebe and his colleagues proved that the law could be manipulated to uphold illogicality. Their judgment was nothing short of disastrous and shameful.

Last week, the selfsame Ogebe appeared before a Senate committee to make a case for the soundness of his nomination for the Supreme Court. Inevitably, his tribunal's weird verdict had to come up for discussion, and, boy, what a mess it was to read the man's rationalization of a bankrupt ruling. Instead of strengthening

his case, Ogebe torpedoed it. After reading his statements to the Senate Committee on Judiciary, Human Rights and Legal Matters, one came away convinced that, if there's a wretched candidate for elevation to the Supreme Court, Ogebe is it.

Let's be clear: Ogebe's tribunal's verdict could have made sense only in a nation that is sworn to ignore its own laws. The only way that Ogebe and his colleagues can be accused of judicial wisdom is if, as a country, Nigeria adopts the tenet that laws are enacted for the sheer fun of it, with the understanding that the said laws are meant to be observed in the breach. If Nigeria pretends that it takes its laws seriously, then the Ogebe tribunal is guilty of judicial mischief – or worse.

Unable to ignore the monumental evidence that Umar Yar'Adua's "election" was marred by fraud, the Ogebe panel resorted to a strategy that amounted to moving the goal post. The electoral law requires that ballot papers contain serial numbers. It is not an idle requirement, made lightly. Properly serialized ballots equip the electoral commission, as well as political candidates, with the tool to detect extraneous votes. They also more easily indicate when electoral results are at odds with the number of votes cast. The elections would have been far more creditable if Maurice Iwu's INEC had

adhered to the provision. Rigging would have been easier to track.

It was not in doubt that the electoral commission failed to imprint serial numbers on ballot papers. That's a gratuitous flouting of the electoral law. Even so, Ogebe and his colleagues elected to shirk their obligation to invalidate the corrupt electoral exercise. Rather, they contrived to create a new burden for the petitioners, namely, that they had not proved that the absence of serial numbers adversely affected their electoral prospects. It was the judgment of a desperate tribunal: desperate to do the wrong thing, to return the wrong verdict at all cost.

Ogebe, who is the visible face of that judgment, owes it to Nigerians to explain how he and his panel got such simple arithmetic so awfully wrong. The timing of the government's announcement of Ogebe's nomination for the Supreme Court compounded the controversy of his tribunal's verdict. Ogebe told the Senate that his promotion had been in the pipeline since June. Here are his words: "At the time the name was sent to the Senate, there was nothing else for me to do, so the President in his wisdom decided to send. By the Constitution, once the judgment has been written, any justice of the Court of Appeal could read that judgment but because of the attacks on me and on the President on why should he send me, I deliberately decided not to go into court on the day of the reading of the judgment because I don't have to be there before it is read and my colleagues went in and read."

If he knew all along about his nomination, why did he not excuse himself altogether from the case? He also

told his senatorial screeners that Yar'Adua's announcement of his Supreme Court nomination came after he had written the judgment. Does it mean he contacted Yar'Adua with news that the judgment had been prepared? If he did, then Ogebe must concede that it was, at the very least, a questionable move. Imagine the scenario where the tribunal had cancelled Yar'Adua's "election." Would Ogebe then have accepted his nomination by a "president" whose mandate he just eviscerated? Or is it the case that Ogebe assured Yar'Adua's camp that the judgment was going to be in their favor? In which case there are profound ethical problems. As a side note: What kind of ethical muscle does Ogebe possess if he'd duck from public view the day his tribunal's judgment was read? And he said he dodged on account of media criticism of his nomination!

Ogebe's more disturbing answers came when the Senate sought his opinion about Nigeria's perennial post-election crises. The judge gave a response that advertised his unfitness for a place on the Supreme Court. Let's quote him: "The problems of elections are numerous and I am happy that a committee has been set up to review the electoral process. I think the first problem of election in Nigeria has to do with the attitudes of the politicians, they see it as a do or die affair and it shouldn't be so. The result is that nobody is willing to accept defeat. Even when people perform poorly, they try to blame somebody or they blame the tribunal."

The foregoing was a classic case of blaming the victim. It was as if Ogebe was inadvertently exposing his psychological sympathy with the successful rigger. In a sense, the

statement tells us a lot about how this jurist misled himself into the errant verdict for Yar'Adua.

Any sentient Nigerian knows that rigging is the entrenched rule. Anybody who follows public discourse would also realize that Nigerians now look on the judiciary to redress the disenfranchisement of the electorate. That's why Nigerians applaud excitedly whenever a tribunal invalidates one "election" or another. But Ogebe apparently does not inhabit our planet. Here's a would-be Supreme Court justice tarnishing cheated candidates as sour losers. If this man is permitted to assume a position on our highest court, then God help future petitioners. Ogebe would be the friend of riggers. He'd be a nightmare to those whose mandates are pilfered, or those manipulated out of contention through a variety of electoral malpractices. A country beset by political crises, including deep-rooted and pervasive electoral fraud, cannot afford a justice on its apex court whose reflex is to offer comfort to usurpers even as he berates their victims.

Nigeria is at a political crossroads. In the next few years, the nation's democratic dreams are apt to be tested in many ways. This is a time for judges who at once possess a profound grasp of the law and a preparedness to serve the ends of justice with singular resolve. Justice Ogebe does not fit the bill.

Under former President Olusegun Obasanjo, the nation's political aspirations, begun on a note of great expectations, have met with dismal results. In the last nine years, Nigerian politicians at all levels, local government, state and federal, have operated with

parasitic mindlessness. They have enriched themselves while pauperizing an increasing number of Nigerians.

The legislative department has been just as mediocre. With the exception of a smattering of legislators at the National Assembly, the nation's legislative business has been thrust in the hands of men and women whose sole motivation is to maximize their gain even as they ignore the collective pain of their fellow citizens. As far as the deployment of legislative tool as an instrument of social transformation is concerned, the case can be made that the last eight years have been thoroughly wasted. Yes, members of the National Assembly had a rare shining moment when they stood up to abort Obasanjo's illicit drive to change the constitution in order to stay in office unto death. Even so, the legislature was compelled to act because there was decisive, and felt, public opposition to the impunity of "third term."

Of the three arms of government, the Nigerian judiciary strikes me as the best placed to play a dynamic role as a democracy deepener. Unlike the arena of politics that is often dominated by ne'er-do-wells, the judiciary boasts men and women of solid intellectual training. If there is a judge who speaks or behaves like Lamidi Adedibu, chances are that it is not because he is unschooled or rustic but a matter of moral hollowness. Besides, judges enjoy a security of tenure that politicians are not guaranteed. A judge seized with the requisite legal sagacity and moral spine could, if he or she wanted, become an instrument for redressing some of the plethora of wrongs embedded in the body politic.

Make no mistake: the Nigerian judiciary is as deeply troubled as other sectors of the nation's life. Lawyers know those judges, sadly too many, who don't themselves and their constitutional responsibilities seriously. There are members of the bench whose agility lies, not in interpreting the law, but in selling judgments to the highest bidder.

The Nigerian judiciary represents a new source of hope about the survival of the nation's sometimes frustrating, one-step-forward, four-steps-backward brand of "democracy." If the country is not to slip into absolute lawlessness or, worse, anarchy, then we need fearless judges who are willing to take tough and admirable decisions. At this juncture in its history, with criminals posing as "stakeholders" and holding the political space to ransom, Nigeria demands intrepid judges. Ogebe does not strike me as that kind of judge.

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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*.

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

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