

TRIBUTE TO THE HON. JUSTICE NIKI TOBI, JSC, CFR.

I pay this tribute on behalf of Chief Richard Akinjide, Senior Advocate of Nigeria and former Attorney General and Minister of Justice of the federation. I am highly honoured to be called upon by him to represent him at this ceremony.

We come to bid farewell to a man who will go down in history as one of our greatest and most respected jurists. We pray for him as he awaits the judgment of his creator. If in his lifetime he had any difficulty obeying the injunction: "Be still and know that I am God," he has no such difficulty now. The Lord himself has brought him to a halt. The one who made him judge over us now sits in judgment over him. The titles he held in our midst are now of no account. He stands before the one who is able to behold the spirit in all its nakedness. Therefore we pray for him.

It shall be with him as it was with Adam when he was naked and yet not ashamed. It shall not be with him as it was with Adam who, when he heard the voice of the Lord, hid himself from the presence of the Lord amongst the trees of the garden. It shall not be with him as it was with the Apostle Paul who, when he encountered our Lord Jesus Christ did not know him and asked saying: "Who art thou, Lord?" it shall not be with him as it was with Marcus Tullus Cicero, who sought but did not find consolation in the works of the Greek philosophers following the death of his daughter. It shall be with Niki Tobi as it was with the youth of the Gadarenes who, unclean though he was, ran and worshipped the Lord afar off. We come to pray for the repose of his soul. May his soul rest in peace.

To say of him that he was a sinner is not to disparage him. We have all sinned and fallen short of the grace of God. The Bible says of our righteousness that it is as filthy rags. Therefore we pray for Justice Tobi in the words of Charles Spurgeon that now that he has crossed the Jordan, not a single sin shall cross the Jordan after him; now that he has passed the Red Sea, not a single sin shall pass the Red Sea to overtake him. He shall walk the Red Sea dry-shod chanting alleluia as he goes to heaven. The strong hand of our Lord and Saviour Jesus Christ shall lead him on and his crown shall be golden. Whatever fears may have attended his life, now he knows that it is blessed to die. No more shall he labour to bend his knees. They shall bend of their own accord before the Almighty.

As lawyers we are no strangers to sorrow. We devote our lives to sharing in the sorrows and anxieties of society. And so we mourn Justice Tobi, not as the unlearned mourn their dead, but as men and women of wisdom and learning. Justice Tobi is not dead. He has gone to take his rest at God's appointed time. In the beginning his body was dust. That is what it still is. We do not mourn dust. His spirit, which is the breath of life, never dies. It is with us and always will be. He did not live a single day less than was appointed. Of him it has been said that he worked until he died. He lived without fear. He did his work without fear and without favour. He was a good man. He was a good judge. He was a patriot. He was an honest and humble man. And so he died in peace. May his soul rest in peace.

We are witnesses to the trials and temptations that he had to contend with. We are witnesses to the many difficulties he had to overcome. We are witnesses to all the dangers that he had to avoid. He worked harder than a slave but it was the Lord that he served. Like the Apostle Paul, he became all things to all men that he might win a few. He spoke for all generations and so generations to come will honour him with the same affection that we do now.

My Lord, Niki Tobi, while you were in our midst, you were yourself witness to our sicknesses, our poverty and our divisions. As heaven is not indifferent to the earth, we trust that you will intercede for us. Find a voice for the suffering in our midst. Pray for those who exercise authority lest they become presumptuous. Pray for the weak, lest they fall into despair. Come to the aid of your own brothers and sisters who are now imperilled.

It is not too long ago that your voice resonated through these halls. No more shall that courageous voice, that confident voice, that voice of truth and honour be heard in our courts. Nevertheless, you will never be forgotten. A part of you lives on in us, just as you took with you a part of ourselves. You have immortalized yourself in your numerous judgments. You are that man of whom it is said that the Lord gave five talents and who rendered a good account so that the Lord commended him saying:

“Well done, thou good and faithful servant.”

The death of a man of high character, such as Justice Tobi was, offers us the opportunity to reflect upon our own lives

and to be reconciled to one another knowing that death shall be our common experience. In the death of this great man, we should see the futility of all things. If Niki Tobi could die, we should never forget that we too shall die. If at death he took nothing with him, we should realize that at death we too shall take nothing with us. If he stands in judgment we should realize that a day is coming when we too shall be called to account. If the titles we gave him are now of no account, we should know that all our own titles and goods shall be of no account. If the things he owned while he lived are now the witnesses against him, let us realize that the things we are sacrificing everything to acquire shall equally testify against us on the Day of Judgment.

As for the members of his family our word of consolation is this: The Lord is with you particularly at this time when your boat appears to rock the most. It is God himself that steers your vessel now. Be not afraid. Let your hearts be assured as you calmly meet this trial. This event has occurred when it should occur. God is never before his time and he is never behind. A bad portion will never come from his table to any of his children. May the Lord send us whatever he will as long as it comes from Him. If the Lord wills us to be in darkness, let him be blessed. If he wills us to be in light, let him be again blessed. If he wills to comfort us, let him be blessed. But if he wills to afflict us, let him be again blessed. It is in mercy, they say, that sorrow is allotted to man.

As for you, the Acting Chief Justice of Nigeria, the Justices of the Supreme Court and the Court of Appeal, the judges of our High Courts and Area Courts, our word of consolation is this: do not feel that you are no match for the evils that you have to contend with now. If ever that feeling should take hold of you, remember that it is the Lord that you serve and that he will never burden you more than you can bear. This is the time for you to remember His past mercies and deliverances. When in the past you passed through the rivers your passage was supported by the divine presence. When you walked through the fire you walked through unharmed. He satisfied your mouth with good things and made you to lie down in green pastures. He is the same yesterday, today and for evermore.

Our judges are the equals of the judges of other nations. That is not to say that they are perfect. No nation has a perfect judiciary. It is to our judiciary that we owe the continued survival of the nation. And so our judges must not lose confidence in themselves. Nothing that has happened or is happening should cause the Judiciary to lose confidence in itself. The vast majority of our judges are intelligent, principled, patriotic and just. I can say with confidence that in many respects they surpass the Judges of other nations. The few who fail to meet our standards provide the proof that it is a human institution. At a time of gross materialism many of our judges deserve commendation for the restraint that they have exercised. When the temptations are so great and so persistent and so rampant, we marvel, not that some judges have fallen but that the vast majority are still standing.

This court is called supreme. It is a title given to you by the Constitution itself. Nothing that has happened or that is happening can take away that title. You are called supreme because when the law is put into your hands it remains lifeless until you give life to it. The laws are not self-enforcing. It is you who enforce them. And whatever you say the law is, that is what it is. So those people are right who say that the nation is ruled by the judges rather than by the law.

The judiciary is the mother of our profession. Therefore, duty demands that we rise in sympathy with her when she is assaulted. In speaking about her we must be respectful. The duty of respect that we owe to the judiciary is no different from the duty to honour father and mother. It is an unqualified duty and we are not allowed to sit in judgment over father and mother in order to justify our failure of duty towards them.

We may draw attention to the weaknesses of the judiciary but we are not allowed to humiliate and disgrace her. Because she is our mother, we must revere her. And the time to do so is now when her reputation is challenged; now when her honour is in danger. It is not a time to proclaim her weaknesses. It is a time to sing of her strength and of our love. It is said of a certain stone that initially the builders rejected it but afterwards they put it in its proper place. Our judiciary has suffered rejection and it is my hope and prayer that we will suffer a change of mind and put it in its proper place. It is the stone of justice. It must be made a part of the foundation. There will never be a time

when it would be right to cease to honour the judiciary. Been the mother that she is, it is not by condemnation that we shall win her approval. It is by commendation. She is not just one of the arms of government. She is the pre-eminent one. Whatever others may say of the judiciary, it is our duty to defend her and to protect her. The intensity of our gratitude to the judiciary should in no way be diminished by the mistakes that some judges and magistrates have made. Our duty is to exalt her.

However competent the judiciary is, it cannot save a nation totally lacking in moderation. A nation which abandons its responsibility entirely to the judiciary cannot survive. There is a limit to what the judiciary can do. The judiciary is founded on the premise that crimes and civil wrongs will be limited. Once those **limits are exceeded the judiciary cannot cope.**

With the advent of civil rule, the pendulum swung from one extreme of dictatorship to the other extreme of liberalism. For over thirty years, during which we were under military rule, the military maintained law and order using their own machinery and ousting the jurisdiction of the courts whenever they found it expedient to do so. As a result, the traditional institutions for the maintenance of law and order and the dispensation of justice became weak or were deliberately weakened. And so now both the police force and the judiciary are struggling to recover from the effects of many years of abandonment. We are making good progress but it will take some time before these

institutions recover completely. While they are struggling to do so, it is our duty to cooperate with them as best we can and not heap temptations on them or disparage them as some of us have been doing.

The powers conferred by the constitution on your Lordships are based on the assumption that we have a functioning, representative, effective and dependable democratic system. If those assumptions prove to be false, the judiciary must be trusted to adapt itself using powers inherent in it to ensure justice and the survival of the nation. It is because the judiciary has been faithful in the execution of that duty that the nation continues to survive. Nothing that has happened should cause you to despair or to be discouraged.

We acknowledge that our judges are not angels from heaven. If ever it should become necessary to bring our judges from heaven we would have to bring our legislators and members of the executive from there as well. Our judges are human beings responding as other human beings do to the conditions around them. It is often the case that when we suspect them it is because we are ourselves unworthy of being trusted.

If mistakes have been made we must make allowance for their correction. The constitution vests power in the judiciary to correct itself. The judiciary is the only arm of government that, within limits, can expand its own powers or correct itself when it goes wrong. In matters of discipline, the judiciary cannot base her decisions on investigations that are not ordered by her.

The powers conferred by the constitution on the judiciary are those powers that every young democracy must confer upon the judicial arm if they are to withstand or survive the assaults of the political class. And whether our democracy will mature and consolidate depends to a large extent on how these powers are exercised by our judges. The framers of our constitution were conscious of the fact that there would be a struggle for power between the various arms of government. The least equipped for that struggle is the judicial arm. It is, in fact, the least harmful of the three arms of government. In the case of the judiciary, the contest has taken the form of intimidating the judges into fearing to exercise the powers vested in them. Had our trial judges been more forthcoming, had they been more decisive, had they been more determined, courageous and fearless, they would not today seem so helpless.

If a feeling of helplessness is going to be foisted on any of the arms of government it certainly should not be the judiciary. That arm of the government into which the custody and interpretation of the constitution has been entrusted should suffer no lack of confidence. By vesting these powers the constitution ensures that through the wise exercise of discretion, the nation does not perish under law. On the contrary, by the intelligent and visionary exercise of its interpretative jurisdiction, law is made to serve the ends of justice.

The judgments of our courts should encourage the nation to look inwards and to find solutions from within. Only by so doing can the judiciary be that viable instrument of social change which it was intended to be. And only by so doing can the judiciary break the severe limitations under which it is presently labouring. It is for our judges, by themselves to push further and further the frontiers of the judiciary until they eliminate completely those conditions that hinder their participation as equal partners of the other arms of government in the administration of our country.