

**ADDRESS BY THE PRESIDENT OF THE NIGERIAN BAR ASSOCIATION (NBA)
ABUBAKAR BALARABE MAHMOUD, OON, SAN, AT THE VALEDICTORY COURT
SESSION AT THE SUPREME COURT OF NIGERIA, IN HONOUR OF HIS LORDSHIP,
THE HONOURABLE JUSTICE MAHMUD MOHAMMED GCON, RETIRING CHIEF
JUSTICE OF NIGERIA ON 10th NOVEMBER, 2016**

My Lord, the Chief Justice of Nigeria,

My Lords, Justices of the Supreme Court

President of the Court of Appeal, Justices of the Court of Appeal

Attorney General and Minister of Justice

Former Chief Justices of Nigeria,

Justices of Superior Courts from across the Country

Benchers, Learned friends and colleagues inner and utter Bar

Excellences, Royal Highnesses

Distinguished ladies and Gentlemen.

We are here this morning to bid farewell to one of Nigeria's most humble, modest and impeccable Chief Justices. Hon. Justice Mahmud Mohammed. A man of great intellect and learning. His physical stature and seeming frailty belies the steel of his character and unbending commitment to justice and fairness.

It is a great privilege and an honour therefore for me to, on behalf of the Nigerian Bar Association, give this speech in this court before an array of distinguished of personalities on such a historic occasion.

Justice Mahmud Mohammed has been the Chief Justice of Nigeria since Nov. 2014. He exists this Court during one of its most turbulent periods in history. Yet we are certain that history will be kind to him. He has led this court through major reforms and great innovations, for which the legal profession and indeed the country must be grateful. Besides, Justice Mohammed has had exemplary career and everyone who knows him will remember him as a man of unblemished character and integrity. A man who personifies, modesty, humility and simplicity; invaluable qualities for all who seek career on the bench.

I have known Justice Mohammed for many years since I began to appear before him at the Court of Appeal in the early nineties. But, I must admit, I have come to appreciate him

even more in the course of the last few months when, as President of the Nigerian Bar Association, I have had to interact with him on more regular basis over matters affecting the judiciary and the legal profession. He has proved a very listening person, cautious and pragmatic. I have seen him very distraught by the recent events. Yet he maintained his calm and composure. I think his departure at this time will leave a huge vacuum in the nation's judiciary.

My Lords, distinguished ladies and gentlemen, Hon. Justice Mahmud Mohammed to whom we bid farewell as a justice of this court and as Chief Justice today, was born in Jalingo, Taraba State on 10th November, 1946. He had his early elementary and primary education at Mallam Kasimu Qur'anic School and Jalingo Junior Primary School from 1950 to 1956. He completed his primary education at the Senior Primary School Jalingo which he attended from 1957 to 1959. He later proceeded to Secondary Technical School/Government College, Kaduna from 1960 to 1964, where he obtained the West Africa School Certificate (WASC). He attended Government College now Rumfa College, Kano from 1965 to 1966 for his Higher School Certificate. I only recently learnt that while at Rumfa College he led a demonstration against military rule in the streets of Kano in 1966.

Hon. Justice Mohammed studied Law at the Ahmadu Bello University between 1967 and 1970 and was at the Nigerian Law School between 1970 and 1971. Mr. Justice Mohammed has at various times undergone specialist legal training in several institutions around the world. He was at the Commonwealth Institute of Legislative Drafting in 1976; at National Institute of Public Management, Washington DC, United States of America in 1980; at the Institute of Judicial Administration, University of New York, United States of America in 1982 and at the Institute of Advanced Legal Studies, University of London, United Kingdom in 1983.

He began his career in public service with the Ministry of Justice of the defunct North-Eastern State, and later Gongola State. He was Attorney General and Commissioner of Justice of Gongola State from October 1981 to December 1983. He served as Chief Magistrate Grade One before joining the High Court Bench of Gongola State in 1985. In 1991, he was appointed the Acting Chief judge of Taraba State, and later confirmed the Substantive Chief Judge of Taraba State in the same year. He was elevated to the bench of the Court of Appeal in 1992 and to the bench of the Supreme Court in 2005.

In his years in public service, he has served as a member of several committees and panels on national assignment. Justice Mahmud Muhammed has attended numerous national and international conferences and workshops and has presented papers at various judicial functions and seminars which included the followings.

- (a) The role of military tribunals in the administration of justice in Nigeria at Maiduguri National Conference of Magistrates' Association of Nigeria in 1989.
- (b) Contempt of court: At the National workshop for Magistrates and the Area Court Judges held at the Maiduguri and Yola in 1990 and 1991 respectively.
- (c) Administrative/organisation of the Courts and Chambers: At the National Workshop for Magistrates and Area Court Judges held at Maiduguri in June 1992.
- (d) Alternatives Dispute Resolution at the World Jurists Association 19th Biennial Conference on the Law of the World in Budapest Hungary.

Justice Mahmud Muhammed is a recipient of several National Honours; he was conferred with Officer of the Order of Niger (OFR) in 2003, Commander of the Order of Niger (CON) in 2006 and Grand Commander of the Order of Niger (GCON) in 2014. Justice Muhammed a life Bencher, became the Chairman of the Body of Benchers on 31st March, 2015.

He is married with children, and his hobbies include reading, photography swimming, farming, animal rearing and keeping pets. Talking about his pets, I had an encounter with one which my Lord never knew about. It was during one of my recent visits to his residence. His Special Assistant had placed a call to me early on Sunday morning. She got me in Lagos. I had a busy weekend retreat there. Hoping to catch some much needed rest, my staff had arranged a late afternoon flight for me to Abuja. His assistant said to me "the CJN wanted to meet with you urgently". I said alright but I am in Lagos due to return later in the evening. She said I will inform his Lordship that you will see him as soon as you arrive. I went back to catch my rest. Then her call came again, "can you make an earlier flight? His Lordship says its' urgent" she said to me. At that point, I quickly got ready and made my way to the airport. I caught the next available flight. In no time I was in Abuja. I drove straight to the CJN's residence. I was ushered in. However, I was very pressed so I immediately asked for the guest toilet. I rushed in to the toilet and opened the door rather forcefully only to be met by a terrified cat. I did not realise that the guest toilet was also a residence to one of the CJN's pets It jumped across the small room and latched on the window pane. For some few moments we looked at each other, both of us obviously frightened. With my trousers almost at my knees I quickly weighed my options. Not sure what the freighted cat would do, I could not go further with my mission. Luckily we both quickly regained our composure as I gently opened the door the freighted cat made its way out. So if any of you is ever a guest in my Lord's residence, please remember you may come across his pets in unexpected places!

In his many decades of his remarkable career on the Bench, Justice Mahmud

Mohammed has made an indelible mark. He is known for his clinical legal mind but as one also focused on substantive justice. He has through countless number of decisions made a huge impact on the nation's jurisprudence in diverse areas of the law ranging from criminal law, to contract to employment law and of course election jurisprudence. The common thread running through all these cases was the uncanny ability to weave through complex legal arguments and strike at the heart of the matter. I have argued and won appeals before him. But when I read the Judgment I would sometimes be unhappy with myself for failing to anticipate his sound reasoning and perspectives in the first place. Mr. Justice Mahmud Mohammed will be remembered for his forthrightness and for remaining faithful to his judicial oath of dispensing justice fairly and without any fear, favour, affection or ill will.

There is no time to make a detailed foray or analysis of his judicial decisions. I am sure that will be done at the appropriate time. But illustrative of his legal mind and judicial reasoning may be his ruling in the Sokoto State governorship tussle in the appeal No. SC.32/2010 instituted by Alhaji Muhammadu Maigari Dungyadi and Democratic People's Party as appellants where the Independent National Electoral Commission (INEC) and Aliyu Magatakarda Wamako were respondents which was delivered on June 4, 2010. At that time, the Court of Appeal was the final court in the governorship election matters.

This is case where Justice Muhammed gave a dissenting, minority decision against an order stopping the Court of Appeal, Sokoto Division, from Delivering judgment on a case which it had concluded hearing and had adjourned for judgment.

Justice Mahmud Muhammed stood his ground and typically showed his brilliance in his dissenting decision. He insisted that "Yes, this court being one of the superior courts of record created by the Constitution and invested with defined jurisdiction under Sections 232 and 233, thereof prescribing original and appellate jurisdiction of this court, it is the same Constitution in the combine effects of the provisions of Sections 246(1) and (3) and 285 thereof, that the jurisdiction of this court in matters arising from the decisions of Election Tribunals other than the decision of the Court of Appeal in Presidential Election Petition had been ousted. See *Awuse v. Odili* {2003} 18 N. W.L.R. {Pt. 851} 116 and *Onuaguluchi v. Ndu* {2001} 7 N. W.L.R. {Pt. 712} 309.

"In the instant application, therefore, since this court has no jurisdiction to entertain the reliefs of stay of proceedings in the Court of Appeal Sokoto, the relief is hereby struck out. Application for stay of proceedings in the Court of Appeal Sokoto in appeal No. CA/S/EP/GOV /10/09 is struck-out as this court has no jurisdiction to grant the same"

With the benefit of hindsight, this decision has been lauded by legal scholars as being more in tandem with the provisions of the Constitution and the electoral law.

In *Mohammed v State*, (2013) 5 NWLR, 315, Hon. Justice Mahmud Mohammed demonstrated his ability to maintain a delicate balance between procedural justice and substantive justice. This was as case of an 80 year old man facing the death penalty. He had been convicted for culpable homicide punishable by death. He was alleged to have killed a man he suspected to be having an affair with his wife. He had been assigned a counsel by the trial court. The record of the trial however did not show that the appellant's plea was taken before the case went to trial. On appeal, the Court of Appeal nullified the trial but sent the case back for retrial. On further appeal to the Supreme Court, in his lead Judgment, Justice Mohammed allowed the appeal and set the 80 year old man free. His reasoning was that in ordering a trial the Court of Appeal did not take cognisance of the fact that the appellant had spent 14 years in detention and the evidence in the record revealed that even if he was convicted of the offence of culpable homicide after a retrial, the defence of provocation, revealed availed the appellant for which he had already served adequate sentence.

Justice Mahmud Mohammed is well known for his candour. He never lost opportunity of expressing himself. He often rebuked lawyers for failing short in their professional responsibilities. His warning to counsel in *Ibama v. SPDC (Nigeria) Ltd* (2005) 17 NWLR pt. 954, 364 @ 385 -386 is worth recounting when he said: " ... I am completely at a loss to see the necessity of prosecuting this case right from the trial High Court through to the Court of Appeal and ultimately to this court ending in abysmal failure at each stage: The question then is whether it was not really a futile exercise for the learned counsel to the appellant to have saddled the trial court, the Court of Appeal and lastly this court with a case which the appellant himself seemed to have agreed that there was no real dispute between him and the respondent. For this it is necessary to observe that learned counsel exercising their professional responsibilities in pursuing matters in our courts of law on behalf of their clients must exercise caution and due diligence in not wasting their energies and valuable time leading to the precious time and energies of the courts also being wasted in pursuing matters which are not only clearly without merit but which even the parties themselves as in the present case, do not support: I think this warning remains germane.

Hon. Justice Mahmud Mohammed will be remembered not just for his judicial pronouncements, but as a Chief Justice who spearheaded some of the most innovative reforms in judiciary. He championed the reform of the process of the award of the rank of

Senior Advocates of Nigeria leading the enactment of the Guidelines for the Conferment of the Award of the Rank of Senior Advocates of Nigeria, 2016. The exercises for the award of the Rank which he led in both 2015 and 2016 have been adjudged as among the fairest and most rigorous since the award started. Justice Mohammed as chairman of the Federal Judicial Service Commission has overseen the implementation of the new guidelines for the appointment of judicial officers. This process has become more rigorous and transparent. It is also during the term of Hon. Justice Mohammed that the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria and the new National Judicial Policy were enacted in February 2016 and April 2016 respectively. These in my view represent major milestones in the efforts to improve the workings of the judiciary.

Since he assumed office as Chief Justice, Mahmud Mohammed has introduced several measures to speed up the pace of justice. He introduced a second panel of the court. This has proved greatly helpful in clearing the back log of cases pending in the court. He also pursued vigorously the implementation of the Judicial Information Technology Policy. In collaboration with the NBA, the National Judicial Council has pioneered the introduction of the use of a secure legal email system that will enable secure communication between the Supreme Court legal practitioners. This when fully implemented will greatly enhance the speed of justice delivery in the nation's apex court.

My Lord is also a firm believer of Alternative Dispute Resolution. He championed the enactment of the Supreme Court Mediation Rules 2016 and also the establishment of the Supreme Court Mediation Center. To further support these, the NJC under his leadership now recognises that matters disposed by Judges utilizing the ADR processes will count in judicial performance evaluation. Hon. Justice Mohammed has just only last month inaugurated the First Judicial Ethics Committee under the Chairmanship of Hon. Justice Idris Legbo Kutigi, retired Chief Justice of Nigeria.

Without doubt My Justice Mahmud Mohammed will be remembered as a champion of judicial reforms in Nigeria. He is a disciplined man and has led this court with honesty and integrity.

But there is another side of Justice Mahmud Mohammed which we should also celebrate which again brings out his qualities as a leader. In the run up to the 2015 Annual General Conference of the NBA here in Abuja, Mr. Alegeh SAN, my predecessor in office had called me to inform me of the planned Novelty Football Match between the NBA and the Judiciary. He informed me of he was inviting both Mr. J. K. Gadzama and myself to participate on the NBA team and advised that I begin to work on my fitness level. Both Mr. Gadzama and myself were of course eyeing to succeed Mr. Alegeh as President of the Bar.

I recognise that this was an opportunity to begin to connect more with our members and potential voters. But I thought compared to my opponent, who was much more robustly built, participating in such an adventure was perhaps much more risky for me. If by any chance I fractured my leg, that would have put paid my ambition to lead the bar. I carefully avoided Mr. Alegeh's invitation. So you can imagine how ashamed I felt when I learnt that Justice Mahmud Mohammed led the team of the Judiciary called Judiciary Strikers Fe against NBA Bulldozers Fe which ended in a 4-1 defeat of the NBA Bulldozers Fe and also learnt that His Lordship, Justice Mohammed scored two goals including the opening goal. Justice Mahmud Mohammed is indeed a leader. The bar will without doubt miss one of its great friends on the bench.

My Lords, distinguished ladies and gentlemen, valedictory speeches are traditionally expected to be light, witty and humorous. An occasion for sharing nostalgic memories. Indeed, they are hardly expected to be controversial or bring up serious matters. However, in our circumstances, keeping with such a tradition may seem almost insensitive or perhaps somewhat out of tune with our realities. So I seek your indulgence to deviate a little and reflect on some of the current happenings. By current happenings I do not mean the election of Mr. Donald Trump as President of the United States on the eve of His Lordship's retirement.

I am of course referring to events affecting the legal profession here at home. The Nigerian Bar Association has tried very hard in the last couple of weeks to maintain the delicate balance of fulfilling one of its sacred duties, defending and maintaining the independence of the Judiciary and the legal profession with equally strong imperative of promoting a clean and corruption free judiciary and legal profession completely aligned with the aspirations and expectations of the Nigerian people. The events of the last several weeks, naturally have elicited mixed reactions from Nigerians and indeed even from members of the legal professions. One of the first thing I had to do immediately was to set up a framework for consultation to guide the association in our responses as the situation unfolded. I thank our past presidents and other bar leaders for making themselves available during this period. However, I take ultimate responsibility for all decisions. Our statements have been hailed in some quarters and condemned or viewed with suspicion in other quarters. I will like to emphasise that our position is unequivocal and there is indeed no contradiction. The fight against corruption is an imperative for our country. The legal profession must do its part. We maintain however that this must be done in accordance with the due process and the requirements of the rule of law. We will not accept the style of operations adopted by the Department of State Security. We condemn that approach. We will not also accept that any department of government can exercise supervisory powers over the National Judicial Council as the DSS sought to do. Our Constitution prohibits it.

We nevertheless recognise that these events as distasteful as they have been,

present the legal profession with an opportunity to confront the problem of the corruption in the judiciary and indeed in the legal profession. We must work hard to regain the confidence of the Nigerian people. I believe the views of almost all stakeholders are now almost at tandem as to what needs to be done. What perhaps must happen is for these views to be harmonised and clear strategy developed.

I will at this juncture like to commend the efforts of the National Judicial Council under the leadership of the retiring Chief Justice Mahmud Mohammed. The Chief Justice deserves commendation for spearheading and introducing the New National Judicial Policy which came into effect in April 2016. That is well before these recent events. A careful review of the policy will indeed reveal that many of the challenges facing the judiciary have been thought through and the National Judicial Policy has set out a strategic framework for dealing with them. Part Six of the document for instance sets out the Transparency and Anti-Corruption Policy: It provides as follows:

6.4 The Policy accepts that for a strong transparency mechanism to be established, first, the present working of judicial system must be properly studied and, second the modalities of corrupt practices in the judicial system must be understood

6.5 As to the first, Council will set up a Working Group for the study of the working of the judicial system, covering the modalities of access to justice to justice delivery and extending to judicial decision making. This study will among other things include a study of the practices of the Registry of each Court, efficiency of the services rendered to the public by it, and the process of judicial decision making.

6.6 As to the second, Council will set up ad hoc Fact Finding Committees to provide a platform to afford an opportunity to citizens who profess factual and credible knowledge of information of the nature and modalities of corruption in the judicial system to ventilate such considering widespread claims in the country by several persons that corruption is prevalent and practiced with impunity in the system of justice. Such committees will be empowered to receive confidential and privileged information.

The NBA is delighted that the NJC is now examining ways of implementing these sections of National Policy and indeed at its last meeting has set up a small committee to work out the modalities for doing so. We think this is a matter that must be pursued with vigour and urgency.

We hope and believe that such an exercise will provide the basis and empirical data for a much needed audit of the judiciary in terms of systems and processes that will enhance accountability, but also provide a basis for judicial personnel audit that will ultimately

enhance public confidence in the nation's judiciary. I want to assure the My Lord the Chief Justice and indeed the incoming Chief Justice that the NBA will be is ready to play its role in this exercise and remains committed to rebuilding public confidence in the legal profession. We will remain steadfast in the defence of the independence of the legal profession and the independence of the Judiciary.

I should inform this gathering too, that tomorrow 11th November, I have convened a Bar Leaders Summit here in Abuja. It is an occasion for leaders of the bar to reflect on the challenges facing the legal profession and review some of the directions we propose to chart going forward. I look forward to seeing many of the distinguished bar leaders here.

My Lords distinguished ladies and gentlemen, let me conclude this brief address by wishing Hon. Justice Mahmud Muhammed a happy retirement. On the behalf of the Nigerian Bar Association, I extend our profound appreciation to his family for the support they have given him through his career. They have given us one of the greatest Chief Justices. We are indeed grateful. We will continue to seek your wise counsel even as you bow out. I will of course remember your cats in unusual places whenever I visit to say hello.

Thank you for your attention.

Long Live the Federal Republic of Nigeria

Abubakar Balarabe Mahmud, OON, SAN,
President, Nigerian Bar Association