

A Cowardly Majority

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By Okey Ndibe

Legal historians may be scratching their heads to come up with a name for what happened last Friday at Nigeria's Supreme Court. I propose that we call it, simply, "A Dark and Cowardly Friday".

In two split decisions, the justices of the high court dismissed separate appeals by Muhammadu Buhari and Atiku Abubakar, presidential candidates of the All Nigerian Peoples Party and Action Congress respectively. The two candidates had asked the apex court to review a bizarre unanimous ruling - delivered last February by a five-judge panel of the court of appeal - to the effect that Umaru Yar'Adua's "victory" in the presidential elections of April 21, 2007 was in accord with the nation's electoral laws.

Instead of acceding to the vigorously argued grounds of the appeal, a majority of the Supreme Court opted - out of, one suspects, moral cowardice - to rubberstamp impunity. In so doing, they worsened the image and tainted the integrity of a troubled, troubling judiciary that often leaves the impression of prostituting itself to the highest bidder.

Despite the reign of mediocrity in every aspect of Nigerian life, one must state that you don't become a justice of the highest court by being a certified fool. No, one can't possibly accuse Chief Justice Legbo Kutigi and his colleagues of judicial foolishness or ignorance. But it's

entirely possible for a candidate to be elevated to the pinnacle of the Nigerian bench when he or she has little or no moral capital. And if one must make a choice, I'd choose a little foolishness in a judge rather than a deficiency in moral currency.

Even the most optimistic Nigerian would agree that the country's fabric is frayed. I suggest that the electoral travesty of 2007 gravely exacerbated Nigeria's travails. In effect, the ruling Peoples Democratic Party and an inept, shameless electoral commission used that "election" to serve notice that Nigeria is a space where any manner of impunity was possible. Millions of Nigerians had stood in the sun for hours just for the opportunity to cast their votes. For Nigerians, the experience of voting - which in Ghana and many other African countries has become a simple ritual - was akin to going to a war zone. Voters often queued under the gaze of the ruling party's thugs - among them well armed police officers with instructions to regard political sympathy for any opposition party or candidate as nothing less than a capital crime.

To the chagrin of millions of Nigerians, the electoral commission had bungled the ordinary tasks of compiling a voters register, providing valid ballot papers on time, and sending electoral officials to man polling booths. Throughout the country, there were accounts of

programmed chaos, confusion and violence. Domestic and foreign observers saw on display a farce worthy of topping global indices of electoral infamy. And then, to the shock of decent people, including these observers and disenfranchised voters, Maurice Iwu's commission proceeded to award legislative seats and executive offices, including the presidency, to the ruling party's candidates.

Rather than a general election, Nigerians were treated to a general selection - a Darwinian absurdity in which the ruling party, as the fittest rigger, allocated offices to its members without regard to any electoral method. It was the most unabashed violation of electoral principles in Nigeria's history. When it was all over, Nigeria was saddled with an illegitimate president for whom the task of composing even a medium-rate cabinet is a perplexing, confounding challenge.

If there was ever a presidential election that deserved to be quickly and decisively invalidated, Yar'Adua's was it. Yet, Justice James Ogebe headed an appeal court panel that gleefully reached the strange conclusion that Yar'Adua's "election" complied with the law. In a twist that reeked of inducement, Yar'Adua nominated Ogebe for a spot on the Supreme Court days before the verdict. Neither Yar'Adua nor Ogebe had the moral sensibility to recognize that the timing of the nomination, if not the nomination itself, was abominable. Responding to the panel's (predictable) verdict, I wrote: "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."

Today, such words could be used to describe the judicial abracadabra deployed by a majority of the Supreme Court's panel to uphold the legitimacy of Yar'Adua's mandate. And many disappointed Nigerians have done just that. Justice Niki Tobi, who read the majority judgment, led Chief Justice Kutigi and two others to what amounts to a legal cul-de-sac. The nation's electoral laws state, in black and white, that "ballot papers SHALL be bound in booklets and numbered serially with differentiating colors for each office being contested" (emphasis mine). It was established that INEC breached this important requirement of the electoral law. Yet, Tobi, who showed questionable judgment when he accepted to chair former President Olusegun Obasanjo's illegitimate political conference, was not bothered by the commission's calculated decision to ignore a fundamental provision of the law.

Why go through the rigmarole of writing laws at all if our supposedly best and brightest judicial minds would not insist on their strict observance? The only redeeming tinge to the Supreme Court's appalling performance lay in the dissenting opinions, especially that of Justice George Oguntade. On a day when the majority advertised mediocrity, Oguntade spoke with rigor, courage and a brilliance that shone through in that murky hall. He asserted that the proper

construction of the word “shall” meant that INEC did not have a choice. “Shall” connotes and denotes mandatory compliance. How sad that the majority failed to see straight on a matter that should not be open to legal and linguistic somersaults!

The worst of it is not that the Supreme Court’s majority has cast a vote (more political, it seems, than judicial) to keep an inept man at the helm of Nigeria’s affairs. Truth be told, an INEC headed by (the golden standard of rigging) Maurice Iwu and other partisan electoral commissioners would simply have “re-selected” Yar’Adua in a re-run poll.

The court’s tragic ruling has far more ominous consequences for the body politic. A friend of mine wrote: “the nation’s highest judicial organ has canonized electoral iniquity.” Then he added: “Another sad day for the blackman.”

By Friday’s ruling, the judiciary has effectively removed itself as a factor in Nigeria’s future electoral politics. Here’s a prediction: the so-called elections in 2011 are bound to be a bloodbath. And a good deal of the reason is that the judiciary has signaled that it’s firmly on the side of the boldest, bloodiest rigger. Dispossessed candidates now know that the odds of reclaiming their mandates through the courts are slim to non-existent. Did I hear you say Adams Oshiomhole? Many Nigerians believe that his recent legal triumph was simply a contrivance to beguile the Nigerian palate before it was fed the bitter and toxic confection of the Yar’Adua verdict.

In 2011, candidates will recruit their small armies of thugs and resort to self-help as

the rule of the game. We stand in danger of witnessing the murderous horror of Jos replayed all over the country.

The Supreme Court has fortified the conventional “wisdom” that the courts don’t have the spine or will to ever send away a presidential impostor, however offensive the manner of his imposition. Whenever the judiciary reveals a willingness to uphold crime – and there’s no crime worse than rigging – it’s a recipe for disaster.

In a carefully choreographed coincidence, Yar’Adua received the report of a 22-member “electoral reform committee” a day before the Supreme Court said he was properly elected. The grim symbolism should not be lost on Nigerians. Yar’Adua impressed the gullible when he conceded to some irregularities in the process that produced him. He was hailed for his alleged honesty. For me, he flunked the simple litmus test for honesty: that a truly honest man in possession of stolen property will find a way to return it.

In court, Yar’Adua did not admit to any flaws, minor or major, in his “election.” And two panels of justices who like to be called “learned” have now assured him that there’s indeed no provable defect in his mandate.

One wonders, then, why Yar’Adua told members of the Justice Muhammadu Uwais electoral reform panel that he would “carefully study and faithfully implement, with the support of the national assembly, those recommendations that will guarantee popular participation, ensure fairness and justice, and bring credibility to the electoral process in Nigeria”? Don’t

bother, Mr. Yar'Adua. Sleep easy, for everything is all right. Nigeria is the gold standard in electoral transparency. And the PDP, which will soon gobble up the AC and the Ume-Ezeoke wing of the ANPP, is on the way to ruling for sixty years or until Nigeria dies from the exhaustion of being moved forward - whichever comes sooner. The trouble is that countries like the United States and Ghana are slow to learn that elections are just wars and that the ruling party's job is to capture more seats and states in each election and to swallow up the opposition.

Uwais and the Supreme Court verdict are two sides of the same bad coin.

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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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