



NIGERIAN BAR ASSOCIATION

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ADDRESS OF THE PRESIDENT OF THE NIGERIAN BAR ASSOCIATION, MR YAKUBU CHONOKO MAIKYAU, OON, SAN, DELIVERED AT THE VALEDICTORY COURT SESSION HELD IN HONOUR OF LATE PROFESSOR BENJAMIN O. NWABUEZE, CON, SAN, NNOM, ON 22 FEBRUARY 2024 AT THE HIGH COURT OF LAGOS STATE, IKEJA

PROTOCOLS

1. My Lord, the Honourable, the Chief Judge of Lagos State, Honourable Justice Kazeem Olanrewaju Alogba, and My Lords, the Judges of Lagos State Judiciary herein sitting *en banc*, I stand here today with mixed feelings to pay tribute to a legal colossus, a revered member of the inner Bar and distinguished professor of law; the internationally renowned oracle of Constitutional Law, the Late Professor Benjamin Obiefuna Nwabueze, CON, SAN, a recipient of the National Order of Merit Award (NNOM) - **(the Oduah Afo-na-Isagba of Atani)**. My feelings are mixed because, while the legal giant departed this earth at 92 years (a blessed and great age notwithstanding), his departure has no doubt cast a heavy pall on our nation and left a gaping hole in our legal landscape, nationally and internationally, and it is one that will be difficult to fill.
2. For decades, Prof Nwabueze dominated our jurisprudence like the Colossus he was. I do not think that there is any lawyer called to the Bar as a Barrister and Solicitor of the Supreme Court of Nigeria, who has not had to have recourse to at least one of the myriads of legal literature authored by Prof. Nwabueze, SAN, at one point or another in their career. In fact, I do not believe that a law library without copies of Prof. Nwabueze's books could be considered a standard law library. This, I respectfully recommend to the Honourable Chief Justice of Nigeria, as the Chairman of the Legal Practitioners' Privileges Committee (LPPC), to be specifically included as one of the determinants of the quality of any library being considered for the purpose of conferment of the rank of Senior Advocate of Nigeria.
3. My first introduction to Prof Nwabueze, like most lawyers of my generation, was through his books, particularly, ***The Presidential Constitution of Nigeria***, and ***Military Rule and Constitutionalism in Nigeria***. These two books were among the recommended texts for our Constitutional Law classes back then in the university. The books were our first glimpse into the intellectually mobile, brilliant, versatile, and sagacious mind of the man called Prof. Nwabueze. I was therefore not surprised to learn that he was the first person to be awarded the exalted rank of Senior Advocate of Nigeria, on account of his massive accomplishment as a legal scholar in 1978. He, alongside the late sage, Chief Obafemi Awolowo and the distinguished late Honourable Justice (Dr) Augustine Nnamani, CON, SAN, Justice of the Supreme Court, were among the second set of

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lawyers to be conferred with the prestigious rank. In this regard, he blazed the trail for other deserving law scholars to be elevated to the Inner Bar in the Academic Category. It may therefore not be out of place to assert that succeeding generations of Professors who attained the rank owe a debt of gratitude to the erudite pioneer.

4. Prof Nwabueze was not the one to be content with resting on his oars. He continued to dominate both the Classroom and the Courtroom with his forensic advocacy and ingenious legal analysis. I recall the case of **Uzoukwu v. Ezeonu II [1991] 6 NWLR [Pt. 200] 708**, where Prof. Nwabueze, SAN, the legendary scholar, urged the Court to hold that the meaning of '*circumstances of birth*' which appeared in Section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) – Section 39(2) in the 1979 Constitution, is "*a circumstance existing by law, not one existing by mere social practice, such as the social status of one's parent as a rich or poor man, an educated or illiterate man, a nobleman or a common man.*" A position that accords with the true spirit and intentment of the Constitution, which do not accommodate discrimination against any person on the basis of those or similar factors, or at all.
5. It will be recalled that in the year Prof Nwabueze was conferred with the rank of SAN, he also earned his Doctor of Laws of the University of London. This stupendous and gargantuan intellectual achievement was predicated on the critical review of only three of his outstanding books. He thus became the second Nigerian, after the illustrious Taslim Olawale Elias, to be awarded a higher doctorate degree in Law (LL. D) based strictly on his published works. This should not be surprising because Prof Nwabueze, SAN had always been an authoritative legal voice and an undisputed authority on Nigerian law both at home and abroad. It will be recalled that Prof. Nwabueze, was one of the two foremost experts whose opinion were considered by the British Court in *Alamieyeseigha's* case, in determining whether or not a governor in Nigeria was entitled to immunity in criminal proceedings in a foreign court.
6. Of course, his books are constant reference materials whenever an authority is required to resolve a knotty legal issue. In the popular case of **Attorney General of the Federation v. Attorney General of Lagos State [2013] 16 NWLR [Pt. 1380] 249**, the Supreme Court quoted copiously from the book, *Federalism in Nigeria Under the Presidential Constitution*, in explaining the concept of 'covering the field'. The same book was cited by the Supreme Court in the case of **Olafisoye v. Federal Republic of Nigeria [2004] 4 NWLR [Pt. 864]580**. Similarly, in **Onyekwuluje v. Benue State Government [2005] 8 NWLR [Pt. 928] 624**, his book, *Ideas and Facts in Constitution Making*, was one of the books cited before the Court.
7. My Lords, Distinguished Colleagues, Ladies and Gentlemen, today's event is the valedictory court session for our revered Icon. The challenge I have is how to reconcile the concept of valediction with the ever-present personality of Prof. Nwabueze. Whilst it is not in doubt that Prof. Nwabueze has indeed gone the way of all mortals, one fact that cannot be disputed is that he continues to be alive through his innumerable works by

which he has etched his name in history. His intellectual contributions to our jurisprudence both as counsel and as a private citizen are far too great to be forgotten. A good number of us here today (if not all) must have at one point in our career had to cite the case of **Nwabueze v. Obi-Okoye (1988) 4 NWLR (Pt. 91) 664 at 668** in support of one of argument or another – issuance and service of Writs of Summons; the need to satisfy preconditions for the commencement of actions, et cetera.

8. Another feat that immortalises the works of Prof Nwabueze, SAN is the professorial chair endowed in his name and in his honour at the **Nigerian Institute of Advanced Legal Studies** – the **Ben Nwabueze Distinguished Professor of Law**. For as long as deserving intellectuals continue to occupy this chair of eminence, Prof. Nwabueze, SAN shall continue to live in the values he exemplified. I must not fail to note that all the achievements and impact made by Prof Nwabueze, SAN in his lifetime were possible because of his high regard for ethical standards and professionalism. The only Counsel, to my knowledge, whose mere attendance in court generated headlines in all national newspapers and social media platforms in Nigeria and across the globe, was Prof Nwabueze, SAN. Some of our colleagues wore their wigs and gowns for the first time and made it to the Court of Appeal very early that morning just to catch a glimpse of the legal colossus.
9. It will however be a great disservice to the memory of the illustrious Senior Advocate to limit his greatness to Law and Academia. In my humble view, the singular thread that runs through the entire gamut of his works and thoughts is his unconditional patriotism. Professor Ben Nwabueze was a true patriot in every sense of the word. I want to believe that this was the reason he co-founded the Patriots with his intellectual soulmate, Chief FRA Williams SAN, as the foremost platform of patriots who wanted nothing but the best for the country. He also co-founded the Constitutional Rights Project (CRP), a non-governmental organisation dedicated to the promotion of civil liberties, human rights, and the rule of law in Nigeria. He was also the behind-the-scenes voice in the founding of the Civil Liberties Organisation.
10. He further exemplified his nationalism when he was appointed the Minister of Education in 1993. His tenure as brief as it was witnessed radical educational reforms being introduced in the country at the time.
11. Professor Nwabueze was a man of unblemished character and integrity. In his private practice and public service, he held himself to the highest ethical standards and was a role model to many in this regard. His influence goes beyond the classroom and extends beyond the shores of Nigeria and indeed, the entire Africa. A tireless champion of constitutional reforms, he firmly believed that the constitutional framework should continuously adapt to meet the evolving needs and aspirations of the people.
12. Distinguished Ladies and Gentlemen, as I mentioned above, we are not here to bid farewell to Prof. Nwabueze. Not at all. Prof Nwabueze, SAN has, by the giftings in him,

created a niche for himself. Generations yet unborn will feel his presence and drink from his fountain of knowledge. What then are we doing? It is my humble view that we are here to celebrate the life and times of one of Nigeria's greatest statesmen, a Doyen of the Legal Profession, a Titan of Legal Practice, a Colossus of Academics, and a giant among patriots.

13. Having regard to the prodigious prolificity of Prof Ben Nwabueze SAN, I dare say that if all the seminal books, researched monographs, scholarly articles, and erudite opinions authored by the pen of the illustrious advocate are removed from our library, there will be a big chasm in our jurisprudence that can never be filled.
14. Rest well, Africa's foremost Constitutional lawyer; rest well, erudite Professor of Professors; rest well, our revered Leader of the Bar; rest on, the Patriarch of the legal profession worldwide. Perhaps, this is a good place to convey the condolence message by the Matriarch of the legal profession worldwide; Chief Folake Solanke, CON, SAN, as some of us may already have known, our dear Matriarch had a domestic accident that kept her out of active practice for some months. After going through medical consultations in three different hospitals, the Matriarch was discharged in July 2023, and has since been recovering well and getting stronger by the day. The Matriarch recalled that when she celebrated her 75th birthday – 17 years ago – Prof Nwabueze, SAN, who could not attend the event in person, sent his goodwill message and apologised for his inability to celebrate with her in person. The Matriarch noted that they enjoyed a relationship of mutual respect and testified to the fact that Prof Nwabueze, SAN fulfilled purpose and impacted lives across the globe. The Matriarch extends her condolences to the family, the Bar, and the entire legal community within and outside Nigeria.
15. On behalf of the National Executive Committee and the entire members of the Nigerian Bar Association (NBA), I celebrate with the family of the iconic legal scholar, and the good people of Atani. My prayer is that God will comfort the hearts of all members of his family, his colleagues, and friends. May the peace of God which is beyond human understanding, protect our hearts and minds through Christ our Lord, Amen.
16. I thank you all for your attention.
17. May it please My Lords.


Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT