



SPECIAL MENTION

THE TITAN OF A JUDGE

Homage to Lord Denning on his 100th anniversary

LORD ALFRED Denning, one of the most remarkable jurists ever produced in the third planet called earth clocks 100th year on the 23rd January 1999. The Bar, the Bench and the entire spectrum of the oppressed masses all over the world who have benefited and still benefiting from his judicial activism must be made to remember this titan of a judge.

Lord Denning was born on 23rd January 1899 to a royal and revered family in England. He had his first degree in Mathematics before venturing into legal profession. He came to High Court in 1944 at the age 45, promoted to Court of Appeal later in 1948. He was elevated to House of Lords in 1957. Denning took the whole world aback when he voluntarily came back to Court of Appeal in 1962 as Master of Rolls. His reason for such historic voluntary demotion was that the annual output of Appeal Court is about 800 cases while that of House of Lord is about 50-60 cases. And he opted for where he would be more essentially pre-occupied with dispensation of justice.

In controversial circumstances that arose out of his comments about the black jurors in his book "What Next in the Law", Lord Denning voluntarily retired in July 31, 1982 at the age of 83 years. He put in 38 years of service in the British Judiciary.

The judicial life of Lord Denning is an epic narration of a single man who single-handedly bestrides his own world like a colossus. According to that immortal Indian poet - Rabindranath Tagore¹ :

Above all what makes a man great is the spiritual climates he create in his own soul. The celestial orbits, the fiery sun, the gyrations of earth, and moon are not more inexorable than the dedication of a great human being.

The judicial climate created by Lord Denning was filled inexorably with vapour of justice and equity.

Lord Denning has been the champion of the underdog - "the little man" in securing him justice. How responsive he is as to the feeling of the ordinary man is best illustrated in his work - "The Due Process of Law" where he graphically articulates the idea of social justice, as against the concept of technical justice. He condemned legal technicalities as obstructive to justice in *Re Vandervells Trust (No2) White and Ors. v. Vandervell Trustees Ltd.*

Denning looks at law as an instrument of social justice. He is an apostle of Roscoe Pound. This belief that law must serve the interest of Justice explains his often misunderstood radicalism. As a teleological Jurist, he thinks of result before

1. 1861-1941.



he considers the legal reasoning on which it has to be founded. If the result to which established legal doctrine lead is obviously out of touch with what ordinary people expect to be the law, Denning always takes a dissenting step. In the celebrated case of *Gouriet v. Union of Post Office Workers*² Denning granted an injunction to the applicant despite the fact that the Attorney General did not grant the leave to the applicant. Denning's argument was that if the Post Office Workers go on strike economic implications might be grave to the nation. His judgement was overturned by the House of Lords, but he has achieved an aim - the workers did not strike.

The judicial life of Lord Denning was so spectacular that all his cases have been forming vertebra for plethora of legal decisions in all the jurisdictions in the world. And he was always at home with all aspects of the law. He is the most cited judge in the history of the Common Law.

In Company Law, his judgements in *H.L. Bolton Co. Ltd. v. T.J. Graham & Sons Ltd.*³ is an indisputable authority on the concept of corporate entity. He finally settled the legal status of a Company Secretary in *Panorama Developments (Guilford) Ltd. v. Fidelis Furnishing Fabrics Ltd.*⁴ where he held *inter alia* "... the Company Secretary is the Chief administrative officer of the Company... He is no longer a mere Clerk."

In Equity, the procedure of getting rectification was laid down by Denning in *Rose v. Pim*⁵. In his 'Due Process of Law', Denning admonished that the new spirit of equity must be planted in the hearts of law students at the Law School.

Talking about Criminal Law, Denning was Comfortably at home. He laid down the paraphernalia of "Proof Beyond Reasonable Doubt" doctrine in *Miller v. Minister of Pensions*⁶. The case was cited with approval in Nigerian Supreme Court in *Joseph Lori & Anor. v. The State*⁷. He defined "Automatism" and what constitutes "Disease of the Mind" in *Bratty v. A.G. Northern Ireland*⁸. Also in *A.G. V. Callagher*⁹ Denning laid down the requirements for the defence of "intoxication". In *Hosegood v. Hosegood*¹⁰ he expatiated on the doctrine of "mens rea".

Lord Denning's classical obiter dictum on the "issue of bias" in *Metropolitan Properties Co. (F.G.C) Ltd. v. Lannon*¹¹ will remain one of his enduring legacy in administrative law. In the case, having laid down what constitutes the "real likelihood of bias" with moving clarity, his Lordship concluded: "Justice must be rooted in confidence and confidence is -destroyed when right minded people go away thinking: The judge was biased." The Lannon Case has remained a recurrent decimal point in Nigerian courts. It has been cited with approval in *Oyelade v.*

2. (1977) 1 All E.R.

3. (1957) 1 Q.B.

4. (1971) 2 Q.B. 711 (C.A.).

5. (1953) 2 Q.B.450, 461, (C.A.).

6. (1974) 2 All E.L.R 373.

7. (1980) 8-11 S.C.

8. (1963) A.C. 412.

9. (1961) 3 All E.R. 299.

10. (1950) 66 T.L.R. 735.

11. (1969) 1 Q.B. 577.



*Araoye & Ors.*¹², *Taliatu Adio v. AG Oyo State & Ors.*¹³, *Garba v. University of Maiduguri*¹⁴, etc.

In hire purchase law, Denning settled the concept of owner's claim for damages after repudiation in *Financing Ltd. v. Baldock*¹⁵ and *Bridge v. Campbell Discount Co. Ltd.*¹⁶. Lord Denning's vital decision on the claiming of specific performance by a servant in contract of employment was cited per Oputa J.S.C in *Olaniyan & Ors. v. University of Lagos*¹⁷. The Contagious influence of Lord Denning on Nigerian judiciary came to fore in the case of *Alli v. Okulaja*¹⁸ where Beckley J. held that the Nigerian court cannot be held bound by the authority of Court of Appeal of England. But he said in *Edmeades v. Thames Board Mills Ltd.*¹⁹ "an eminent judge like Denning would certainly be the most persuasive authority.."

With a perspicacity of mind and futurity of focus, Denning always looked beyond the shackles and manacles of precedents and used law to move society forward. In *Ostime v. Australian Mutual Provident Society*²⁰ Denning insisted:

The doctrine of precedent does not compel your Lordships to follow the wrong path until you fall over to the edge of the cliff.

Lord Denning actually departed from precedent in *Att. Gen. v. Butterworth*²¹, *Sydall v. Castings Ltd.*²² and *Packer v. Packer* among others. In Parker's Case Lord Denning bravely said:

If we never do anything which has not been done before we shall never get anywhere. The law will stand still whilst the rest of the world goes on, and what will be bad for both.

In the Nigerian case of *Nosiru Bellow v. Att. Gen. Oyo State*²³ Justice Oputa's decision was influenced by Packer's Case.

Denning, as a judge, was unequivocally against executive lawlessness. In a sensational case of *R. v. Inland Revenue Commissioner Ex. parte*, Denning said: "No one, not even the Crown, can dispense with law of England." In *Gouriet v. Union of London Post Office Workers*²⁴, Denning re-echoed Thomas Fuller: "Be your ever so high, the law is above you."

The contributions of Lord Denning to the hallowed course of justice is so vast and expanse that this forum is not sufficient to do justice to this titan of a judge.

12. (1968) N.M.L.R. 44.

13. Tribune Law Report 2/11/90 at 8.

14. (1986) 1 N.W.L.R. 550.

15. (1963) 2 Q.B. 104.

16. (1962) A.C. 600.

17. (1985) 2 N.W.L.R. 599.

18. (1970) All N.L.R. 35.

19. (1968) 1 Lloyd Rep.221.

20. (1960) A.C. 459.

21. (1962) 2 W.L.R. 819.

22. (1967) 1 Q.B. 302.

23. (1986) 5 N.W.L.R. 82.

24. *Supra* note 2.



His life epitomised the best attributes that a judge could possess: *i.e.* freedom of thought, erudition, courage, conscience, beauty of language and equanimity.

One cannot resist the temptation to sum the judicial career of Lord Alfred Denning with the little tinkering of Shakespearean couplet:

He was a judge take him for all in all the like of him you will never see again.

Happy birthday the Daniel of our time of justice. Long live the empodium of justice.

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