

Book Review

Book Title: *"Two Decades of Forensic Advocacy At The Inner Bar A Festschrift in Honour of Yusuf Ali, SAN"*

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Introduction

When I got the invitation to serve as the reviewer of the 2 volume Book *"Two Decades of Forensic Advocacy At The Inner Bar, A Festschrift in Honour of Yusuf Ali, SAN"*, I instinctively and enthusiastically responded "yes". I saw the opportunity to write about the very considerable professional accomplishments of this remarkable gentleman as truly an especial honor. I knew my task would not entail any difficult searching for significant achievements to enumerate. The tough challenge will be how to keep on leach my personal laudatory view of this man for whom I have great respect, but, rather, in the tradition of professional review, allow the contributions in the Book speak for themselves. I am therefore grateful to the Honouree and the Editors for the opportunity of this review.

The starting point of my review is the phrase *"Forensic Advocacy"* which the Editors in their wisdom have used to label what Yusuf Ali, SAN, has done at the Inner Bar in the last two decades. Forensic advocacy is a phrase that cannot be used all too lightly because of the burden of surrounding expectations which it bears. In one sense, "forensic advocacy" is the act of channeling the energies and resources of forensic experts by a legal practitioner in the proof of their case before a court. In this first sense, not only must the legal practitioner be able to decipher what manner of forensic evidence is needed to prove a fact and issue in the civil or criminal proceedings before

the court, he must also have mastered the art of cross-examining an expert in the field to be able to generate the evidence required to support the case of his client. In the second sense, a forensic advocate must be able to protect his clients from a range of problems that are frequently encountered within the court system – biases, prejudices, divided or conflicting loyalties, corruption, and more. He must be able to factor into his litigation strategies the thinking of other diverse specialties like mediation, psychoanalysis, forensic analysis, and psychological reviews among others.

The fundamental question that follows is whether the Editors are right to have qualified Yusuf Ali, SAN as a forensic advocate? I found an answer to this in the different ways the contributors and the courts have profiled, described and given illuminating expressions to the reputation and fame of the Honouree. As noted in one of the Pittsburgh Family Law Services series:

The kind of person a lawyer is matters, and will go a long way toward defining the relationship he has with his clients. What a lawyer does, and how he approaches his work, is what defines him before his colleagues and before the court. Lawyers talk, judges talk, and for better or for worse a lawyer's reputation will spread: this lawyer turns everything into a fight and refuses to settle because he knows he makes more money that way, and that lawyer won't allege anything she can't back up with fifty pages of documentation, so don't waste time and effort second-guessing her. Reputation accumulates and it remains...

A lawyer with a good reputation is simply more effective on behalf of his clients than a lawyer with a bad one. If my colleague already know that I don't bluster and will follow through on a threat, they are more likely to compromise. If they know that I will advise my client to conduct themselves sensibly, they are more likely to advise their own clients to do the same. If they know that I don't fight just for the sake of fighting, they are more likely to work with me to reduce the scope of a dispute.

As noted in the Preface by Professor Wahab Egbewole, one of the Editors, the contributors are those “...who know our subject relatively well, who can properly connect with the issues determined in the cases and who are generally familiar with the

rudiments of advocacy...". With this background in mind, reading through the twenty chapters of Volume 1, I was able to glean the following valuable insights of the legal prowess of Yusuf Ali, SAN: an intellectual powerhouse with incisive mind; a good tactician who spot the points that others do not; calm measured quick and methodical in his arrangement of facts; deep understanding of the law; lucidity of his thought and expression; rigorous in analysis of matters of which there is no precedent in order to give practical advice; matchless grit and courage to stand up for the powerless and causes he represents; adroit skills in cross-examination; straight, forthright and always leaving a strong impression whether his case was intrinsically good or bad; a man who believes his duty as an advocate is to do the best for his client however bad the case may be; reserved, courteous and with impeccable mannerism in his dealings with the court and colleagues; an exemplar of skillful and brilliant advocacy, yet, exuding gravitas and authority; meticulous counsel with extraordinary eye for details; an advocate with immense work ethic and integrity; and a well respected leader at the Bar.

From the above qualifications and celebration statements about Yusuf Ali, SAN, by jurists and advocates who have at one time or the other been opportune to interact with him and some of whose views I will shortly make specific reference, my unequivocal answer to the fundamental question earlier raised is "Yes". The Honouree of today has more than proved his mettle in both senses in which we earlier clarified the phrase forensic advocacy, and the book as an intellectual object can also effectively answer to that title which the respective chapters as a compositional whole has been given to bear.

Insights into Two Decades of Forensic Advocacy

As noted earlier, the book is in two volumes. Volume 1 which has 321 pages is where you have critical analysis of 36 judicial decisions in which the Honouree has been involved. Volume 2 which has 1012 pages is where you have a reproduction of 55 of the judgments in which the Honouree appeared for one of the parties. These judgments are inclusive of the 36 judicial decisions covered by volume 1.

Again, as noted in the Preface, the three-fold objectives of the book is the need to record for posterity the exploits of Yusuf Ali, SAN; have the book serve as a reference material to legal researchers; as well as provide inspiration to coming generations. I will shortly return to whether these three objectives were duly served. For the moment, a noteworthy point is that both volumes for ease of reference repeated the

Acknowledgement written by one of the Editors, Ayo Olanrewaju; Preface written by Professor Wahab Egbewole, SAN; Foreword written by former Chief Justice of Nigeria, Honourable Justice Walter Samuel Nkanu Onnoghen, GCON; and the Profile of the Honouree written by another of the Editors, Kehinde Kolawole Eleja, SAN. Reading through the Profile of Yusuf Ali, SAN, one would see that consistently he has always been an exceptionally bright man. He is also a prolific speaker on topical issues of interest, and a blessing to humanity in the context of service to professional bodies, institutions, communities and the promotion of quality philanthropy.

A conceptual point that should be made clear at the outset is that to seek to offer comments on every segment of volume 1 where we have the critical analysis of judicial decisions would certainly be tedious. For emphasis, to attempt to review chapter by chapter, 36 judicial decisions that have been thoroughly analyzed by 18 critical thinkers in 20 chapters in the space of a Book Review, and in the context of their topicality and knowledge value addition will put me in danger of losing my legitimacy before this distinguished audience. Consequently, what I will be offering at this juncture is an overview of this serious work of scholarship, sufficient enough to whet the appetite of the dignitaries here present and also stimulate the interest of other potential readers to what this addition to legal jurisprudence offers. Underlying this approach therefore is that understanding that my non-reference to some chapters as I go further in his review does not make them less a major contribution.

The areas of law touched upon is quite broad ranging from criminal prosecution and the duty of the prosecution, the jurisdiction of courts to determine cases, statutory interpretation, exercise of court's discretion, electoral matters and election petitions, impeachment process in Nigeria and the role of courts, labour and employment, banking processes and the challenges of guarantees, disciplinary process of judicial officers, the constitution and the role of courts, estoppel and negligence, chieftaincy, and Nigerian littoral state and sovereign wealth.

As the saying goes, iron sharpens iron. In this regard, one cannot but acknowledge the intellectual brilliance of the contributors drawn from practice and the academia. In not too dissimilar styles, the contributors conceived of an approach that gives the reader an opportunity of what the chapter will focus on through an introductory paragraph. This is then followed by the facts of the case being considered, the actual issues formulated before the court, arguments of counsel with particular emphasis on the contribution of the Honouree to the development of the law through the case being examined, the principles decided, and finally the significance of the judgment. This

approach has a lot to commend the contributors for their intellectual rigour and the editors who I suspect must have given a guide to the contributors on the style of writing to be adopted. For the relevant areas of law dealt with, this book will effectively serve as primary and secondary sources for legal research. For the young practitioner and in some cases, older practitioners too, the book will serve as practical guide to how issues can be formulated for determination before Appellate courts.

It is appropriate that I identify those leading advocates, professors and other scholars who have not just paid tribute, but, who have through their deep critical thinking and analytical scholarship given us an opportunity in this book to truly understand the qualities and values that has set Yusuf Ali, SAN, apart as a forensic advocate at the Inner Bar. These great minds listed here in no particular order, but, whose common purpose is their love and admiration for the Honouree are: Adebayo Adelodun, SAN; Bimbo Akeredolu, SAN; Dr. Ibrahim Imam; Dr. Dauda Adeyemi Ariyoosu; Prof. Bashiru Adeniyi Omipidan; Prof. Wahab Egbewole, SAN; Dr. Muhtar Etudaiye; Kehinde Kolawole Eleja, SAN; Lateef Fagbemi, SAN; Kemi Pinheiro, SAN; Olanike Adelakun-Odewale; Dr. Joshua Olukayode Olatoke, SAN; Roland Otaru, SAN; Professor Muhammed Mustapha Akanbi, SAN; Elijah Adewale Taiwo; Dr. K. I. Adam; Joseph Bodunrin Daudu, SAN; and Ayo Olanrewaju.

The contributors were not reluctant to express their criticism and independent opinion. Indeed, they held an even balance in what is the law and what they believe the law should be. An example of this is the decision in the case of *Abubakar v. Nasamu* (2012) (No. 1 17 NWLR (pt. 1330) where the Supreme Court was called up for the first time to interpret Section 285 (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. One of the two issues for determination is:

Whether in view of the provision of Section 285 (7) & (8) and 294 (i) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, the judgment of the lower court delivered on the 29th day of December, 2011 in respect of which the reasons for the decision was given on the 23rd day of January, 2012, is a nullity.

The contention of Kola Awodein, SAN, learned Counsel for the Appellant was that the Court of Appeal was wrong to have given its judgment first within the stipulated time while deferring its reasons to another date outside the statutory 60 days prescribed by the Constitution. Mallam Yusuf Ali, SAN, on the other hand forcefully argued on behalf

of the 1st and 2nd Respondents that having heard and decided one way or the other on the 29th day of December, 2011, the Court of Appeal's decision was well situated within the 60 days allowed under Section 285 (7) of the Constitution. The Supreme Court, in its unanimous decision, held that Court of Appeal lacked the requisite jurisdiction to adopt the procedure of giving judgment first and deferring the reasons to another date.

Following his penetrating analysis of the historical antecedents of the constitutional amendment in question and the well setted position of the apex court of preference for substantial justice as against technical justice, the view of Kehinde Kolawole Eleja, SAN, (chapter 7) was that the Supreme Court ought to have upheld the argument of the Honouree in that case.

It was in the context of this approach that Kemi Pinheiro, SAN, in chapter 11 also respectfully disagreed with the thrust of the decision of the Supreme Court in the case of *Elelu-Habeeb v. A. G. Federation* (2012) 13 NWLR (pt. 138) 423, where the apex court took the view that the Federal High Court had jurisdiction to hear and determine a suit on the removal from office of the Chief Judge of Kwara State by the Kwara State Government. The facts of the case are not directly germane to the point I want to make here. It will suffice to note that the Learned Silk found so much wisdom in the point that Yusuf Ali, SAN, was trying to drive home before their Lords same which was not accepted. Kemi Pinheiro, SAN, argued from the perspective of sovereignty and the fact of Nigeria being a Federation. He thereupon premised his argument on a combined reading of Sections 1 -6 of the Constitution of Nigeria as amended. If we go to the complexities surrounding the issue of Federalism, and the realities we are daily confronted with as a nation, it may be too early to prognosticate that the position of Kemi Pinheiro, SAN, is somewhat facile. Indeed, it may well be that the day is not far distant when opportunity may present itself for the Supreme Court to revisit this decision along the lines of his contention.

Another of the several notable cases reviewed in the Book is the decision of the Court of Appeal in the case of *Ajadi v. Ajibola* (2004) 16 NWLR (Pt. 898) 91 (Chapter 9). That case, which was reviewed by Prince Lateef Fagbemi, SAN revealed Yusuf Ali, SAN, as a man whose love for the law is matched only by his contributions towards its improvement. In the words of the respected Learned Silk, the case has remained an unassailable authority for the principle of law that a Cross Appeal and Respondent's Notice are mutually exclusive, as both cannot be jointly employed in same case by same party. It is awe inspiring to read of the admirable commendation by the court in

that case of the work ethic and teaching by example attributes of the Honouree. The Court stated:

I take the opportunity to once more comment and commend the learned counsel involved in this matter especially Olanipekun and Yusuf Ali Esqs, SANs. They handled the matter with utmost respect to the Court. We have seen the evidence of hard work and deep research they exhibited in their respective briefs. We have learnt tremendously by their hard work and presentation in court without any rancor. We have enjoyed their decency and decorum which is classic and worthy of emulation by all and sundry.

In chapter 13, the remarks of Dr. Joshua Olatoke, SAN, in his review of the case of *Oladejo v. State* (1994) 6 NWLR (Pt. 348) 101, CA is a powerful reminder of the intellectual rigor and tireless efforts of Yusuf Ali, SAN, in always pushing the frontiers of law. Just because something is precedent is no reason why we should be constrained by it. As noted by the Learned Silk, while the law has been that a person must not be punished for an offence not known to law, the Honouree in a brilliant, calm and measured manner was able to persuade the court to hold that a party cannot be guilty of an offence which is not in existence or that he is not capable of committing. It goes without saying that it is only a very tenacious and bold advocate with tactical acumen who can seek to open new frontier of defences in criminal actions. It was one of those situations that the Honouree succeeded in advancing the jurisprudence of law.

A thread that cuts across the criticisms of the contributors as contained in the book and same which is to be commended is that they were all result oriented as against uncultured discourteous abusive criticisms that are lacking in analysis and deep thinking, and motivated by the results reached in particular cases.

In closing this segment of the review, I found the remarks and observations of a former past President of the Nigerian Bar Association, Joseph Bodunrin Daudu, SAN, in chapters 18 and 19 not only revealing of the personal side of Yusuf Ali, SAN, but, also illuminating of his considerable professional accomplishments. His path and that of the Honouree crossed shortly after the Honouree joined the Law Firm of Awomolo & Co., and since then, they have been friends and brothers, sharing the joys and pains of life. In chapter 18, where he reviewed three of the cases, he noted:

Mallam Ali is first and foremost, a God-fearing man, he has lived his life and brought up his children in the utmost fear of God almighty... Mallam Ali was elevated to the rank of Senior Advocate of Nigeria in the year 1997 after 15 years of dedicated and scintillating legal practice. In those days, with the pervading quality of the Bar, to make Silk at such youthful age at the Bar meant that such a candidate came up top of the list and was qualified in all 3 categories A, B and C as they were then referred to... For Mallam Ali, wearing the rank at such a young age did not go into his head, when you compare his age at the time to the ages of the earliest SANs at the time of conferment. He retained his humility and sense of humour in the presentation of cases. In my humble view, Mallam's greatest strength as an advocate continues to be his uncanny ability to communicate his points (arguments) to the judge or justices.

In chapter 19 where he reviewed the Supreme Court decisions in the cases of *Adekeye v. Adesina* (2010) NWLR (Pt. 1225) 474; and the Court of Appeal decision in *Governor of Kwara State v. Eytayo* (1997) 2 NWLR (Pt. 485), 118, the Learned Silk revealed that Yusuf Ali, SAN, is not only a master of the game when it comes to formulation of issues for determination before the Appellate Courts, he also disclosed that while the Honouree has accurate appreciation of the law generally, the areas of expertise which has won him great acclaim are customary law, chieftaincy matters, election petitions and constitutional law.

Conclusion

Reading through the twenty chapters in volume 1, the reader is not left in doubt of how remarkable the two decades of Yusuf Ali, SAN, at the Inner Bar has been. The incisive examination of the different cases is impressive in their richness and extent, and in the excellence of their scholarship. The contributors probed widely and deeply and with revealing effect. In this regard, if I am to answer the second question earlier posed as to whether the book answered the three-fold objective intended by the editor, I will answer in the affirmative, and further add a fourth objective that has been served, which is: it espoused on what I will call '*de lege ferenda*' (a desire to express the future of law).

Volume 1 of the Book is marked by clarity of writing and simplicity of exposition, while the cases reproduced in volume 2 has without doubt been painstakingly compiled as a valuable source material. I am particularly impressed with the comprehensive index of the two volumes. For those who know, an index is the roadmap to a book, thus, when you have a well-made index like the one under reference, the reader is assured of an effective guide to whatever information he/she is trying to find. The two volumes have equally been attractively presented. The cover is adorned with the handsome photograph of the Honouree, with his trademark smile, which mien has been the undoing of many unwary legal opponents. This is followed by the black and white frontispiece portrait of the Honouree adorned in the ceremonial Silk Robe.

Distinguished Ladies and Gentlemen, a book reviewer by accepted standards must not only present the great side of a book. He must also objectively identify the flaws and gaps, if any, in the book subject of review. That it was difficult finding faults with the Book subject of review was not surprising to me. Wahab Egbewole, SAN, is an outstanding academic and scholar, Kehinde Eleja, SAN, an extensive knowledge of law and advocacy skills, while Ayo Olanrewaju has a background in English, Law and currently Chair of the Editorial Board of a foremost Law Publishing Company. Thus, the efforts that produced these monumental volumes is a synergy of the academia, advocacy and publisher fused together.

The above notwithstanding, there are few imperfections which always are inevitable. Why for instance should we have a critique of 36 judicial decisions in volume 1, and a reproduction of 55 judgments in volume 2 which is meant to complement it, yet no justification for this by the editors. Minor confusion in one or two of the articles also went undetected by the editors. For example, in Chapter 17, Yusuf Ali, SAN, was stated at page 231 as counsel for the Respondent at the Supreme Court, and then, at page 233, he was referred to as counsel to the Appellant before that same court. In volume 2, the whole of page 29 would appear to be written in Spanish. Is this deliberate? I strongly doubt, otherwise, there would have been an explanation of sort by the editors. These few criticisms which I must confess have been laboriously put together do not detract from the fact that the 2 volumes of the Book *Two Decades of Forensic Advocacy At The Inner Bar, Festschrift In Honour of Yusuf Ali, SAN*, are of immense value. The contributors, editors, publishers and most importantly, the Honouree Mallam Yusuf Ali, SAN, are all to be congratulated for producing a Book of high standard and an indispensable reference materials to students of law, the Bar, the Bench and other legal enthusiasts.

I heartily congratulate the family of the Honouree. My prayer is that Allah will continue to uphold Mallam Yusuf Ali, SAN, such that humanity will ceaselessly benefit from his intellect, passion and scholarship.

Professor Olanrewaju .A. Fagbohun, *Ph.D, SAN, NPOM*

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