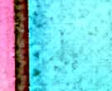
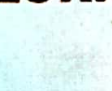




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AN APPRAISAL OF THE SUPREME COURT DECISION IN INAKOJU VS ADELEKE AND ITS IMPACT ON POLITICAL STABILITY IN NIGERIA

M.T. ADEKILEKUN

INTRODUCTION

The plethora of removal proceedings in respect of Governors is not only frightening but also capable of affecting the stability of Nigeria. It is almost like a child's play as some state legislatures indulge in it with all the ease and comfort like the way the English man sips his coffee on his breakfast table.¹

Since the impeachment of the then Governor of Kaduna State, Alhaji Balarabe Musa in the Second Republic, impeachment process has become a topical issue in the Nigerian constitutional development. The problems of impeachment that have engulfed the Nigerian State warrant competent inquisition.² The Supreme Court of Nigeria therefore has set a pace by applying this constitutional tool and delivered a landmark judgement in the case of Inakoju Vs Adeleke³ otherwise known as Ladoja's case. The apex court gave a holistic interpretation of S.188 of the Constitution of the Federal Republic of Nigeria 1999.

THE FACTS OF THE CASE

The 3rd respondent (Senator Rashidi Adewolu Ladoja) was the elected Governor of Oyo State. His four years term of office started in May 2003 and would end in May 2007. The 1st and 2nd respondents were respectively the Speaker and the Deputy Speaker of the Oyo State House of Assembly while the eighteen appellants were members of the Oyo State House of Assembly. Towards the end of 2005, the members of the House became polarized as a result of some political disagreement among them. The 32 members of the House were divided into two factions.

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1. Niki Tobi JSC in INAKOJU vs ADELEKE (2007) 4 NWLR (Pt 1025) 423 at 634
2. Taiwo kupolati, Crises of Constitutional impeachments: Governor Fayose as a case study in Legal issues for contemporary justice in Nigeria. Olatunbosun LA (Ed) Pg69
3. Ibid at p 423

The 18 appellants⁴ belonged to a faction while the 2 respondents and the remaining 12 members of the House were in the second faction. The 18 legislators were opposed to Senator Ladoja while the remaining 14 were in support.

On the 13th December 2005, the 18 legislators met at D'Rovans Hotel, Ring Road, Ibadan. They raised a notice of allegations of gross misconducts against the Governor. They did this without the involvement of the Speaker and his Deputy. The service of the notice on the Governor was done by the group through a newspaper advertisement. Thereafter, they went ahead and requested the Acting Chief Judge of Oyo State to set up a 7-man panel to investigate the allegations of gross misconduct levelled against the Governor.

The Acting Chief Judge inaugurated a panel to investigate the alleged acts of gross misconduct levelled against the Governor. The Panel sat for two days and without taking oral evidence from anybody. It eventually submitted its report to the 18 member faction in January 2006. The 18 member faction later passed a resolution by which they removed Senator Ladoja as the Governor.

THE POSITION OF THE LAW BEFORE THE INAKOJU'S CASE

Basically, the idea of impeachment⁵ was developed to curtail the excesses of the executive actions and to ensure that it is not abused or corruptly used to the disadvantage of the electorate. By Section 188(2) (b) of the 1999 constitution of the Federal Republic of Nigeria, a holder of the office of the Governor or Deputy Governor may be impeached if he is "guilty of gross misconduct in the performance of the functions of his office." Misconduct is universally described as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty and an unlawful behaviour.^{ss} Impeachment is therefore an instrument for the exercise of legislative oversight functions over the executive branch of government.

4. *The eighteen appellants commenced the impeachment proceedings in the Oyo State House of Assembly in 2005.*

5. *This is the act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official's alleged misconduct. For more on impeachment, See Black's Law Dictionary (8th Edition)*

As stated by Chief Afe Babalola, SAN. OFR, on impeachment:

Impeachment is such a very serious weapon of destruction that destroys its given victim(s) completely. In highly sophisticated advanced democracies of the world especially the United States of America where we copied our Presidential System of government the weapon of impeachment is sparingly mentioned let alone employed ostensibly because of its damaging potency. It is only employed in extreme cases where alternative routes do not just exist at all e.g. vote of censure or vote of no confidence. Thus, impeachment as a constitutional process is not designed as a weapon of political intimidation, oppression, suppression, harassment, and/or witch hunting of a president (or Governor whose face the legislature does not want to behold any longer in the government house).⁶

The provision on impeachment,⁷ had however been misunderstood and politicized to the extent of construing sub-section 10 of the provisions to be a complete ouster of court's jurisdiction to entertain any matter relating to impeachment of President and their Vice, Governors and their Deputies. These impeachments were being carried out in flagrant disregard to the constitutional procedures.⁸

S 188 of the 1999 Constitution generally provides for the procedure to be followed before a Governor or his Deputy can be impeached. Sub section 10 thereof provides:

No proceedings or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.

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6. Adebayo Adenipekun, SAN: *Practice Note on Impeachment and Rule of Law in Legal issues for Contemporary Justice in Nigeria*, Olatunbosun I.A. (Ed). Pg 94.
 7. See Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999.
 8. See especially the cases of some governors like Balarabe Musa of Kaduna State, Abaribe of Abia State, Ayodele Fayose of Ekiti State, Joshua Dariye of Plateau State among others.

It is important to state at this juncture that there is a difference between the provision on impeachment under the 1979 Constitution and the 1999 Constitution," especially on the appointment of committee to investigate the allegation levied against the executive while the 1979 Constitution gave the power to the Speaker to appoint the committee, the 1999 Constitution gave the power to the Chief Judge of the State to appoint 7 persons who in his opinion are of high integrity.¹⁰

It can rightly be said therefore that while the 1979 provision made impeachment an absolute political matter limited to members of the legislature, the 1999 Constitution assigns a responsibility to the judiciary thereby making the issue of impeachment a quasi-judicial process.

Due to the fact that the legislature in the state is unicameral, i.e only one house is involved in the process, this makes for the impeachment process to be faster.¹¹ Indeed the speed at which a House determined to remove either a Governor or his Deputy can achieve its aim can be illustrated in some decided cases. In *Balarabe Musa Vs Hamza*.¹² The Plaintiff had appealed against the refusal of the High Court of Kaduna State to stay proceedings of the Investigating Committee appointed by the Speaker of the Kaduna State House of Assembly. The issue for determination in the Court of Appeal was the effect of S.170 (10) of the 1979 Constitution which ousted the jurisdiction of the court in the impeachment proceedings. Adenekan Ademola JCA(as he then was) summarized the prevailing position of the law thus:

9. *Section 170(5) gives the speaker the power to appoint seven man panel to investigate the allegations against the executive, Section 188(5) of the 1999 constitution vests the same power on the Chief Judge of the State.*

10. *The persons to be appointed should be persons of unquestionable integrity and should not be members of any political party, public service or members of the legislative house.*

11. *Jadesola O. Akande; Introduction to the Constitution of the Federal Republic of Nigeria 1999, MLJ Professional Publishers Ltd 2000.*

12. (1982)3SCNLR Pg 229

The court's authority possessed neither of the purse nor the sword-ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the court's complete detachment, in fact and in appearance, from political settlements...In this situation, as in others of like nature, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives. In any event, there is nothing neither judicially more unseemly nor more self-defeating than for this court to make interrorem pronouncements to indulge in merely rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope...

Also, in *Abaribe Vs The Speaker Abia State House of Assembly & Ors.*¹³ The Abia State House of Assembly had commenced impeachment proceedings against the Appellant who was the Deputy Governor of Abia State at the material time. The appellant instituted an action at the State High Court for the enforcement of his fundamental rights. He contended inter alia that he was not given time as required by the Constitution to respond to the allegations. The High Court raised the issue of jurisdiction and resolved it against the Deputy Governor. On appeal, the Court of Appeal in its judgement read by Patch-Acholonu, JCA (as he then was) followed the decision in *Balarabe Musa's* case and upheld the lower court's decision not to assume jurisdiction.

Patts Acholonu, JCA(as he then was) stated in his lead judgement thus;

*The worrying aspect of this all- embracing provision seems to imply that the court may not even look into the issue as to whether the duly laid down procedure has been followed.*¹⁴

In these two cases, the court relied on the provisions of S. 170(10) and S.188(10) of the 1979 and 1999 Constitutions respectively to decline jurisdiction and therefore held that it was purely a matter within the competence of the legislature.

13. (2002)14NWLR(P1788)466

14. Ibid at pg 488 Paras10-11

THE DECISION OF THE SUPREME COURT IN INAKOJU'S CASE

It is important to mention that an executive Governor of a state is elected by the people i.e. the electorate. Then the procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery. The Supreme Court seriously frowns at the secret proceedings in a hotel leading to the removal of Governor Ladoja.

Niki Tobi, JSC at page 600 states:

A legislature is not a secret organization or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion.

The Supreme Court also interpreted the word "gross" to mean glaringly noticeable, obvious, inexcusable, badness or objectionableness or a conduct in breach of the constitution. It is not every misconduct that attracts impeachment. Although, the legislature has the discretionary power to determine what amounts to gross misconduct, however, this is clearly suppose to be apparent to all and sundries that the misconduct is clearly and immediately apparent.

Per Tobi, JSC also stated at page 588 thus:

It is not a lawful or legitimate exercise of the constitutional function in Section 188 for a House of Assembly to remove a Governor or a Deputy Governor to achieve a political purpose or one of organized vendetta clearly outside gross misconduct under the Section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor or Deputy Governor in a particular moment or the Governor or Deputy Governor refused to respond with a generous smile to the legislature qua House on a parliamentary or courtesy visit to the holder of the office.

It can be safely posited from the above quoted decision of the Supreme Court that whether gross misconduct is sufficient to warrant the removal of a Governor is apparently a political question and what qualifies as misconduct is at the discretion of the legislature. In their legislative functions, including deciding whether a conduct amounts to an impeachable offence, the legislature is however bound by other provisions of the constitution and in doing this, it must act in a responsible and civilized manner.

THE DECISION OF THE COURT ON OUSTER CLAUSES

When interpreting the provision of an ouster clause in a statute, including that of the constitution, the courts usually scrutinize every aspect of such provision with a view to ensuring that everything done under such statute is done strictly in compliance with the provision of the statute.

Katsina – Alu JSC said at page 661 thus:

Section 188 has an ouster clause. I think it is only right that in interpreting it, the whole section must be taken into account. Sub-sections 1 – 9 thereof state clearly what must be done before a Governor may be removed from office. It is only when these conditions are religiously fulfilled will a Governor be said to have removed from office. When the Governor has been constitutionally removed, then and only then will sub-section 10 comes into play. It ousts the jurisdiction of the court to question such valid removal from office

Per Akintan, JSC went further on the same point at page 688 thus:

It is not in doubt that Section 188(10) creates an ouster clause in that rights of an aggrieved person to challenge actions carried out under such provisions are expressly taken away by the provision. The attitude of the Courts to such provisions is that they are regarded with extreme caution since they are regarded as unwarranted affront and unnecessary challenge to the jurisdiction of the courts which the courts guard jealously.

It should be stressed that when ouster clauses are provided in statutes, the courts usually invoke Section 6 as barometer to police their constitutionality.¹⁵ The courts become helpless when the constitution itself provides for ouster clauses, such as Sections 143 and 188.

In such situations, before the courts can give effect to those ouster clauses, it must have ensured that such provisions were clearly donated in the statute. The courts would then check whether all the provisions have been complied with before it can invoke the provisions of the ouster clause(s).

THE DECISION OF THE COURT ON THE ISSUE OF FAIR HEARING

The plaintiff/respondent instituted the action at the High Court vide an originating summons. The defendants did not file any counter-affidavit in reaction to the affidavit in support of the originating summons. This is because the defendants/appellants raised a preliminary objection to the jurisdiction of the trial court which was upheld by Ige J. In his ruling, the learned trial Judge stated as follows:

When the House of Assembly is exercising its constitutional powers in relation to impeachment proceedings or any matter relating there-to, it is performing a quasi-judicial function. Thus, it is provided in sub-section 11 of Section 188 of the 1999 Constitution that the power to determine what constitutes gross misconduct or a conduct that will lead to impeachment proceedings lies in the House of Assembly and not in the Court.¹⁶

¹⁵ See *Adamolekun vs The Council of the University of Ibadan* (1968) NMLR 253.
¹⁶ Ruling of Ige J. Delivered on 28th December, 2005 where he upheld the preliminary objection raised by the defendants.

The plaintiff, aggrieved with the ruling of the trial High Court, appealed to the Court of Appeal. The Court of Appeal invoked the provisions of Section 16 of the Court of Appeal Act. The Court of Appeal upheld the appeal of the plaintiffs/appellants against the decision of the High Court dismissing their case and setting the decision aside and proceeded to hear the appeal on the merit by virtue of its powers under Section 16 of the Act.

Section 16 of the Court of Appeal Act provides:

The Court of Appeal may, from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or, in the case of an appeal from the court below in that court's appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction.

The Court of Appeal relied on the affidavit in support of the originating summons and decided the case on the merit without giving the defendants any opportunity to controvert the affidavit because they had ample opportunity to file their counter-affidavit at the trial court but they failed to do so. The defendants/appellants therefore contended at the Supreme Court that this has constituted a breach of their right to fair hearing.

Reacting to the contention of the learned counsel to the appellants, the Supreme Court per Ogbuagu, JSC stated ex-Cathedra thus:

A party or parties given an opportunity to be heard and who is/was aware of proceedings going on in the court and not taking any step required by law or the rules of that court, cannot be heard to complain of denial of fair hearing. No party has the right; it must be stressed, to hold a court of law to ransom... I regret to say that the reliance on Section 36 of the 1999 Constitution has been thoroughly abused by litigants and especially by many learned counsel who cling or hang on a straw like a drowning man wanting to save his life. This Section has been blown out of proportion by many learned counsel who stand, with respect, on quick sand

It therefore flows from the above decision of the Supreme Court that where a party is given an opportunity to defend himself and he does not make use of the opportunity, he cannot complain thereafter that he was not given fair hearing. A party who seeks fair hearing from the court must also be fair in litigation to the adverse party and to the proceedings.

ON THE MEANING AND ATTRIBUTES OF JUSTICE AND ROLE OF COURTS THERETO

The Supreme Court of Nigeria described the term Justice as an important expression in the judicial system and the administration of justice. The court described justice as the quality of being just, fair play and fairness. It has an element of quality of egalitarianism in its functional context. The court held further that the proper role of a judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid that rule.

It is a fundamental function of courts to do justice to the parties who appear before it in the pursuit of due and proper administration of justice.¹⁷

17. See the dictum of Uwaifo, JSC (as he then was) in *Shahin v. Kwan* (2000) 8 NWLR (Pt 670) at page 708 Paras G-H.

CONCLUSION

The principle of separation of powers under the constitution is meant to guarantee good governance and development and to prevent abuse of power. A writer, Montesquieu once said 'political liberty is to be found only when there is no abuse of power. But experience shows everyman invested with powers is liable to abuse it, and to carry his authority as far as it will go'.

In this wise, impeachment has come to be recognised as one of the legitimate means by which a Governor or his Deputy, President or his Vice can be removed from office for an impeachable offence. The meaning of 'gross' misconduct as contained in the Constitution in relation to impeachment proceedings is whatever the legislature deems as 'gross' misconduct. This clearly, is nebulous and subject to potentially dangerous at this point of our national or political life. A more serious cultural policy on impeachment ought to be evolved; otherwise it would translate to pure charades.

With this decision of the Supreme Court, legislatures would have to caution themselves before they can institute any impeachment proceedings against the executives. This is because strict compliance with the provisions of the Constitution is non-negotiable.