KEYNOTE ADDRESS

ON

CHALLENGES OF LEGAL PRACTICE IN THE 21ST CENTURY NIGERIA

BY

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INTRODUCTION: THE IMPACT OF TECHNOLOGY

The Organizers of this Conference have done me the honour of inviting me to deliver the Keynote Address on the Theme of the Conference. That theme, as you are all aware is CHALLENGES OF THE LEGAL PROFESSION IN THE 21ST CENTURY. My task accordingly involves a prognosis into the affairs of the Profession in the 100 years beginning from January 1, 20,000. For such a task, profound knowledge of the affairs and problems of the Legal Profession are not enough. In addition, the capacity to conjure a vision of what is likely to happen in the next millennium is essential to the successful discharge of such a task.

I hope that you will not take it as a lack of modesty on my part if I declare (and I do so in all humility) that I am fully conscious and eternally grateful to my Maker for the fact that He has bestowed and lavished upon me a variety of Blessings. But none of these include the Gift of Prophesy. That being so, I do very seriously regard the task I have been invited to perform this morning as a Mission Impossible!

Think of any of the great and distinguished jurists in Great Britain upon whose legal and judicial institutions we have modeled those of our country. Take any of such jurists who were alive in November of 1897. And ask him to give a prognosis of the challenges of the legal profession in Great Britain in the 20th Century!

Let me tell you something which is today common place with us in the legal profession but, in November 1897 no one could ever have predicted that it would happen.

In 1897 you cannot imagine a solicitor's office which does conveyancing work and who does not have in its employment highly qualified calligraphers trained to write pages and pages of words on indenture papers without a scratch or mistake and in the most beautiful handwriting you can ever imagine. You will readily understand the reaction of lawyers who were alive in those days and who may have had to listen to a Keynote address on Challenges to the Profession in the 20th Century, if, speaking about the set up in a solicitor's office, had dared to suggest that the army of calligraphers inscribing indenture papers with first-class hand writing of everlasting artistic beauty will, in the 20th century be swept away and treated as primitive, unnecessarily expensive and time consuming luxury. In 1897 such a forecast is unlikely to be regarded as a sensible prognosis. It would most certainly have been treated as an unmistakable manifestation of the raving of a lunatic.

If the lawyer speaking in 1897 was abreast of technological development he would perhaps have been able to envisage the development of the electric typewriter which, as an office writing machine, emerged in 1920. But he could never have foreseen the Word Processor, or the Computer, the

Fax Machine or the E Mail. These are technological developments which have vital consequences on the operations of a lawyer's office in this century and his ability to communicate within his own country of operation and throughout the world.

I decided to start this address in the way I have done because it is my firm belief that the most significant effect upon our legal and judicial system in the coming millennium will be the impact of technolocal development upon that system. The entire profession, the organization and functioning of our courts of law as well as legal practitioner's offices must be conscious of the need to adapt to and embrace all the new technologies which are capable of facilitating the judicial and legal process.

It is not only unnecessary but, for reasons already stated, impossible for me to indicate the possibilities of technological developments that will vitally affect our legal and judicial system in the next century. All that is necessary is for us lawyers to see that we keep or are kept abreast of these developments. In turn we must see to it that necessary changes are made, particularly in the area of (a) practice and procedure of courts of law and abritration proceedings (b) law of evidence and (c) law of civil and criminal procedure.

I must say some few words in elaboration of what I just mentioned. I can envisage big possibilities in facilitating communications through inter-Net between counsel and the court or indeed in the examination or cross-examination of a witness who for one reason or the other cannot be physically present in court. In recent times the entire world was able to follow the criminal trials of O J Simpson and subsequently, that of Louise Woodward on the television. Somehow or the other the rules of practice and procedure in our courts must change from time to time in line with the adoption of facilities made available to us by improved technology. In this regard the rigidity of the idea that a court is not duly constituted for any purpose whatsoever until the presiding Judge sits in an open court in which all parties and their counsel are physically present may well become a thing of the past.

The fundamental rule to be observed and kept sacrosanct is that our courts of law should operate "in public". We must however realise that we may well rule ourselves out of the capacity to adapt to technological improvements if we construe the requirement for our courts to operate "in public" as meaning only that they must operate in a place and at times open to "the public." I venture to suggest that in the coming millennium, and in order to make our legal and judicial systems adaptable to technological improvements, we must construe the phrase "in public" more liberally. The reason why our courts are required to sit in public is because we want to avoid "cloistered justice" i.e. the administration of justice in a secluded place to which the public in general have no access. If developments in the electronic media make it feasible to conduct any proceedings in a cause or

matter through the inter-Net more efficiently and effectively, our rules of practice and procedure ought not to stand in the way of conducting those proceedings in that way. If necessary the rules of practice and procedure should be amended.

Let me now turn to say something about the Law of Evidence. I believe that the efficiency and performance of machines we use for the photocopying of documents has reached a stage when it ought to be possible for copies which achieve a prescribed standard ought to be treated as if it were the original in all but some few exceptional cases. I know that if the law of evidence were amended to give effect to this suggestion, there may be room for fraud. But this danger can be taken care of by making provision for criminal sanction to punish possible fraud.

It seems to me rather strange that up to this date we have left it completely to the Judges to lay down and work out the rules for admissibility of tapes, E mail print outs and fax messages. I suggest that time is overdue for carefully thought out express rules on these matters which should be in place in preparation for the next millennium. The object of any trial is to arrive at a fair and just decision on the basis of the truth. That will never be possible if due to some inadequacy in our rules of evidence, vital documentary evidence which may have influenced the actions of the parties or either of them must be excluded from consideration. I appreciate that my comment is really a criticism of our current law of evidence on technical rules of evidence relating to admissibility. However it is a useful illustration of how in this century we have failed to amend our rules of evidence so as to bring them in line with technological development.

Before I leave the question of the Impact of Technology I think I should mention a few other areas where we have failed to make full use of available technology in the present century. I emphasize that I make this point in order to show that if we are not sufficiently alert to the possibility of making use of available technology we would merely be missing our chance of facilitating legal process. The daily or weekly publication of Cause Lists ought to be computerised so as to save unnecessary time and labour of producing such lists. Some of the standard works on which the profession relies in practice such as the White Book have been put on a CD-ROM (Compact Disk read only Memory). I envisage that in the course of the next millennium many of our Statutes and Law Reports will be available on CD-ROM. Although I have earlier said I cannot predict exactly the trend of technological development, I think that my prognosis in this regard can be described as reasonably foreseeable developments.

Finally I must make reference to video technology by which I mean the technique of recording sight and sound exactly as they occur to enable someone who was not present when an event occurred to know what in fact happened without the necessity of having to rely upon evidence put before him by one or more of those who were present. Obviously this technology can

be used to facilitate the ascertainment of facts by a court of law and it ought to be possible for our rules of evidence to make it easy to admit video records of events. One of it's obvious effects would be to assist the tribunal in arriving at the truth of a disputed fact without the very difficult and often invidious exercise of having to determine who is lying and who is not by watching the demeanour of eye witnesses. Furthermore I envisage that developments in video technology can be useful as part of the record which courts exercising appellate jurisdiction from courts sitting at first instance may find most valuable.

THE IMPACT OF GLOBALISATION AND INTERNATIONALIZATION

It is correct to say that in these closing years of the 20th Century we are beginning to feel and to witness the impact of Globalisation and Internationalisation of certain aspects of our legal and judicial activities in Nigeria. Some of us have wrongly attributed the interest of the outside world in our activities in this regard to unwarranted and unjustified interference in our internal affairs and an assault on our national sovereignty. I hasten to say that they are utterly wrong. It is true that the interest shown by the international community in certain aspects of our internal affairs is a new development. During the period of the cold war, when both sides were scrambling for friends, moral considerations were thrown into the wind and the super powers and their satellites failed to condemn open violations of Human Rights which were there for the world to see. The courage to condemn Human Rights violation only came after the end of the cold war.

On our side let us remember that when Nigeria became independent in 1960 we were admitted, quite rightly, to the membership of the United Nations and we proudly took our place as one of the many important members of that Organisation. Furthermore as a member we adhered to the UNIVERSAL DECLARATION OF HUMAN RIGHTS. It is very important to remind ourselves of the words of the Preamble as well as the opening words of the Proclamation. I crave your indulgence to quote -

"PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

This universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

This was why in the days of apartheid Nigeria joined with other African States to condemn the wicked and inhuman activities of the then South African Government prior to the dismantling of system of apartheid. In doing so we were surely justified because we were promoting the implementation of the United Nations Universal Declaration Of Human Rights. We were right in having done so.

So, if member countries of the United Nations critisize Nigeria because they claim that we fall short of observing and maintaining the provisions of the Universal Declaration Of Human Rights, however much we may disagree with the content of their criticism we ought not to accuse them of being guilty of unwarranted or unjustified interference in the internal affairs of Nigeria: Let me add further that it is wrong to describe all those of our people who join in criticising our country's human right's record as "unpatriotic Nigerians". We must realise that Nigeria, as a member of the United Nations, does have obligations binding on it in international law to uphold

and maintain the principles embodied in the Universal Declaration of Human Rights.

At this point in time our country has so far been punished with the imposition of some sanctions by the International Community on the ground of their opinion that we have failed to live up to what is required of us under the Universal Declaration Of Human Rights. In Bosnia, persons have been arrested and tried or being tried at an International Tribunal for crimes against humanity. A similar trial is going on in Rwanda nearer us here, for the crime of genocide against their own nationals. Finally Nigeria is leading ECOMOG troops in Siera Leone on a mission to restore the lawfully elected government of that country against the armed forces of an illegal Military Dictator. All the activities that I have just mentioned are lawful activities for the purpose of implementing the Charter of the United Nations and its Universal Declaration Of Human Rights and should never be described as unjustified interference in the internal affairs of any country.

It is my firm belief that the United Nations or the International Community will eventually see to the establishment of International Tribunals for dealing with violations of United Nations Charter and particularly the Universal Declaration of Human Rights. This would be a major stride forward for Mankind. It would avoid the imposition of sanctions on a country such as Nigeria without going through some form of trial and adjudication. Whatever happens, it is obvious that in the next century, lawyers will be called upon to play a very large part in the implementation and ultimate enforcement of these international obligations whether as Judges or counsel or legal advisers.

The World Community is developing the idea of promoting the recognition of certain inalienable fundamental rights of man and a concept of crimes against humanity. We as lawyers can envisage the eventual development of these ideas in the next century. And, who knows, we may yet see in the coming millennium, a common international legal system under which a universally recognized system of courts or tribunals are established to guarantee that violations of human rights or crimes against humanity will be enforced or punished as the case may require in any part of the world.

It is my hope that in attempting to select the two factors, which I reckon will pose the most significant impact on the legal profession in the coming millennium, I have not swayed too widely off the mark. If I have erred I hope that the factors I have mentioned will be found to be nevertheless not unimportant. I thank you all.

4th – 6th November 1997.