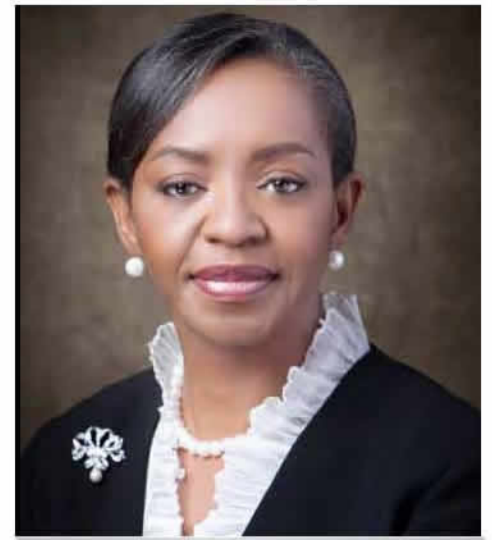


# The Award of SAN: a System in Need of Reform



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With the conferment and admittance last week of 17 Senior Advocates of Nigeria (SAN) into the inner Bar, the debate on the continued relevance of the rank has re-surfaced.

It all began with the first Queen's Counsel (QC) Extraordinary Sir Francis Bacon, who was given a patent which allowed him precedence at the Bar in 1597. By 1830 it had become the standard means by which to recognise a barrister as a senior member of the profession. There were rules accompanying these appointments, for instance a QC was not permitted to appear in court without a junior barrister and also had to have chambers in London. In 1994 solicitors in England and Wales became entitled to gain rights of audience in the higher courts and later to become entitled to apply for appointment as QC. The appointment of new QCs was however suspended in 2003 as a sustained campaign for the system to be abolished was mounted but eventually those in favour of retention won the day. The government though thereafter focused on reforming the process instead of abolition, when it resumed appointments in 2004. Selection is now by a nine member panel, chaired by a lay person and further including two barristers, two solicitors, one retired judge and three other non-lawyers. The Lord Chancellor supervises the process and reviews the panel's recommendations, basically simplifying and making the process more open.

The title of QC still remains in Scotland, Northern Ireland and in some provinces in Canada. In other Commonwealth jurisdictions such as South Africa, Trinidad & Tobago, Guyana, Hong Kong and New Zealand the rank QC has been changed to Senior Counsel. Nigeria, India and Bangladesh changed to Senior Advocate while in Sri

Lanka it is called the President's Counsel. In Australia the rank has been replaced with Senior Counsel though in 2013 Queensland restored the rank to QC and most states will likely follow suit. Nigeria is certainly not alone in this debate as in South Africa a vocal group of advocates fervently believe the status of Senior Counsel is part of a colonial legal tradition that has no place in modern day South Africa.

Though the Body of Benchers is the highest body within the Nigerian Bar Association (NBA), the rank of SAN is still a highly coveted and exclusive and one some lawyers will go to any extent to be appointed. The Conferment of SAN is made in accordance with the Legal Practitioners Act 207 S. 5 (1) by the Legal Practitioners Privileges Committee (LPPC) headed by the Chief Justice (as Chairman) and consisting of the Attorney General, one Justice of the Supreme Court, the President of the Court of Appeal, five of the Chief Judges of the States, the Chief Judge of the Federal High Court and five legal practitioners who are SANs.

SANs enjoy the privilege of sitting in the 'Inner Bar' (the front row seat in court) as opposed to the outer bar where other advocates are seated. They also have the privilege of having their cases called first in court as well as wearing silk robes. The award of the rank of SAN is a privilege awarded as a mark of excellence to advocates. They must however meet the eligibility criteria wherein their professional competence, integrity, knowledge of the law, leadership in the profession, contribution to the development of the law, strength and quality of references received on their behalf, quality of their law office and library and much more besides are all taken into consideration. In exceptional circumstances in any given year the rank of SAN may be awarded by the LPPC to an academic member of the legal profession.

The title was first conferred in 1975 to Chief F.R.A. Williams and Dr Nabo Graham-Douglas and since then to a good number of legal luminaries whose brilliance, eloquence,

dexterity and gravitas have earned them the award, which cannot be disputed, as it was glaring for all to see that they possessed the requisite integrity, work ethics and leadership skills. Without a shadow of a doubt one can assert that these SAN awards of old were conferred solely on merit. Being in court was like a theatre of sorts, quite a sight to behold! Unfortunately this is no longer the case. I was at the Court of Appeal a few months back when an SAN brought a wholly frivolous application and was told off in no uncertain terms by the presiding judge. A truly embarrassing situation ensued and as he walked out of court with his retinue of juniors, I just wondered what lessons these young up and coming lawyers could have learnt. Further, just last week an acquaintance from outside the profession had occasion to refer to an SAN as 'that tomato seller, a complete agbero (truck pusher)'. The reason for the caustic comment was because the SAN in question, like some others, had by their behaviour and comportment openly debased the privileged rank. Sadly, for some time now when the lists are announced it baffles one when details get out of how A, B and C got their awards, how money changed hands and cases were purchased etc. Simply despicable, cynical comments that bring the entire process into disrepute and diminishing the dignity of this coveted rank. Interestingly enough some time ago a group of SANs decided to incorporate the body as a social/friendly society under the Company and Allied Matters Act (CAMA) as they considered it as merely an expression of their fundamental right to freedom of association. That single act alone triggered much resentment and ever since nothing further has been heard about this association.

Last week in Abuja I attended the NBA President Augustine Alegeh SAN's President's dinner in honour of the newly sworn-in SANs, a first by the NBA and a good start indeed. It was interesting to note that they had speakers give presentations on a SAN's code of dressing and decorum (by Augustine

Alegeh himself) and on the leadership role of SANs: perspective from the bar and bench, particularly appropriate as the leadership qualities expected of SANs cannot be over emphasised.

One also needs to mention that there are a good number of distinguished lawyers who have made a mark in the legal profession and have also made major contributions to the law but may not wish to apply and or operate outside the court practice, i.e. solicitors. These lawyers deserve to be honoured as is done in England with the Queen's Counsel Honoris Causa (Honorary QC).

I believe strongly that one must aspire to greater heights in whatever you do, most especially in one's chosen profession. On whether the rank of SAN should be abolished or not, I am of the view that it should remain, as it is appropriate and encouraging to be rewarded in any form, most especially when it has been well earned. The entire process should be reformed to bring dignity back to the rank and on thus a lingering question that really bothers one is that if it is an honour to be so conferred, why then must one apply to be so honoured?

