

ANOTHER WORK ON HON. MUYIWA¹ INAKOJU AND 17 ORS, V HON. ABRAHAM ADEOLU ADELEKE AND 2 ORS FROM THE PRICING OF THE 1999 CONSTITUTION OF NIGERIA

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Abstract

The power of impeachment as provided by the 1999 Constitution of the Federal Republic of Nigeria is a means of checking the excesses of certain classes of executive office holders who enjoy privilege and immunity against criminal and civil proceedings while in office. While impeachment is supposed to be an instrument to checkmate the excesses of executive officers in the hands of the legislature, there have been certain situations where it had been used by some political parties as a tool for removing executive officers who do not belong to their political parties from office. Furthermore, some constitutional requirements for the exercise have been duly compromised in certain situations, leading to some of them not complying with. Most times, the quorum may not be fully formed but still, the honourable members would still go ahead to affect such impeachment. This work sought to analyze Hon. Muiyiwa Inakoju and 17 ors v. Hon. Abraham Adeolu Adeleke and 3 ors and their implications for constitutional democracy in Nigeria. The work took a doctrinal methodology of the research analyses of the issues and the holdings raised here. It made some findings, among which is that impeachment procedures should record only minimal achievement until the right political culture is developed and sustained among the Nigerian political class. The Nigerian legislature must learn to exhibit political maturity and patriotism when exercising legislative power, including impeachment power. The work recommended that a clear definition of gross misconduct under the Constitution and impeachable offences should be established in the *1999 Constitution of the Federal Republic of Nigeria*.

¹ (2007) ISC 617 at 668. See also O T Ilediegwu; The Role of the Judiciary in Impeachment Proceedings under the 1999 Constitution of Nigeria (as amended) An L.L.B Project Submitted to Faculty of Law, Enugu State University of Science and Technology, Agbani, July, 2021 39-43.

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1. Introduction

As a democratic nation, Nigeria practices a presidential system of government³.

It equally applies to the doctrine of the separation of powers.⁴ This made it possible for the nation to also adopt the doctrine of checks and balances⁵, which aims at each of the three arm of the government checking themselves one another to avoid eachacting in excess of its powers. It alsohelps in checking the excesses of government officials in their actions while in office. On the side of the executive, the doctrine ensures an impeachment proceeding to remove the erring executive member, recall for the legislature, and dismissal for the judiciary when they fail or come short in the discharge of their responsibility⁶ The aim of this work is to examine the extent of abuse of legislative power with respect to the removalof the state governor and to provide recommendations to that effect using *Inakoju and ors v Adeleke and 3 ors*⁷ as a case study.

2. Facts of the Case

In 2005, Honorable Justice Ige of the High Court of Justice, Ibadan, also declined jurisdiction to entertain the suit challenging the removal of the Governor of Oyo State in *Hon. Muyiwa Inakoju and 17 ors v. Hon. Abraham Adeolu Adeleke*⁸ on the 13th day of December, 2005, the Oyo State House of Assembly sat at its complex secretariat Ibadan. The applicant sat at D' Rovans Hotel, Ring Road, Ibadan, where they purportedly suspended the Draft Rule of the Oyo State House of Assembly. The appellants purportedly issued a notice of misconduct allegation against Senator Ladoja, the Governor, with the purpose of commencing impeachment proceedings against him. On 22nd December, 2005, without following the laid down rules, regulations, andprovisions of the 1999 Constitution, the appellant purportedly passed a motion calling for the investigation of the allegation of misconduct against Senator Ladoja without the concurrent consent and approval of the two-thirds majority of the 32 Honorable members of the House of Assembly. The purported notice of the allegation of misconduct against the Governor was not served on each member of the House of Assembly.

The 1st and 2nd respondents who were the speaker and Deputy Speaker of Oyo State House of Assembly, respectively, commenced the action by way of origination summons before Ige J. in Suit No.1/1050/. They sought from the Court the determination of eight questions, nine declarations, and two mandatory orders all on the purported passing of a motion for the investigation of the allegation of misconduct against His Excellency Senator Rasheed Adewolu Ladoja, the Governor of Oyo State and the purported request by a non-existing speaker of the Oyo State House of Assembly asking the Chief Judge of Oyo State to appoint a panel of seven (7) persons to investigate the allegation against the Governor. The appellants and the defendants were duely served with the processes, and instead of entering the appearance as required, they immediately filed a notice of preliminary objection on the grounds that the court lacking jurisdiction, the plaintiff lacked the necessary *Locus Standi*⁹, and the claim disclosed no reasonable cause of action. Hon. Ige J., in his ruling delivered on the 28th day of December 2005, maintained the provision of section 188 (10) of the Constitution in the impeachment matter by holding that:

³This is the system of Government, where the president is both the head of the government and ceremonial head of the State.

⁴. This is the procedure of allocating different functions to each of the three cardinal arms of government: legislature (section 4 of *The 1999 Constitutions*, Executive (Sections 5 of the 1999 Constitution), and judiciary (Section 6 of the 1999 Constitution). See B O Igwenyi, *Modern Constitutional Law in Nigeria*, (Abakaliki: Nwamazi Printing and Publication Co. Ltd, 2006) 54-63. See J. Lock, *Second Treatise of Civil Government Chapter xii Paragraph 143 cited in B O Igwenyi Ibid*.

⁵. See Sections 69 and 110 of the 1999 *Constitution of The Federal Republic of Nigeria 1999* (As amended).

⁶ . See section 188 of the 1999 Constitution.

⁷Note 1.

⁸See *Inakoju and Ors v. Adeleke and 2 ors* cited *from the beginning*.

⁹*Locus Standi* as a term in law means the legal ground a person must possess before he can bring a matter and succeed before a court of law.

It is not part of the duty of the court to forage into areas that ought to vest either directly or implicitly in the legislature, such as the impeachment issue, which is a matter that comes within the purely internal affairs of the House of Assembly. Therefore, the court will declare jurisdiction¹⁰ in the matter.

The respondent was dissatisfied with the ruling of Ige J. and appealed to the Court of Appeal. While the appeal was pending at the Court of Appeal, Senator Adewolu Ladoja, who was elected as the Governor of Oyo State, sought and was granted leave to be joined as an interested party.

The Court of Appeal allowed the appeal and exercised its powers under section 16¹¹, proceeded to decide the plaintiffs' claim on merit and thereby granted all the relief claimed by the plaintiff. Based on these, the defendant/respondent filed an appeal before the Supreme Court and the following issues were raised:

3. Issues Raised

1. Whether the Court of Appeal was not right in its construction and interpretation of the provisions of section 188 (10)¹² and in coming to the conclusion that the ouster clause in section 188 (10)¹³ cannot avail the appellants having regard to the circumstances of the case.

2. Whether the Court of Appeal was right in its determination that the High Court has jurisdiction to entertain the question of impeachment of the party interested as the Governor of Oyo State¹⁴.

3. Whether the respondents have the *Locus Standi* to institute this action.

4. Whether the Court of Appeal was not right with regard to the peculiar circumstances of this case in invoking the provisions of section 16¹⁵ in giving judgment in favour of the respondents and whether the right to fair hearing of the appellants was thereby breached.

4. The Holdings

On issue 1, the Supreme Court held that the clause cannot help the appellant in this case. The ouster clause could only apply if the condition precedent in subsections (1) to (9) of section 188¹⁶ could be complied with by the court. However, in this case, the provisions were not complied with; hence, it is the job of the judiciary to enforce the provisions of the *Constitution*¹⁷, and the court had jurisdiction to entertain the matter.

On issue 2, the court held that the court possessed jurisdiction over the matter. On this issue, the court affirmed the Court of Appeal's ruling and overruled the High Court's decision that the court had no jurisdiction to entertain the matter.

On issue 3, the court ruled that the respondents have *Locus Standi* to commence the action as they did in the High Court of Justice Oyo State.

On the issue number 4, the court did hold that:

The real question in controversy in this appeal is whether the removal of the 3rd respondent complied with section 188 of the *1999 Constitution* or whether it was in violation or in breach of the section. The grounds of appeal and their particulars before the Court of Appeal clearly decided on the real question in controversy, and so the court was clear by invoking its section 16 power. Instead of paying the cost back to the trial judge for a

¹⁰Jurisdiction is the legal Court of Appeal Act, of the *Constitution of the Federal Republic of Nigeria, 1999 (as amended)*.

¹¹ Court of Appeal Act, Laws of the Federation Nigeria 2004.

¹²*The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*.

¹³*The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*.

¹⁴Rasheed Adewolu Ladoja

¹⁵Of the Court of Appeal Act as cited earlier.

¹⁶*The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*.

¹⁷Section 6 of *The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

trail, section 16 empowers the Court of Appeal to assume the jurisdiction of the trial court and determine the real question in controversy. This is to save time in the administration of justice.¹⁸

Again, on the issue of fair hearing¹⁹, the court ruled against the appellant and, stated that fair hearing was granted to them. In fact, they, conjured up all possible means to delay the court process. The, court stated the following:

A party who seeks fair hearing from the court must also be fair in the litigation²⁰ to the adverse party and to the proceedings. A party who intentionally files a motion to delay the proceedings is not fair to the adverse party and the proceeding. He should not annoy the proceedings in any way. He has a duty to respond to the procedural needs or requirements of the litigation without applying any baits. The adverse party is a human being; not a fish. He must come out and embrace the litigation with all honesty and sincerity of purpose. Where he decides to plant mines in the judicial process to obtain victory in the event of a possible slip on the part of the court or the adverse party, such a party will not be in a position to ask for the fair hearing of a case because, he has not shown raciness in the process itself. The principle of equity and fair play will certainly deny him of the fair hearing principle that he refused to surrender in the judicial process. Although fair hearing is a constitutional guarantee, it has some resonance with the principles of equity and fair play.²¹

In considering the above issues, the Supreme Court held that the impeachment process in Oyo State House of Assembly was unconstitutional and, null and void for not conducted in conformity with the 1999 Constitution of Nigeria's requirements with respect to impeachment proceedings. Going further, the court equally held that the court is constitutionally ousted only when the constitutional requirements are complied with²²

5. Recommendations

Having essayed above on the decision of the Supreme Court in this matter, it is our humble recommendation that a clear interpretation of the ouster clause should be provided. For the ouster clause to have full effect, the legislature must be ready to fully comply with the provisions of the law regarding impeachment proceedings, follow it step by step, and apply it stage by stage. If this is done, the courts will definitely lack jurisdiction and not even the provisions of the Constitution²³ cannot cloth it with the same.

However, the absence of full compliance gives the court the power to override the ouster clause.

Again, the work also posits that there should be a clear definition of the words "gross misconduct" as enshrined in the 1999 Constitution and that impeachable offences should be categorically itemized in the Constitution, criminal code Act, penal code act and the administration of criminal justice Act and also in both criminal code laws and penal code laws of various states for the impeachment of both the Chief Executives and the Deputies/Vice of the Federation and the State and also the Local Government Chairmen and their vice. The issue of this is to ease the issues with respect to the interpretation of the expression "gross misconduct" as enshrined in the 1999 Constitution of Nigeria.

6. Conclusion

This is a landmark judgment on the impeachment proceeding in Nigeria's constitutional democracy vis-à-vis Nigeria's judicial history. The Court of Appeal and the Supreme Court did not agree with the application of ouster clause incorporated in the Constitution on this case²⁴. The position of the two legal institutions was that it is only when the provision of section 188(1) is complied with in the impeachment process of the Governor and

¹⁸Par Niki Tobi J S C.

¹⁹Par Niki Tobi J S C.

²⁰Section of *The Constitution of the Federal Republic of Nigeria, 1999 (as amended)* is provided below.

²¹*Ibid.*

²² See Section 188(1) – (9) of *The Constitution of the Federal Republic of Nigeria, 1999 (as amended)* on Judicial Powers.

²³Sections 6 and 46 of the same Constitution.

²⁴Section 188(10) of the same Constitution.

the Deputy Governor of the state that it will become effective in the law courts. It was on this note that the impeachment proceeding was declared unconstitutional, useless, and of no effect, which till tomorrow is a landmark in Nigeria's legal system.