

AND WHO SAYS BAIL CONDITIONS ARE TOO STRINGENT

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OPINION

First the caveat. I am not a lawyer although I have been admitted to read for the LL.M. degree as an external student of the University of London. No, I don't have an LL.B degree. The University of London aggregated the papers I passed at the inter LL.B stage and the courses I passed for the Masters Degree in International Law and diplomacy and came to the conclusion that I am fit and proper to be admitted to read for the LL.M degree. Therefore while I am not learned in Law, I am not ignorant either.

The issue of bail and the conditions under which bail is granted have again come to the front burner. As far back as the 2007 Conference of Nigerian judges, Chief Justice of Nigeria, His Lordship Idris Kutigi berated Nigerian judges for what he called "extravagant and ridiculous" bail conditions. Some weeks back, at the 2009 All Nigerian Judges Conference in Abuja, Chief Justice Kutigi revisited his condemnation in even harsher tones, describing high bail conditions as "scandalous and absurd."

My initial reaction was to just note the views of the out-going Chief Justice as I did the 2007 criticism. But when THISDAY of December 4, 2009 wrote an editorial titled Judges and Unrealistic Bail Terms where it not only endorsed the views of the out-going Chief Justice but went beyond to prescribe stiff penalties for Judges who impose stiff bail conditions, then I think that we have reached the stage of the proverbial handshake beyond the elbow. To quote from the editorial:

"We urge the CJ not only to pontificate at judges conferences but to take serious disciplinary action against judges giving ridiculous bail conditions. The CJ must show that even in the temple of justice, amongst judges, he can bite as well. Making an example of one or two judges in terms of strong disciplinary action will spare the CJ and indeed the nation the pain of looking on helplessness at a problem that portrays the judiciary in very bad light."

Even though the net has been cast in very broad terms, it is a notorious fact that it is only in corruption cases that this issue of stringent bail conditions has raised its head. Firstly, if I may raise this issue right here. Is it the fact of the stringent bail conditions that has led to a drop in our rating on the table of International Transparency? I thought our rating fell because there are so many corruption cases that are hanging in the judicial process. Once lawyers have secured bail for their clients, all kinds of "technicalities" to use the words of the EFCC Chairman, are then used to frustrate the prosecution in pursuing the cases to their conclusion. Former Governors who were charged to various courts in 2007 have still not had their cases decided. Yet the out-going Chief Justice did not find it necessary to draw attention to this untidy state of affairs. All he could focus on was the issue of excessive bail conditions.

Secondly, is there not a contradiction in the often stated position that bail is a constitutional right but it is at the discretion of the judge? How can a right be at the discretion of a judge at the same time? Were the judges who handled the following cases NWUDE v F.G.N, OFULUE v F.R.N., ANAJEMBA v F.R.N. and AJIDUA v F.R.N. in violation of the Constitution when they denied bail to the various accused persons who were standing trial for various crimes of economic and financial nature?

Thirdly, how stringent is stringent? In other words, what amounts to stringent bail conditions? Is it really not a matter of comparativeness? A retired Professor who is on a pension of N100,000.00 a month may find bail conditions of N500,000.00 stringent. So why should someone who has been charged to court for embezzling billions of Naira find a bail of N100,000,000.00 (One hundred million

Naira) onerous? In fact, if the out-going Chief Justice was rightly quoted in the THISDAY editorial, he was criticising "a bail bond in the sum of one million Naira". Would his Lordship have criticised a bail bond of N200,000.00 imposed on a journalist? Furthermore, what is onerous in asking for surety to be either a Senator, Governor or a first class traditional ruler? After all, there is hardly a politician who does not have a chieftaincy title to his name, a title conferred by some traditional ruler somewhere. And it is difficult these days to find a traditional ruler who is not of a first class vintage. And as for a governor being asked to stand surety for an ex-Governor, what is impossible about that especially since all the ex-Governors made sure that they anointed their successors before they left office to watch their backs? Really, what is all the fuss about then?

The danger posed to the nation state is in fact the circles that have been drawn round our judicial system by lawyers with the connivance of the judiciary. Section 40 of the Economic and Financial Crimes Commission Act of 2002 states clearly:

Subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999 an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court (my emphasis). "And yet practically all the high profile cases involving corruption have been stymied by appeals against rulings of an interlocutory nature on one matter or the other in outright violation of this section 40.

As to the constitutionality of this section 40 quoted above (and here I am relying on a paper delivered by Barrister Femi Falana on "PROSECUTION OF CORRUPTION CASES: THE JUDICIARY AS AN ARBITER"), this issue was raised before Justice Oyewole (yes, the same Justice Oyewole) in *NWUDE v F.R.N.* and His Lordship held:

The provisions of the said section in my view only seek to further give life to section 36 of the Constitution and the intention of the legislature in this instance is to remove impediments in the way of the administration of justice. It is not directed against the accused alone for it is not just the accused person alone that makes interlocutory appeals and seeks to stay proceedings as could be seen in the case of *STATE v AJAYI* (supra) where stay was actually sought by the prosecution".

Such is the alarming situation where we are in terms of the paralysis of the judicial system in handling corruption cases that the Honourable Justice Emmanuel Ayoola, the Chairman of the ICPC and a retired Justice of the Supreme Court, has been driven to advocating the suspension of the fundamental rights of accused persons in the trial of corruption cases. Also, Mrs Farida Waziri, the Chairwoman of the EFCC , took the bull by the horn by taking her call for the establishment of Special anti-Corruption Courts to the same All Nigerian Judges Abuja Conference where the out-going Chief Justice vented his own anger on bail conditions.

With all due respect, I was hoping the out-going Chief Justice would have raised his judicial voice against High Court injunctions against the Police, EFCC, ICPC and other security agencies from investigating corrupt cases, some of these injunctions are even of a perpetual nature, raised his judicial voice against violation of section 40 of the EFCC act and various other acts of judicial rascality that are beyond human understanding. It is not too late to do so. His Lordship has his valedictory session on retirement from the Supreme Court to do so