THE JUDICIARY AS A PILLAR OF NATIONAL DEVELOPMENT: REFLECTIONS ON SOME CONTRIBUTIONS OF LORD JUSTICE KUMAI BAYANG AKA'AHS*

Abstract

The role of the judicially in national development cannot be underestimated. It is a product of painstaking efforts of judges and justices of the court system. This study reviewed selected judgment of Hon. (Mr.) Justice Kumai Bayang Aka'ahs JSC. The main objective is to determine the extent to which these judgment have contributed to the development of the Nigeria's State. Employing doctrinal methodology, the study found that Hon. (Mr.) Justice Kumai Bayang Aka'ahs JSC delivered notable judgments which directly or indirectly have contributed to the development of the Nigeria's State, particularly in the area of electronic evidence, stamp and seal of legal practitioners, restrictions on claims for specific and general damages, effect of pleadings, interlocutory injunction, jurisdictions, rules on interpretations of statutes and many others. Yet, the gap between the end of justice and perversion still gapes. It is recommended that judicial officers in Nigerian courts should be proactive in dispensing justice despite daunting paucity of evidence. The study concluded by affirming that the judiciary occupies a critical role in the national development, and called for the more support of the judiciary in achieving this important mandate.

1. Introduction

National development is a critical factor to the sustainable existence of any nation. Accordingly, governments of every nation strive towards the attainment of higher value level of developments that would provide qualitative life its citizenry. Attaining a sustainable national development is a collective responsibility of every citizen and every organ of government. In this paper, the focus is on the judiciary as a central pillar for attaining national development. As expressed in ***Ogunleye v Aina,***[1] 'the judiciary is an independent pillar of the State constitutionally imbued with the mandate to exercise judicial authority of the State fearlessly and impartially.' The importance of judiciary to national development cannot, therefore, be overemphasized. The World Bank study aptly captures the importance role of the judiciary as follow:

> Justice institutions [such as courts] are the foundation for the social contract between people and the State. They address breaches of law, provide redress for violation of rights, and facilitate peaceful resolution of disputes. They also oversee State institutions and enforce the State's role as regulator. When justice institutions [such as court] operate effectively, accountability increases, trust in the government grows, and the citizens and business can invest with confidence that their property right will be protected.[2]

No doubt, it can be discerned from the World Bank study that the courts are not only the major component of the justice system, but most importantly it guarantees the functionality of the justice institutions. A functional justice system or institutions remain a catalyst for effective national development. The court, which represents the judicial arm of government, facilitates and nurtures government institutions towards attaining sustainable national development. Also, the court system is pivotal to the economic growth and stability of every nation. The implementation of legislative interventions and institutional policies is sharped largely by the judicial constructions. Thus, it is

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[1](2011) 3 NWLR (Pt. 1235) 497.

[2]The World Bank Development Report: Justice and Development, available at the official website of the World Bank, <https://www.worldbank.org>, last accessed on 22nd October 2019.

reported that 'the attainment of a sustainable national development depends largely on the functionality, commitment and competence of the judiciary.'
A functional judiciary cannot be sustained without an effective and functional Justices or Judges. It is the combined effort of the Judges, Justices and other personnel that yield to positive manifestation of the contributions of the judiciary to national development. The reconstruction of the statutes, policies and government progrmmes in manner that will positively impact national development is the key reasonability of the Justice and Judges.

One of the giant Justices that have dedicated his life in ensuring that the judicial effectively performs it function is my Lord Justice Kumai Bayang Aka'ahs, the Justice of the Supreme Court (JSC) of Nigeria. The task of this paper is to bring to fore some of the notable judgments of my Lord Justice Kumai Bayang Aka'ahs, which directly or indirectly have contributed to the development of the Nigeria's State. It must be pointed out that it is not possible to consider all the contribution of Lord Justice Kumai Bayang Aka'ahs, in a paper of this nature. We, therefore, consider only some of these of contributions beginning with the issue of jurisdiction in trials of civil and criminal matters.

2. Significant areas of National Development

2.1 Dealing with the Question of Jurisdiction in Trials

Jurisdiction may generally be described as the power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of law, or to award the remedies provided by law upon state of facts, proved or admitted.[3] There are many strands of jurisdiction, just as there are multiple judicial pronouncements on the area of court jurisdiction. Nevertheless, there are novel areas of court jurisdiction that have been projected over time by my Lord Justice Kumai Bayang Aka'ahs. For instance, in the case of *Nosakhare Innocent Ohanmu v. Ketson Komplex Int'l Ltd*,[4] Lord Justice Kumai Bayang Aka'ahs pointed out not only the importance of jurisdiction but also the practical approaches in adjudicating issues relating to jurisdiction in the following words:[5]

> …once an issue of jurisdiction is raised, it should be examined in all its ramifications. It should not be compartmentalized and subjected to piece-meal examination and treatment. The very many faces of jurisdiction should come under the searchlight and pronounced upon.

The above reasoning by Lord Justice Kumai Bayang Aka'ahs was informed by the earlier Supreme Court positions as demonstrated in *Oloba v Akereja*,[6] and *Njokanma v Mowete*.[7] Similarly, my Lord Justice Kumai Bayang Aka'ahs added that:

> …jurisdiction is fundamental and crucial and its absence in a matter automatically results in a nullity of the proceedings. A court is bound to put an end to proceedings if at any stage or by any means it becomes manifest that the proceedings are incompetent for lack of jurisdiction. See *Onyema v Oputa (1987)3 NWLR (Pt. 60) 259; Att-Gen Federation v Sode (1990)1 NWLR (Pt.128) 500*.

Another important area of jurisdiction that was clarified by Lord Justice Kumai Bayang Aka'ahs was whether a State High Court can exercise jurisdiction over a subject matter, which the State House of Assembly has no power to legislate upon. Again my Lord Justice Kumai Bayang Aka'ahs held in the same case of *Nosakhare Innocent Ohanmu v. Ketson Komplex Int'l Ltd* that:

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[3] B.A. Garner, *Black's Law Dictionary*, (8th Edition, Thomson West, 2004) 867.

[4] Appeal No.CA/B/102/97.

[5] Page 7 of the Judgment.

[6] (1988) 3 NWLR (Pt. 84) 508 per Obaseki JSC.

[7] (2001) 6 NWLR (Pt. 709) 351 at 364.

> A fortiori, a court cannot exercise an jurisdiction which the State House of Assembly has no power to legislate and invest it with. This view finds support in the judgment of Elias CJN (of blessed memory) in *National Employers Mutual-General Insurance Association Ltd v Uchay* (1973)1 NMLR 170 at 173. In that case, the Appellant in exercise of the right conferred by Section 35 of the High Court Law of the former Eastern Nigeria appealed direct to the Supreme Court against the decision of the High Court Enugu sitting in its appellate jurisdiction. At the Supreme Court objection was take to the competence of the appeal in that leave to appeal was not sought nor obtained under Section 117(4)(c) of the constitution. Mr. Anyamene, learned counsel for the Appellant submitted that section 117(2) (f) of the constitution gives power to a regional or State legislature by legislation to confer right of appeal as of right, and that any law so made cannot be inconsistent with the constitution. He argued that this must be so because Section 117(4) begins with the phrase "subject to the provisions of subsection (2) and (3) of this section", which he considered to subordinate the provisions of subsection 117(4) (c) to that of subsection 117(2) (f) with the result that any law made under the latter can make provisions for appeal as of right. I support of this submission, he cited *Commissioner of Police v Smart Ededey* (1963)1 All NLR 404 in which the question fell to be decided as to whether the Commissioner of Police had a right to appeal without leave under Section 69 of the Magistrate'S Courts Law (Cap. 74) 1959 Laws of the Western Nigeria, and it was held that a prosecutor may appeal as of right on a matter of law to the Supreme Court from the appellate decision of the High Court in a criminal case determined by a magistrate. It was held by the Supreme Court that the powers of the state to legislate cannot be construed in such a way as to contravene the express provisions of the constitution. The objection was upheld by the Supreme Court.[8]

On the submission by learned counsel for the respondent that the lower court acted within its jurisdiction in granting leave to the respondent to appeal as an interested party since the enabling Statute permitted it, my Lord Justice Kumai Bayang Aka'ahs disagreed. According to His Lordship, this position cannot be right because 'neither the then Bendel State House of Assembly nor the Military Governor of Bendel State had power to expand the jurisdiction of the Customary Court of Appeal. His Lordship stated that:

> Section 52(2) of the Customary Court of Appeal Edict 1984 as amended by the Customary Court of Appeal Edict 1990 which provides that *'…the Court shall…without prejudice to the generality of the foregoing, shall have all the jurisdiction, powers and authorities which are vested in or capable of being exercised by the High Court of Justice of England',* is not within the contemplation of Section 247 (2) of the 1979 Constitution and it is not in furtherance of the jurisdiction granted to the Customary Court of Appeal in Section 247 (1) of the said Constitution as amended by Decree No. 107 of 1993. The jurisdiction conferred by the amended Section 52(2) of the Customary Court of Appeal Edict 1990 is inconsistent with that granted by Section 247 (1) of the Constitution as amended and is therefore null and void to the extent of the inconsistency and I so declare.[9]

Another related issue is about the territorial jurisdiction of the Federal High Court. In the case of *Talal Ahmd Roda v Federal Republic of Nigeria*,[10] the contention of the appellant was that offence

[8] P .9 of the judgment.
[9] P11 of the judgment.
[10] Suit No.418/2014.

committed in Kano State cannot be tried by a Federal High Court in Abuja. In resolving this contention, my Lord Justice Kumai Bayang Aka'ahs held that:

> … the Federal High Court have jurisdiction to try offences not only under the Terrorism (Prevention) (Amendment) Act 2013 but also under any other related enactment. This means that if there was a valid charge for conspiracy, notwithstanding that the punishment for the offence was laid under 1(14) (a) (i) of the Miscellaneous Act 2004, a conviction under Sections 96 and 97 of the Penal Code and Section 516 and 517 of the Criminal Code would still stand. Section 32 of the Terrorism (Prevention) (Amendment) Act 2013 gives the Federal High Court territorial jurisdiction to try the offence laid down in count 9 in nay part of Nigeria regardless of where the offence is committed. The argument that since the offence was committed in Kano, it cannot be tried in Abuja is of no consequence and a conviction cannot be set aside on that ground.

The totality of the above discourse on jurisdiction is relevant to national development in many respects. It provides certainty in redress measure, which is important in attaining the satisfaction of the societal needs. Also, it ensures that, as much as possible, justice should meet the expectations of the people. Above all, it helps in safeguarding individuals right and enhancement of the good of the citizens.

2.2 Electronic Evidence: Admissibility of Entries in the Books of Account

One of the key features of the new Evidence Act 2011 is the expansion of the rules on the admission of electronically generated documents. Nevertheless, evolution of this new regime of electronic evidence was enriched to a large extent by the sound reasoning of the judges. In the case of *Esso West Africa Inc. v Oyegbola*,[11] it was held that "the law cannot be and is not ignorant of modern business methods and must not shut its eyes on the mysteries of the computer." Prior to Evidence Act 2011, prevailing law was the Evidence Act 1990. The judicial interpretations and concerns regarding the relevant sections of the Evidence Act 1990 dealing with electronic evidence formed the bedrock of the reforms introduced under the Evidence Act 2011. *Lord Justice Kumai Bayang Aka'ahs* is credited to be one of the Justices that took the lead by providing sound reasoning in judgments that were useful in the reforms of electronic evidence, whch we are celebrating today. Prior to 2011, the important sections of the Evidence Act 1990 that are relevant for the purpose of electronic evidence are sections 38 and 97,[12] which state:

> 38. Entries in the books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which a court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability.
>
> 97 (1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-
>
> (h) when the document is an entry in a banker's book.
>
> (2) The secondary evidence admissible in respect of all the original referred to in the several paragraphs of the subsection (1) of the section is as follows-
>
> (e) in paragraph (h) the copies cannot be received as evidence unless it be first proved that the book in which the entries copied were made was at the time of making one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody and control of the bank, which proof may be given orally or by affidavit by a partner or officer of the bank, and that

[11](1969)1 NMLR 194.

[12]now in sections 51 and 89 of the Evidence Act 2011.

> the copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.

Several efforts were made by Justices and Judges in explaining the import of the above quoted sections of the Evidence Act. In 1969, the Supreme Court made its first notable pronouncement on admissibility of computer print-out in the case of *Esso West Africa Inc. v Oyegbola*.[13] The brief facts were that a document was signed in quadruplicate with carbon copies through one single process with the original copy. The Supreme Court, relying on section 93 of the Evidence Act 1945 held that each of the documents so produced is primary evidence of the other quadruplicate copies. The Supreme Court also held *obiter* that 'the Law cannot be and is not ignorant of modern business methods and must not shut its eyes to the mysteries of the computer.'

Similarly, in *Yesufu v A.C.B*,[14] the central issue was about a bank statement prepared by a Machinist from the Ledger Card of the Respondent Bank. The bank officer that tendered the statement did not personally prepare the statements or verify that the statements were correct. Objection was raised to the admissibility of the bank statements on the grounds that the existence of a banker's book from which the entries were extracted was not established neither were the original entries before the lower court. The Supreme Court upheld the objection but counseled by referring to the obiter statement in *Esso West Africa Inc. v Oyegbola*[15] that:

> … it would have been much better, particularly with respect to a statement of account contained in a book produced by a computer, if the position is clarified beyond doubt by legislation as has been done in the English Civil Evidence Act 1968.

Since then, the Supreme Court have demonstrated readiness to admit electronic or computer evidence in many case, such as, *Elizebeth Ayaebosi v R.T. Briscoe*,[16] and *Oguma Associated Companies (Nig.) Ltd v. I.B.W.A. Limited*.[17]

In consolidating and reinforcing the existing Supreme Court and other Courts decisions on the area of electronic evidence, the contribution of my Lord Justice Kumai Bayang Aka'ahs are also eminent. This is exemplified in the case of *Dizengoff (West Africa) Nig. Ltd v. Afribank Nig. Plc,*[18] *Appeal No. CA/J/304/2004*. Here, the appeal was against the ruling by the trial court refusing to admit as evidence the computer print-outs of the statement of the plaintiff/Appellant. The trial judge relied on the decision in *United Bank for Africa Plc v Sani Abacha Foundation for Peace and Unity* (2004)3 NWLR (Pt. 861) 516 CA. On its part, the Court of Appeal decision was in reliance on the earlier Supreme Court decision in *Yesufu v A.C.B Ltd* (1976)1 All NLR (Pt.1)328. The fundamental question raised by the plaintiff was "whether a court is precluded from invoking the provisions of Section 38 as against Section 97 (1) and (2) of the Evidence Act to admit into evidence computer print-out of a statement of account duly issued signed and stamped by a Bank to its customer who had requested for it." In a well-considered judgment, my Lord Justice Kumai Bayang Aka'ahs took **t**ime out to

[13](1969)1 NMLR 194; (1969) NSCC 351.
[14](1976) 4 SC (Reprint) 1.
[15]*Supra (n 13).*
[16](1987) 3 NWLR (Pt. 59) 84.
[17](1988) 1 NSCC 395.
[18]Appeal No. CA/J/304/2004.

distinguish the case of *Yesufu v ACB Ltd*,[19] from Esso West Africa Inc v Oyegbola,[20] by stating thus:

> In *Yesufu v ACB Ltd*, the Supreme Court considered whether the statement of account could have been admitted under section 37 of the Evidence Act 1945. It stated that the Section was considered in *Esso West Africa Inc v T. Oyegbola supra* and held that the circumstances that led to allowing the appeal in that case were not the same with those in *Yesufu v ACB Ltd*. It appears to me that where application to tender the statement of account is being made under Section 38 Evidence Act, it will be wrong to reject it but if it is being done under Section 97 (1) (h), evidence must be led to show that the print out was compared with the entries made in the books of account.

My Lord Justice Kumai Bayang Aka'ahs added that where the application to tender the statement of account was made under Section 38 and not under section 97(i) (h) of the Evidence Act, the decision in *Yusufu v A.C.B. Ltd* becomes apt. Thus, in the present case of *Dizengoff (West Africa) Nig. Ltd v Afribank Nig. Plc*,[21] my Lord Justice Kumai Bayang Aka'ahs held that

> …reliance placed by the learned trial judge on *UBA v Sani Abacha* Foundation (supra) was erroneous as it was reached per incuriam. The learned trial judge should have followed the decision in Esso West Africa Inc v Oyegbola supra; more so since learned counsel replied to the objection by stating that he was relying on Section 38 of Evidence Act and also cited the two cases which had interpreted the said provision.[22]

My Lord Justice Kumai Bayang Aka'ahs went on to counsel that:

> "It is about time the National Assembly should amend the Evidence Act to reflect the observations made by Fatayi-Williams JSC (as he then was) in 1976 in Yusufu v ACB Ltd to reflect the advancement that has been made in all spheres of life and in particular, in commercial transactions since the coming into being of the computer."

Today, we are living witness to the fact that the Supreme Court's counseling inthe case of *Yesufu v ACB Ltd*,[23] and as echoed by my Lord Justice Kumai Bayang Aka'ahs in the case of *Dizengoff (West Africa) Nig. Ltd v Afribank Nig. Plc*,[24] has become a reality. Particularly, the provisions of section 5 of the English Civil Evidence Act 1968 regarding the conditions precedent for the admissibility of documentary evidence produced by a computer is now adopted under the Evidence Act 2011. Indeed, we are in a modern society that is driven by Information and Communication Technology (ICT). Certainly issues relating to electronic evidence are of increase. Accordingly, the decisions of my Lord Justice Kumai Bayang Aka'ahs are not only useful but timely.

2.3 Restrictions on Claims for Special and General Damages

This is another area that the contributions of my Lord Justice Kumai Bayang Aka'ahs are fundamental. It is the trite law that where a wrong is committed against another, the innocent parties would be entitled to such damages as will put them in the position they would have been if the wrong did not occur. The damages could be special or general damages. In the case of *Agu v General Oil Ltd*,[25] the Supreme Court held that special damages cannot be granted unless specifically pleaded and proved. However, where the plaintiff has difficulty in quantifying his actual loss, the plaintiff may

[19]Supra (n 14).
[20]Supra (n 13).
[21]Supra (n 18).
[22] These cases were: *Esso WA Incorp. v T.Oyegbola* (1969) NWLR 194 AT 198; *Trade Bank PLC V CHAMR* (2003)12 NWLR (Pt. 836) 158 at 216 – 7.
[23] Supra.
[24]Supra.
[25][2015] 17 NWLR (Pt.1488) 327.

claim in general damages after establishing the defendant's liability. In awarding the general damages, the court is to make assessment of the quantum of damages that can be said to have been a natural or probable consequence of the wrong occasioned. While the award of general damages is discouraged in contractual cases, the situation is different in the law of tort.[26]

Nevertheless, the fundamental issue in both laws of contract and tort is whether payment of special damages and general damages at same time will not amount to double compensation. It is in this respect that the contributions of my Lord Justice Kumai Bayang Aka'ahs are instructive. In the case of *Impresit Bakolori Plc & Leadway Assurance Coy Plc v. Elder Emmanuel F. Ikpeme & Mr. Ikpeme E. Ipkeme*,[27] the appeal was based on the respondents as plaintiffs' claim of N5million as special and general damages against the appellant as defendants. A 1st Defendant's staff, who was driving a vehicle belong to 1st Defendant collided with the car of the 2nd plaintiff. The matter was reported to the police. The plaintiff prepared an estimate of N642,100.00 for the repairs of the damage but Leadway Assurance Co., the insurers of 1st Defendant vehicle offered the sum of N67,300.00 for the repair. This was rejected by the plaintiff who instituted action in the High Court claiming the sum of N5million as special and general damages for vicarious liability against the defendants. The learned trial judge held that the plaintiffs did not prove their claim for special damages which was N642,100.00 but found that the plaintiffs specially proved the claim on hire services of N635,000.00 and awarded them N500,000.00 special damages and another N500,000 as general damages with interests of 10% per annum from 3/4/2000 till judgment. Dissatisfied with the decision, the defendants appeal to the Court of Appeal. Delivering the lead judgment, my Lord Justice Kumai Bayang Aka'ahs stated:

> Before considering the issue of damages, be they special or general or both, the plaintiff must prove negligence on the part of the defendants in causing the accident which resulted in damage suffered by the plaintiff… The learned trial judge reviewed the evidence adduced and arrived at the conclusion that '…the defendants owed not just the plaintiff but all other road users duty of care.' From the account given by the 1st plaintiff in Exh. 14, the accident occurred around noon on 2/4/2000, the date the 1st plaintiff vehicle was hit from behind when he (2nd plaintiff) was about to turn into Nsemo Street from MCC Road… The defendants admitted hitting the plaintiffs vehicle from behind but attributed the collision to the 2nd plaintiff who suddenly turned to enter Nsemo Street from MCC Road without trafficking. Even though the V.I.O. was not called to explain his conclusion that the accident was due to human error, the law presumes that in collision cases at day time, the driver of a vehicle which coming from the rear hits another vehicle in its from is deemed negligent. See *Audu v Ahmed* (1990)5 NWLR (Pt. 150) 287. If such a collision had occurred at night, the driver of the vehicle in front would be deemed *prima facie* negligent if his vehicle is not properly lighted, or if stationary, the usual red light or a triangular reflector is not placed on or behind it indicating danger ahead. See *Bankole v U.A.C. Ltd* 15 NLR 41; *Kalla v Jarmakani Transport* (1961)All NLR 747. The learned trial judge was right to hold that the 1st defendant was liable for the accident and since the accident occurred in the course of his employment, the 2nd defendant will be held vicariously liable for the accident.

With respect to the issue of damages, Lord Justice Kumai Bayang Aka'ahs reviewed the judgment of the trial court as well as the available evidence and come to a resounding conclusion that:

[26] *Ijebu-Ode Local Government v Adedeji Balogun* (1991) 1 NWLR (Pt. 166) 136.
[27] *Appeal No.CA/C/179/07*.

> The car was certainly not a new car at the time it was involved in the accident but in writing Exh. '9' to the police two days after the accident, the plaintiff was expecting his 15 year old car to be replaced with a new vehicle. The plaintiff could only be indemnified even if the car was a complete write-off and the principle is '*Restitution in integrum*' which means that the party to be indemnified is entitled to such sum of money as would put him in as good position as if the goods had been lost or damaged. See: *Ike v Mangrove Eng. (Nig.) Ltd* (1986)5 NWLR (Pt. 41) 350; *Leventis Motors Ltd v Nunieh* (1999)13 NWLR (Pt. 634) 235.

The court also frowns at arbitrary and unproven claims whether it is general or special damages. In the present case, Lord Justice Kumai Bayang Aka'ahs did not hide his feelings with respect to arbitrary claims by stating that:

> The evidence given by DW2 on the estimated cost of repair is more professional while Exh. '5' tendered by the plaintiff is quite arbitrary and unreliable. The plaintiff showed his unreliability when he admitted under cross-examination that he was telling a lie on 1/3/2005 when he said the vehicle was damaged beyond repairs….DW2 was honets to admit there was some damage done to the car, hence he recommended N67,300.00 to be paid to the plaintiff for the repairs. The plaintiff was clearly on a gold digging expedition when he put up a claim for 642,100.00 for the repairs of the car. Be that as it may, the car was not repaired; so he cannot recover the amount as special damages.

Furthermore, it is traditionally acceptable for parties to claim for both pecuniary and non-pecuniary losses in tortious actions. However, the extent to which the claims are allowed was demonstrated by Lord Justice Kumai Bayang Aka'ahs in the following words:

> The suit was not prosecuted in a representative capacity so the 1st plaintiff could not claim general damages for the shock, embarrassment, hardship and inconveniencies caused to him and members of the family. He could however maintain an action for the hardship and inconvenience he suffered as a result of the accident since he said he was using the 504 personally for himself before the accident (see page 68 II 24 – 25 of the records). I consider that 3 months is a reasonable time in which he should have hot his car repaired instead of spending N1,500.00 daily in hiring a car. He chose of his own violation to abandon his car in the Police Station in the hope that the car would be replaced or get such amount as would enable him buy a new one instead of repairing and or replacing the parts that were damaged as a result of the accident." The award by the trail court was reduced to N135,000.00 as general damages at 10% interest from the date of judgment.

Again the foregoing restrictions on claims in damages are great contributions of my Lord Justice Kumai Bayang Aka'ahs in curtaining the vices of arbitrary and unreliable claims, thereby promoting good culture that is needed for national development. Above, it helps in promoting mutual co-operation and trust as essential instruments for national development.

2.4 Burden of Proof in Criminal Trials

It is settled law that in criminal trials, the prosecution cannot secure a conviction against the accused person unless the offence is proved beyond reasonable doubts. This is largely because Section 36(5) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 state that, "[e]very person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty". While there are a plethora of cases on the contours of Section 36 (5) of the CFRN 1999, a particular area that we found the contributions of my Lord Justice Kumai Bayang Aka'ahs most interesting is whether a

court can convict on extra-judicial confession alone. In the case of *Manu Galadima v The State*,[28] **t**he appellant was arraigned before Kebbi State High Court, Zuru Judicial Division on one count charge of culpable homicide punishable with death. The trial court convicted the appellant and sentenced him to death by hanging. The conviction was affirmed by the Court of Appeal Sokoto Division in a judgment delivered on the 1oth day of June 2010. The appellant further appealed to the Supreme Court. The first argument of the appellant was that there was no evidence of eye witness before the trial court as the evidence of PW1 and PW2 was hearsay and no circumstantial evidence was adduced. The Supreme Court, per Lord Justice Kumai Bayang Aka'ahs held:

> There is no doubting the fact that neither PW1 and PW2 was present when the appellant hit the deceased with an axe on the head. That piece of evidence came from Exhibit A and A1. The law is firmly established that confession alone is sufficient to support conviction even without corroboration as long as the court is satisfied of the truth of the said confession.

In coming to the above conclusions, my Lord Justice Kumai Bayang Aka'ahs took insight from the earlier Supreme Court reasoning in the case of *Obi Achabua v The State*,[29] where the same Supreme Court faced with a similar situation where there was no eye witness account of the murder except the confessional statements of the appellant which he retracted but was found guilty and convicted by the High Court of murder and subsequently appealed to the Supreme Court. Obaseki Ag. J.S.C. (as he then was) dealing with the issue stated at pages 68-69 as follows:

> Only in few cases do criminals perpetrate their crimes in the open and secrecy with which they execute their plans has tended to deprive the prosecution in some cases of eye-witnesses. Happily, in this instant case, we have the extra judicial confessional statements in evidence and the recovery of the severed head of the deceased from the grave identified by the appellant as the place he buried it established the truth of the confession.

Similarly, my Lord Justice Kumai Bayang Aka'ahs pointed out in *Nwaebonyi v State*[30] that a court can convict on extra-judicial confession alone, even without corroborative evidence where the trial judge accepts the truth of the confession provided the accused person voluntarily made the statement.

Another contention by the Appellant in this case of *Manu Galadima v The State*,[31] was whether or not the learned trial court considers all the defences available to the accused, particularly the defence of provocation. Again, my Lord Justice Kumai Bayang Aka'ahs took his brevity to task on the nature of defence of provocation by holding that:

> A plea of provocation does not exculpate the perpetrator of the act from blame but is only a mitigating factor when it comes to the sentencing. For a plea of provocation to avail the accused, the burden is on him to establish:
> (a) the act of provocation was grave and sudden;
> (b) he must have been deprived of the power of self-control and;
> (c) the mode of resentment degree or extent of retaliation must bear a reasonable relationship or be proportionate to the provocation offered.
> The burden is discharged on a balance of probabilities and not on proof beyond

[28] Suit No. SC.99/2011.

[29] (1976)12 SC 63.

[30] (1994)5 NWLR (Pt. 343) 138.

[31] *Supra* (n 14).

> reasonable doubt. It is true that words alone can constitute provocation but this depends on the actual words used and their effect or what they mean to a reasonable person having a similar background with the accused person.

In the particular context of this case of *Manu Galadima v State*,[32] my Lord Justice Kumai Bayang Aka'ahs affirmed the conviction and held that '[t]he lower court was perfectly right to hold that there was no evidence whatsoever in the records of proceedings to establish that the appellant was so provoked by the deceased in a manner that will enable him to enjoy the benefit of the defence of provocation… Since the appellant elected not to testify but rest his case on the prosecution, he took a gamble and none of the defences he was entitled to would avail him… No court of law will presume or speculate on the existence of facts not placed before it.'[33]

Another important area that we found the reasoning of my Lord Justice Kumai Bayang Aka'ahs instructive is the offence of conspiracy. In the case of *Talal Ahmad Roda v. Federal Republic of Nigeria*,[34] the appellant and four (4) other accused persons were arraigned before the Federal High Court Abuja on a 16 count charge for various offences, including conspiracy. At the end of the trial all the other accused were discharged and acquitted on all the counts, only the appellant was convicted and sentenced on the amended Counts 7 and 9. He appealed to the Court of Appeal, which quashed Count 7 but affirmed count 9. The appellant further appealed to the Supreme Court. In a lead judgment delivered by M.D. Muhammad JSC, the Supreme Court upheld the appeal and quashed the conviction. In characteristic display of legal prowess, my Lord Justice Kumai Bayang Aka'ahs concurred but with different reasons as follows:

> As it takes two to conspire, a person cannot be convicted of conspiracy if others are discharged and acquitted. See *Ogugu v State* (1990)2 NWLR (Pt. 134) 539. There is no separate count in the amended charge where the appellant and Abdulhassan Tahir were accused of conspiracy to warrant sustaining the conviction of the appellant for conspiracy on count 9. The charge in count 9 is bad because of its vagueness and the conviction based on it cannot stand but must be set aside. See Olowo v State (2012)17 NWLR (Pt. 1329) 346.

My Lord Justice Kumai Bayang Aka'ahs stated that the conviction of the appellant is being set aside not because the trial court had no territorial jurisdiction to try the case but because the charge was bad and also because some of the accused were discharged and acquitted of the charge for conspiracy. Again, these contributions are fundamental in attaining sustainable national development. This is largely because the protection of lives and properties against crimes is an important requirement for attaining national development.

2.4. Stamp and Seal of a Legal Practitioner

As at 1st April 2015, the stamp and seal of a legal practitioner became a condition precedent for any document signed or filed by a legal practitioner. This was in accordance with Rule 10 (1), (2) and (3) of the Rules of Professional Conduct 2007, states:

> 10 (1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any government department of Ministry or any Corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.

[32] *Supra* (28).

[33] The existing authorizes cited in support were: *Uluebeka v The State* (2000) 7 NWLR (Pt. 665) 404; *Ali & Anor v. The State* (1998)1 NWLR (Pt.68)1.

[34] Suit No.418/2014

> (2) For the purpose of this rule "legal document" shall include pleadings, affidavits depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents.
> (3) If without, requirements of this rule a lawyer sings or files any documents as defined in sub-rule 2 of this rule, and in any of the capacities mentioned in sub-rule (2), the document so signed or filled shall be deemed not to have been properly signed or filed.

The emergence of Rule 10 (1), (2) and (3) of the Rules of Professional Conduct 2007, has received many reactions from the members of the Bar with respect to the scope of its applicability. In *Yaki v Bagudu*,[35] the appellant pleadings was objected by the basis that there no stamp and seal as required by Rule 10 (3) of the Rules of Professional Conduct 2007. The Supreme Court *per* Onnoghen JSC (as he then was) explained the import of Rule 10(3) thus:

> What sub-rule (3) supra is saying is that such non-compliance renders the document so signed or filed voidable that is why it is said that the document is deemed not to have been properly signed or filed. In other words, the offending document/instrument can be remedied at any stage in the proceedings by an application for and production and fixing of the seal… It should be noted that the qualification to practice law as a legal practitioner is a provided under the Legal Practitioners Act which includes being called to Bar and enrolled at the Supreme Court of Nigeria as a legal practitioner. It is that qualification that entitles a legal practitioner to sign/stamp any document either for filing in Court of Law in a proceeding or otherwise.

In the said case, the appellant did not apply to regularize the documents objected to; consequently the Notice of Appeal and appellant's brief have not been properly filed.
On his part, my Lord Justice Kumai Bayang Aka'ahs also contributed his part towards the enrichment of the jurisprudence of Rule 10 of the Rules of Professional Conduct 2007. Thus, in *Barr. Benjamin Wayo v. Eng. George T.A. Nduul & APC & INEC*,[36] the issue was about an interlocutory appeal brought by the appellant. A preliminary objection was filed by the 1st respondent challenging the competence of the appeal on the grounds, inter alia, that the appellant brief failed to comply with the provisions of Rules 10 (1) (2) and (3) of the Rules of Professional Conduct 2007. That is, there was no stamp and seal of the Legal Practitioner who signed the Notice of Appeal which is the originating process as well as the appellant's brief. The fundamental question before the Supreme Court was, thus, whether a lawyer who is party to a case and is so representing himself as a legal practitioner will still be caught by the provisions of Rule 10 (1) (2) and (3) of the Rules of Professional Conduct 2007. In affirming the decision of the Court of Appeal, the Supreme Court, per Lord Justice Kumai Bayang Aka'ahs, stated:

> On the issue concerning the competency of the notice in not affixing the Nigerian Barr Association seal or stamp by the appellant, I am afraid I cannot see the dichotomy between the appellant filling the process in his capacity as a legal practitioner and filling the same process and describing himself as Barr. Benjamin Wayo….

The above sound reasoning is useful in providing some practical guide in many respects. Most importantly, a legal document or instrument prepared by a lawyer in violation of Rule 10 (1) (2) and (3) of the Rules of Professional Conduct, 2007 in not a void document. It can be remedied by the

[35] (2015) 18 NWLR (Pt. 1491) 288 at 319 to 320.
[36] Suit No. SC.331/2017.

lawyer at any stage of the proceedings. That is by way of an application to regularize the said defective legal document before the court. Once the application is granted, the lawyer can then rely on it as a proper legal document before the court. This is critical to national development because of the need to ensure compliance with national institutions and attain a secured legal practice for the nation.

2.5 Rules of Interpretation and Constructions

It is the primary duty of the court to construct or interpret statutes, documents or words in order to give effect to the intention of the legislature or parties. Accordingly, Section 6 of the Constitution of the Federal Republic of Nigeria 1999 vests the courts with the powers to hear and determine dispute between the parties. The traditional approach to interpretation is gradually being replaced with constructions of statutes, document or words in line with political and socio-economic exigencies. In this area too, Lord Justice Kumai Bayang Aka'ahs has contributed immensely. In *Nosakhare Innocent Ohanmu v. Ketson Komplex Int'l Ltd*,[37] my Lord revealed the proper rule for the interpretation of Section 37(1) of the former Bendel State Customary Court of Appeal Edict 1984. Section 37(1) state that 'Subject to subsection (2) of this Section, where in the exercise by an Area Customary Court of its civil jurisdiction under this Edict, an interlocutory Order or a decision is made in the course of any suit or matter, an appeal shall, by leave of that Court or of the Customary Court of Appeal; but no appeal shall be from any order made ex-parte, or by consent of the parties relating only to costs.'

The contention was that an appeal was allowed on an ex-parte application. In interpreting the above Section 37 (1), Lord Justice Kumai Bayang Aka'ahs applied the literal rule of interpretation and stated thus:

> The Words used in Section 37(1) of the Customary Court of Appeal Edict 1984 are plain and unambiguous. If the language used by the legislature is clear and explicit the court must give effect to it because in such situation the words of the statute speak the intention of the legislature. See *Ojokolobo v Alamu* (1987)3 NWLR (Pt. 61) 377. Where words are plain on the face of it, the literal meaning should, in accordance with the cannons of interpretation of contract documents, be given to it.[38]

He added that:

> …there was no right of appeal against the order of the Oredo Area Customary Court dated 9/12/94 for which leave was sought and granted to the Respondent to appeal as an interested person since the order was made ex-parte. The exercise of an appellate jurisdiction is entirely statutory and in this particular case the Customary Court of Appeal lacked jurisdiction to grant any leave to appeal against the ex-parte order of the Oredo Area Customary Court.

Similarly, in the same case of *Nosakhare Innocent Ohanmu v. Ketson Komplex Int'l Ltd*,[39] the Appellant, through ex-parte application, sought to join and was so joined as a second defendant (in the Respondent case against a third party) based on the order of the Oredo Area Customary Court which granted the Appellant Letters of Administration to his father's estate and was joined. The respondent become aggrieved by the order of the Court and therefore sought for and was granted leave by the Customary Court of Appeal Benin City to appeal against the order as an interested party. The Customary Court of Appeal granted the application against the Appellant, who appealed to the Court

[37] Supra (n 4).
[38] Niger Progress Limited v North East Line Corporation (1989)3 NWLR (Pt. 107) 68.
[39] Supra (4).

of Appeal. In hearing the appeal, Lord Justice Kumai was faced with the task of interpreting who is an "aggrieved party" or interested party." My Lord Justice Kumai Bayang Aka'ahs in holding that the respondent was not an interested party, interpreted the phrase 'a person aggrieved' in the following ways:

> A person aggrieved must be a man who has suffered as a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something; or wrongfully affected his title to something. See *Ikonne v C.O.P. & Nnanna Wachukwu* (1986)4 NWLR (Pt.36) 473. The grant of the Letters of Administration to the Appellant certainly did not deprive him of something or prejudicially affect the Respondent's interest. After all the Respondent can successfully prosecute his claim and right to possession of the property without necessarily challenging the validity of the grant of the Letters of Administration. The Respondent was therefore not an aggrieved person when the Letters of Administration were granted to the Appellant.

Clearly, my Lord Justice Kumai Bayang Aka'ahs was able to demonstrate the fine attributes for determining whether or not a party is "a person aggrieved" in a particular circumstances or not. That is, the party must show that he is wrongly deprived of something or title in something. In the present case, it was held, 'the grant of the Letters of Administration to the Appellant certainly did not deprive him of something or prejudicially affect the Respondent's interest.' Above all, the knowledge on the literal rules of interpretation is further enriched. All these may directly or indirectly impact on the mechanisms for attaining national development.

2.5 Effect of Pleadings; Absence of a Party in Court; Interlocutory Injunction; and Conflict in Affidavit

There are several other important areas of law that the insights of my Lord Justice Kumai Bayang Aka'ahs are noticeable. The first is in the area of pleadings. In the case of *Isaac C. Onyefuosanu v. Integrated Data Services Ltd*,[40] the plaintiff's employment with Nigerian National Petroleum Corporation (NNPC) was terminated by the NNPC via letter dated 3rd May, 1996. The plaintiff protested his termination and several meetings were held with NNPC representative but this did not yield a positive result. Consequently, the plaintiff applied for a writ of summons seeking a declaration that his employment was wrongful and for an order for his re-instatement on the job with NNPC. In reply, the defendant pleaded that: the plaintiff's action was statute barred, and that the plaintiff did not serve a pre-action notice. The trail judge found in favour of the Defendants. The plaintiff being dissatisfied with the trail court ruling, appealed to the Court of Appeal, which held per my Lord Justice Kumai Bayang Aka'ahs thus:

> At this stage of the proceeding, it is not necessary that the plaintiff/Appellant should swear to a counter affidavit to support the averments in the reply to the statement of defence. The relevant consideration that ought to weigh on the mind of the learned trial Judge is the averment in the reply to the statement of defence and whether they are sufficient to allow the matter to be heard and evidence taken. Since the plaintiff had stated that he would lead credible evidence of the facts at the trial, the learned trial judge ought to have waited and allow evidence to be adduced before deciding on whether the action was statute barred or not. I am of the view that the learned trial judge took a hasty decision he concluded at page 41 of the records that the plaintiff did not advance evidence in a counter-affidavit to support his averments in the reply to the

[40] Appeal No.CA/B/230/2001.

> statement of defence. This is not an action based on undefended list where affidavit evidence is needed to support the claim and judgment can be entered thereon if the defendant fails to enter a defence or depose to facts which prima facie shows that he has a defence to the action.

In upholding the appeal, my Lord Justice Kumai Bayang Aka'ahs went on to stipulate the main objectives of pleadings as follows:

> The primary aim of pleadings I to settle issues to be contested and on which the trial court will be called upon to decide. To arrive at such a decision, the trial court will rely on material evidence tendered in support or in proof of such issues. They are also designed to give the opponent notice of the case the pleader is bringing forward in order that the opponent may not be taken unaware and in order also, that he may come forward with answers to the points raised in the said pleadings. See George v. Dominion Flour Mills Ltd (1963)1 ANLR 71; Sodipo v Lemminkainen OY (1985) 1 NWLR (Pt.8) 547. If the state of facts as pleaded in paragraph 1 of the reply to the Statement of defence exists, the action will not be statute barred. Nwadiaro v. Shell Development Coy. Ltd. (1990)5 NWLR (Pt. 150) 322; Road Construction Coy Ltd v Buratto (1993)8 NWLR (Pt. 312) 508; Nigeria Customs Service v Bazuaye (2001)7 NWLR (Pt.712) 357. This appeal has merit and it is hereby allowed.

Other than pleadings, another area of law is whether an applicant who is represented by his counsel must be in court. This issue arose before my Lord Justice Kumai Bayang Aka'ahs in the case of *Dr. S.B. Babajide; Metro Gas Ltd v Prof. Adego E. Eferakeya*.[41] Briefly, the facts were that the plaintiff/Respondent owes a medical centre, while the defendant/Appellant owes a business of bottling and marketing liquefied cooking gas, and both share common boundary. The plaintiff alleges that the emission of noxious fumes/gasses from the defendant's business constituted not only unbearable nuisance, but also exposes the medical outfit to gas poising, fire accident and probable loss of lives and properties. The plaintiff seeks the court to declare the business operations of the defendant as injurious and should be restrained and N10million special and general damages paid to the plaintiff for loss incurred by the nuisance. The Respondent immediately sought and obtained an ex-parte interim injunction restraining the Appellant from carrying on his business in the premises among other claims. The defendant filled an application seeking to vacate the interim injunction and the entire suit. Particularly, the interim injunction was granted on the bass of fraud and misrepresentation of facts. However the trial court ruled against the defendant. Being dissatisfied, the Defendant filled a notice of appeal praying that the learned trial court erred in law. On the issue of whether the absence of the appellant in court proofs fatal to his case, my Lord Justice Kumai Bayang Aka'ahs held that while it is good for an applicant who is represented by his counsel to be in court, his absence does not nullify the order or change the validity and competence of the trial and court decisions. In the words of my Lord Justice Kumai Bayang Aka'ahs:

> I agree with the submission made by learned Counsel for the respondent on this point. There is a presumption of a client's authority if he is represented by Counsel in court. See *Tukur v Government of Gongola State* (1988)1 NWLR (Pt.68)39.

With respect to the duty of court in situations where there is conflict in affidavit, my Lord Justice Kumai Bayang Aka'ahs ruled that the duty of the court in such situation is to "…invite the parties to adduce oral evidence to resolve the conflict. In *Falobi v Falobi* (1976)1 NMLR 169, the court called oral evidence "and reasoned that no person shall after reaping benefit from a transaction of which he is party be heard to say such a transaction is illegal or void or voidable or has created nuisance".

[41] Appeal No.CA/B/300m/98.

However, my Lord Justice Kumai Bayang Aka'ahs went on to distinguish the same *Babajide; Metro Gas Ltd's case*,[42] from the reasoning in *Falobi v Falobi*,[43] by stating that:

> 'With respect to the learned trial Judge, I do not think this was the reason why he avoided determining the issue. The reason why the appellant annexed the receipts for the sale of gas to the respondent was to show, not only that it was engaged in that business long before the respondent built his residence/hospital in the vicinity but also to show that the respondent had patronized the appellant's gas business which was also beneficial to the respondent.'

Also in the same case of *Dr. S.B. Babajide; Metro Gas Ltd v Prof. Adego E. Eferakeya*,[44] my Lord Justice Kumai Bayang Aka'ahs took the opportunity to explain the purpose of granting injunctions as follows:

> "Under the law, injunction are granted for two main purpose and these are:
> (a) To maintain the status *quo ante litis*, that is the position of the parties before the litigation was commenced and thereby preserve the 'res' of the subject matter of the litigation;
> (b) To restrain a threatened breach of one's right or destruction of the property. See *Ojukwu v Lagos State Government* (1986) 3 NWLR (Pt. 26) 39; *Obeya Memporial Specialist Hospital v. Attorney-General of the Federation* (1987)3 NWLR (Pt. 60) 325.
> An interlocutory injunction is not a remedy for restraining an act which has already been executed - *John Holt Nig. Ltd v. Holts African Workers Union of Nigeria and Cameroons* (1963) SCNLR 383; *Kotoye v C.B.N.* (1989)1 nwlr (Pt.98)419. I wish to add that injunctions are not granted on declaratory actions *simpliciter*. See *Olu of Warri v Hon. Justice Nnaemeka Agu* (1994)1 NWLR (Pt. 319) 192".

Also in the same case of *Dr. S.B. Babajide; Metro Gas Ltd v Prof. Adego E. Eferakeya*,[45] my Lord Justice Kumai Bayang Aka'ahs held that "looking at the affidavit in support of the *ex-parte* application, the reported incidents of gas pollution and fire outbreaks occurred before the application was filled…. It would have been in order if the grant of the interim injunction was limited to the threatened injury. But this was not the case. Consequently, the interim injunction granted cannot be allowed to stand". All these decisions are tools for guiding individual interactions in the quest for the attainment of sustainable national development.

3. Conclusion

The role of the judiciary to national development is, among other things, the resolution of dispute without fear or favour; and also to supervise the duties of the Executive and Legislative arm of government. Justices and Judges risks their lives every day to ensure that this essential duties of the judiciary is nor eroded, but sustained. In this article has demonstrated the contributions of my Lord Justice Kumai Bayang Aka'ahs, JSC in sustaining the role of the judiciary to national development. Particularly, the article looked at my Lord Justice Kumai Bayang Aka'ahs contributions in the areas of: jurisdictions in trial of civil and criminal matters; electronic evidence; burden of proof in criminal matters; stamp and seal of a Legal Practitioner; judicial rules of interpretations; and finally the effect of pleadings; absence of a party in court; interlocutory injunction; and conflict in affidavit. No doubts, my Lord Justice Kumai Bayang Aka'ahs has left a huge legacy and jurisprudence that is needed for Nigeria's efforts towards a sustainable national development.

[42] Supra (n 40).
[43] (1976)1 NMLR 169
[44] Supra (n 40).
[45] Supra (n 40).