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Evaluation of Impeachment Proceedings under the Constitution of the Federal Republic of Nigeria 1999

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Abstract

The provisions of the Constitution of the Federal Republic of Nigeria, 1999 on the impeachment and/or removal of public office holders have been invoked with fervor and unusual glee in recent times. In some cases, reasons other than the breach of law or gross misconduct have been found to be behind the ouster of elected officers. In this regard, several instances of procedural deviations and outright lawlessness have been cited.

This article examines the position of the Constitution on the removal of public office holders in light of the above. This will entail a review of Sections 143 and 188 of the Constitution and the extent to which they have been applied in deserving cases. The Sections will also be appraised for both relevance and adequacy within the context of what ought to be, in a functional constitutional democracy.

Keywords: *Impeachment, Removal, Public office holder, Gross misconduct, Abuse of office*

1. Introduction

Elected political officers enjoy and exercise immense power, just as they, in certain cases, enjoy constitutional protection and immunity from legal process in the exercise of these powers[1]. Unfortunately, the latitude afforded by the constitution has been used, and wantonly so as a blind for its abuse. Public office holders have trampled on law with a touch of impunity, while deploying the machinery of government to perpetuate massive financial corruption and cover over patent infraction.

Our discussion in this paper will be centered around what has now become one of the most engaging issues in the constitutional history of Nigeria – the impeachment and/or removal of erring public office holders for violation of law or breach of public trust in the discharge of their duties.

Whereas the tenure of office of the affected officers[2] is prescribed and described under the constitution,[3] an examination of situations under which these may be lawfully truncated is desirable.

The removal in recent past of at least six state governor's[4] three senate president,[5] several speakers of the state Houses of Assembly[6] and some deputy Governors[7] cannot be ascribed to chance.

The relative ease with which proceedings that eventually culminated in the removal of these office holders were conducted has given rise to doubts and questions about this important constitutional process.

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[1] Ekengba, O. F. Impeachment proceedings under the 1999 Constitution: A Shield or Sword"? (unpublished) 2009, p.1.
[2] We shall limit ourselves to the President, Vice President, Governors and Deputy Governors under Sections 143 and 188.
[3] These officers are expected, other things being equal to hold office for a period of 4 years each in the first instance. They are eligible for re- election for another tenure of 4 years after their first term.
[4] Rasheed Ladoja of Oyo State, Peter Obi of Anambra State, DSP Alamieyeseigha of Bayelsa State, Ayodele Fayose of Ekiti State(who is now back as Governor), Joshua Dariye of Plateau State and most recently Muritala Nyako of Adamawa State. Tanko Almakura of Nasarawa and Adams Oshiomole of Edo state survived the onslaught.
[5] The Late Evans Enwerem, the Late Dr. Chuba Okadigbo and Adolphus Wabara.
[6] For example, the Speaker of the House of Ebonyi State and most recently, the Speaker of Ekiti State House of Assembly who was removed by a minority of its members.
[7] For instance Alhaji Abdullahi Argungu, of Kebbi State, Sunday Onyebuchi of Enugu State and Alhaji Mohammed Garba Gardi of Bauchi State.

When is a person deemed or considered legally impeached? What are and how adequate are the requirements? Are the rules in themselves liable to breach or open to abuse? And most crucially, can appropriate remedies be found in cases of infraction?

These, among other issues will be addressed as we look critically at the provisions of the Constitution on the removal of holders of the office of the President, Vice President, Governor and Deputy Governor through the constitutional process of impeachment.

The objective of this endeavour is to appraise Sections 143 and 188 of the Constitution for adequacy and express views that will hopefully be useful in the application and invocation of the process.

2. Meaning of Impeachment

"Impeachment", like many other words, cannot be defined with precision. A universally accepted meaning has therefore not been found for it. Besides, the Constitution under which it is herein examined, is silent on its meaning.

In the circumstances, an attempt to describe the concept as clearly and as unequivocally as possible, will be made at this point.

To impeach in the linguistic sense, means to accuse a public officer or politician of committing a serious crime, especially against the state.[1] It connotes a solemn accusation of a great public offence, especially against the minister of a crown.[2]

According to the Black's Law Dictionary:[3]

> *Impeachment is the act (by legislature) of calling for removal from office of a public official accomplished by presenting a written charge of the official's alleged misconduct especially the initiation of a proceeding in the US House of Representatives against a federal official such as the president or a judge.*

The impression that is created from the above is that, 'accusation' and the commission of a serious offence against the state are necessary elements of impeachment. Also, the mention of the US House of Representatives in the definition suggests that impeachment may be narrowed to that chamber of congress. This, as the facts will show, is more than restrictive.

Whereas the details are still to be examined, these dictionary definitions of impeachment are not totally reflective of the content and spirit of sections 143 and 188 of the Constitution, as they deal more with crimes than with civil wrong.[4] The provisions of the above sections suggest that a misconduct for which the President, Vice President, the Governor and Deputy Governor may be removed depend not so much on the commission of a heinous crime, but on whether it amounts to a grave violation of the Constitution or whatever the legislature considers misconduct. The term, therefore, may be used to describe the process by which political executives are held for misconduct by legislature, resulting in their removal, in some cases.

In *Inakoju & Ors v. Adeleke & Ors*[5] the Supreme Court suggested that proceedings concerning the misconduct contemplated under Sections 143 and 188 of the Constitution may be criminal in nature. It said, adopting the Black Law's Dictionary approach, that impeachment is:

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1 See Oxford Advanced Learner's Dictionary, Oxford University Press, United Kingdom, 6th ed. 2000 p. 621.
2 Osborn's Concise Law Dictionary, 6th ed, Sweet and Maxwell, 1976, p. 170, 22
3 Abridged Version, 8th ed. p 678
4 See Omosehin, K. O. ''Critical Evaluation of the Impeachment Provisions of the 1999 Constitution of Nigeria", p.4
5 (2007) 4 NWLR pt. 1025 421 SC.

> *A criminal proceeding against a public officer before a Quasi political court instituted by a written accusation called articles of impeachment. For example a written Accusation of the House of Representative of the United States to the Senate of the United States against the President or an officer of the United States including Federal judges.*

The Court of Appeal while expressed a similar view in *Jimoh v. Olawoye,*[1] stating that:

> *Impeachment means the act (by legislature) of calling for the removal from office of a public official accomplished by presenting a written charge of the official alleged misconduct.*

As has been shown, the Constitution of the Federal Republic of Nigeria 1999, while providing a framework for the removal of public office holders, does not define impeachment. In its place, it employs "removal" under Sections 143 and 188.

While they are frequently used interchangeably in academic commentaries and legal publications, [2] "Impeachment" and "Removal" are not exactly the same. Although impeachment appears in Sections 146 and 191 of the Constitution, it must not be concluded that it stands for the removal of public office holders in the manner prescribed by Sections 143 and 188 of the same Constitution.

As Niki Tobi, JSC(as he then was) noted in *Inakoju v. Adeleke*[3]

> *...the word ("Impeachment") should not be used as a substitute for the removal provision of Section 188. We call a spade its correct name of spade and not matchete because it is not one. The analogy here is that we should call Section 188 procedure One for the removal of the Governor, not impeachment.*

It is accordingly clear that the Impeachment of a public officer is not synonymous with his removal from office. It is simply a process or proceeding geared towards the removal of a public office holder from office but which may or may not lead to such removal.

Hence, when 35 senators voted to convict the then American president Andrew Johnson of certain alleged offences in 1868, he was impeached but not removed from office. This was because 35 was a vote short of the two – thirds required to remove him from office.

Appropriately then, impeachment as a process, must follow procedure and would be deemed inchoate until the public office holder involved is either removed from office, or is exonerated.

Since "removal" is what the law intends under Sections 143 and 188 of the Constitution to which this work relates, it receives utmost attention, even if impeachment appears to have taken its place in daily discourse.

3. History of Impeachment Proceedings

The practice and tradition of what is today known as impeachment has been said to predate the country's independence.[4] It was an integral part of the pre-colonial administration of the old Yoruba kingdom through which the Oyo mesi could dethrone an erring king by asking him to open a sacred calabash.

[1] (2001) 10 NWLR, pt. 828,307 at 336.
[2] Omosehin, K. O. op. cit. p.3
[3] Supra
[4] Omosehin, K. O. op. cit. p. 12

Although the king possessed awesome powers and was addressed as "Kabiyesi" meaning one whose authority cannot be questioned and "Iku ekeji orisa" which when translated means "Death, the twin of a god", he would be removed if he could no longer be tolerated.

The presentation of the calabash earlier referred to picture the erosion of trust and the withdrawal of support for the erring king.[1]

In England, the practice is rooted in antiquity. Impeachment was a judicial action brought by the House of Commons, usually for high treason in which the Lords conducted trials and passed sentences only at the request of the commons who alone could pardon.[2]

The first impeachment in the history of the United Kingdom took place in 1376, when Lord Latimer was Impeached. Since then, a few others, for example Warren Hastings in 1788 have been impeached until the 1806 impeachment of Lord Melville.[3] The present parliamentary practice under which the cabinet is responsible for individual action of ministers affords a system through which a vote of no confidence could be passed on an entire cabinet for certain reasons.

At independence, the parliamentary system became operative in Nigeria. It was a system that eased the prime minister and his cabinet out of office once it was passed. It was not targeted at any single individual, as is the case under the presidential system.

After the introduction of the presidential system under the constitution, attention shifted to gross misconduct as the grounds on which an erring individual, not a group could be removed. Collective responsibility gave way to individual responsibility so that everyone without the cover of a group could be held responsible, even liable, for any act done or omission made in their capacity as public office holders.

The Nigerian state recorded the first case of impeachment on 23 June 1981, when the then Governor of Kaduna State, Alhaji Balarabe Musa and his deputy were removed from their offices through the process of impeachment by the House of Assembly.

Since then, many more public office holders have been removed from office. Governors have particularly been made to face charges of corruption and abuse of office that eventually triggered the process of their removal.

An overview of the constitutional provisions under which public office holders may be removed will next be considered. It is intended to reveal the entire gamut of steps prescribed as necessary for impeachment and ultimate removal of officers within the purview of the law and due process.

4. Overview of Impeachment Proceedings Under Sections 143 and 188 of The 1999 Constitution

The constitutional provisions for the removal of persons elected to hold and exercise executive powers as contained in Section 5 of the Constitution are found in Sections 143 and 188 of the Constitution.

Both Sections consist of 11 subsections outlining the various steps that must be taken in the removal of the named officers.

Generally, it is required under the Sections that whenever a notice of any allegation in writing signed by not less than one third of the members of the legislature involved is presented to the President of the Senate or the Speaker of the House of Assembly as the case may be, that the holder of the office is guilty of gross misconduct in the performance of the functions of his office, the President of the Senate or the Speaker of the House of Assembly shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the legislature.

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[1] Ibid.

[2] Sanusi, O. I. "Appraisal of the Impeachment Provision of the Constitution of the Federal Republic of Nigeria (Unpublished) p.5

[3] The Impeachment provision of the American Constitution was put to the test for the first time when an attempt was made to remove Andrew Johnson the then president of the United States in 1968.

If the holder of the office makes any statement in reply to the allegation, the President of the Senate or the Speaker of the House of Assembly shall also cause that to be served on members of the house.[1]

According to Sections 143(3) and 188(3), each House of the National Assembly or the State House of Assembly involved, shall, by motion, but without debate, resolve whether or not the allegation leveled against the office holder shall be investigated.

A motion of the legislature that the allegation be investigated shall not be declared as having been passed, unless it is supported by votes of not less than two - thirds majority of all members of the concerned legislature.[2]

If the motion to investigate the concerned office holder is passed, then the Chief Justice of Nigeria or the Chief Judge of the State shall at the request of the President of the Senate, or the Speaker of the House of Assembly of the State, appoint a panel of seven persons to investigate the allegation within seven days. Such persons shall, in the opinion of the Chief Justice of Nigeria or the Chief Judge, be persons of unquestionable integrity who are neither members of any public service, legislative house or political party.

They are to be unattached and completely disconnected from commitments that membership of any of the named institutions can bring.

The panel is allowed a period of three months to report its findings to the National Assembly or the House of Assembly as the case may be.

Where the panel reports that the allegation has not been proved, no further proceedings shall be taken in respect of the matter and it would "die" naturally.[3] If however the allegation is proved, then, the National Assembly or the appropriate state House of Assembly, shall within 14 days, consider the report of the panel which were adopted, will cause the removal of the office holder from his office from the date of the adoption.[4]

There is an opportunity in all of this for the officer whose conduct is being investigated to defend himself, either in person or through a legal practitioner.[5]

However, no proceeding or determination of the panel, the National Assembly or the House of Assembly shall be referred to or entertained in any Court. No issue or any matter relating thereto shall be made a question of litigation.[6] Once the panel reports its findings, the matter ends.[7]

5. Legal Analysis of the Impeachment Process

As we noted earlier, a number of public office holders especially state chief executives, have been removed supposedly for gross-misconduct under the impeachment process. “Gross misconduct” in this case, means a grave violation or breach of the provisions of the Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly or State House of Assembly, to be gross misconduct.

Recent events in Nigeria have given the spotlight to Sections 143 and 188 of the Constitution and have afforded an insight into what the impeachment process looks like in practice.

A case in point was the purported removal of the one-time governor of Oyo State, Rasheed Ladoja for what many saw and still see as disloyalty to the acclaimed god father of Ibadan politics, the late Alhaji Lamidi Adedibu.

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1 Sections 143(2) and 188(2)

2 Sections 143(4) and 188(4)

3 See Sections 143(8) and 188(8)

4 Sections 143(9) and 188(9)

5 Section 143(6) and 188(6)

6 Sections 143(10) and 188 (10)

7 The holder of any of the offices under Sections 143 and 188 shall be removed only for gross misconduct.

The Oyo state House of Assembly initiated proceeding against the Governor under Section 188 of the Constitution and eventually proclaimed the impeachment of the governor, removing him from office. His counterpart in Anambra State, Mr. Peter Obi of APGA was removed from office on account of the frosty relationship that existed between him and the PDP dominated legislature. That House of Assembly wasted little time in supervising his removal. [1]

DSP Alamieyeseigha lost his seat as governor of Bayelsa State, following the pressure the Federal Government mounted on the State's House of Assembly.[2]

The governor was eventually removed purportedly In a Lagos Hotel by members of the State's legislature. The process for the removal of Ayodele Fayose by the Ekiti state House of Assembly from office in his first coming as governor actually took place long after the governor had vanished from sight. His presence was dispensed with, even if it was vital to hearing.

As for Joshua Dariye, the then governor of Plateau State, only a handful - six members of the State's House of Assembly to be precise saw to his "removal". Muritala Nyako got the boot and was removed from office as soon as he crossed from the Peoples' Democratic Party to the All Progressives Congress. The allegation in all of these cases was gross misconduct on the part of the governors. Misconduct is said to be gross when it amounts to a grave violation or breach of the Constitution or a misconduct of such a nature as to amount in the opinion of the legislature to gross misconduct.

The question though, is - what is grossly and legally wrong in being disloyal to a' self-acclaimed god father? How is membership of an unpopular political party a grave violation of the Constitution?

What breach of the Constitution can be greater than the impeachment of a governor in absentia or by a number less than that constitutionally prescribed?

These are questions that are answerable only in the light of impeachments conducted on the strength of allegation of gross misconduct.

Since the reasons advanced for the removal of the named governors had little to do with misconduct, the Courts had no problems proclaiming their unconstitutionality.

Commenting on what is legally considered to be gross misconduct, Niki Tobi, JSC(as he then was) observed in *Inakoju v. Adeleke*[3] that:

> *The word "gross" in the subsection does not bear its meaning of aggregate income. It rather means generally in the context, atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious, and shocking. All these words express some extreme negative conduct. Therefore, a misconduct which is the opposite of the above cannot constitute gross misconduct. Whether a conduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in vacuo or in a vacuum but in relation to the .facts of the case and the law policing the facts.*

His lordship went further to state that:

> *By definition, it is not every violation or breach of the constitution that can lead to the removal of a Governor or Deputy Governor. Only a grave violation or breach of the constitute-ion can lead to the removal of a Governor or Deputy Governor. "Grave" in the context does not mean excavation in earth in*

[1] Peter Obi was eventually reinstated as governor and saw out his term.
[2] Members of the House were reportedly threatened with prosecution by the EFCC if they refused to remove the governor
[3] Supra

> *which a dead body is buried, rather it means in my view, serious substantial, and weighty.*[1]

In the words of professor Nwabueze:

> *The act or omission alleged must be proved to be a misconduct in an objective, legal sense before the discretion of the Assembly to 'say whether it amounted to gross misconduct can' come into play. Misconduct in the legal sense can connote an "unlawful behaviour by a public officer in relation to the duties of his office willful in' character such as "acts which he has no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.*

It is clear then that conduct is gross only when it is serious enough to constitute a grave violation of the Constitution or a breach of any of its provisions. It cannot be when the situation is different. If there was any doubt as to the meaning of gross misconduct under the aforementioned Section of the Constitution, the comprehensive exposition in *Inakoju v. Adeleke* has taken that away.

However, the discretion to determine what amounts to gross violation of the Constitution under Sections 143 and 188 is that of the National Assembly and the State House of Assembly respectively. Whereas the institutions within every political system are all subject to the jurisdiction of the court, they (the courts) must never take over the function of the legislature in this regard. As Irvin of Lairg noted:[2]

In exercising their powers of judicial review, the judges should never give grounds for the public to believe that they intend to reverse government policies which they dislike. *That is why I regard as unwise observations of the Bench by eminent judges that the courts have reacted to the increase in the powers claimed by government by being more active themselves and adding for good measure that this has become all the more important at time of one party government. It suggests to ordinary people the judicial - invasion of the legislature's tuff.*

Pats - Acholonu, JCA (as he then was) opined in *Balarabe Musa v. Auta Hamzat*[3] that:

> *The courts should not attempt to assume for itself power it is never given by the constitution to brazenly enter into the miasma of the political cauldron and have itself bloodied and thereby losing respect in its quest to play the legendary don quizotic te de la mandie.*

What this implies is that the prerogative of determining what gross misconduct is the legislature's. The court cannot and should not interfere in the matter.

The legislature on the other hand is obliged to exercise its power under Sections 143(11) and 188 (11) in accordance with the law. This is because impeachment as a process, could be used to achieve objectives not contemplated by the Constitution.

[1] Examples of what the Supreme Court held to be grave violation of the Constitution include interference in the functions of other arms of government, abuse of fiscal provision of the Constitution, disregard for chapter four of the Constitution, instigation of military rule, grave misconduct include refusal to perform Constitutional, function, Corruption, abuse of power, certificate forgery, sexual harassment etc

[2] See Hansard of the House of Lords 5 June 1996, p. 1255

[3] (1982) 3 NCLR, 229

As Onnoghen JSC noted in A-G v. Atiku Abubakar[1]

> *Impeachment is a strong weapon in the hands of the National Assembly. It is a political solution to political problems that may arise in the presidency either in the discharge of the constitutional functions or conduct of the personality in involved.*

Karibi - Whyte, JSC (as he then was) also observed[2] that:

> *Impeachment is a potent political weapon in the arsenal of the political party or in control of the legislature to impose sanctions on any erring public officer. It is a demonstration that no person is above the law, and that every public officer is accountable under the constitution.*

Onagoruwa expressed the view that:

> *Impeachments are heavy - handed and' clumsy instruments of penalizing serious political delinquencies. Very few convictions have been recorded up to date, primarily because a great deal of political maneuvering is always involved*[3].

The Supreme Court of Malaysia in *Mustapha v. Mohammed & Anor*[4] has also held that:

> *As to whether the issues (i.e. the purported removal of the prime minister by the head of state) are political in nature, one would be naive not to regard them as partly political ...*

Clearly then, the impeachment process can be used to destroy or penalize victims for reasons other than those permitted by law.

Politicking as it is now known, is almost always at the root of such misuse and abuse. Accordingly, public office holders have been removed without clear evidence of gross misconduct.

A serious legislature would not subscribe to this practice. The National Assembly and/or the State House of Assembly must learn to insist on loyalty, morality and due process whenever they are called upon to determine that which in their opinion, is a grave violation of the constitution, amounting in form to gross misconduct.

6. Service of Notice of Allegation of Gross Misconduct

The service of a notice outlining details of the alleged misconduct on the part of a public office holder is a *sine qua non* to impeachment proceedings under the Constitution. Such notice must be signed by at least one third of the members of the legislature involved and must be served within seven days of its receipt by the President of Senate or the Speaker of the House of Assembly if a State Governor or his Deputy is involved.

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[1] (2007) 10 NWLR, Pt 104, 75
[2] See Karibi – Whyte A. G. "Impeachment of Public Officers under the 1999 Constitution" (2000) 3 MILB 999, 103
[3] Onagoruwa, O. "Law and Contemporary Nigeria: Reflections. Inspired Communications Ltd, Lagos 2004, p. 470
[4] 1987 LRC, 16

The fact that the service of notice must be made within seven days shows that the date of the presentation of the notice to the legislative houses is relevant in computing the date on which the notice was served on the holder of the office to determine whether the seven day deadline set by the Constitution, has been complied with.[1]

Any notice not served before the expiration of the period of seven days for the purpose of initiating proceedings for the removal of the holder of the office concerned, is inoperative and nugatory.

Any subsequent removal purportedly carried out on the strength of such notice however well conducted will not stand. The result will be same when proceedings for the removal of the office holder are done without notice of allegation of gross misconduct against him.

An observation to this effect was made by *Bulkachuwa, JCA in Diaplong v. Dariye*[2] that:

> *The requirement of subsection (2) that whenever a notice of allegation of gross misconduct signed by not less than one third of the members of the House against a Governor is presented to the speaker of the House of Assembly of a state, he shall within seven days of the receipt of such notice cause a copy to be served on the Governor and on each member of the house '," there is in effect nothing documentary to show that he was so served, the impeachment of a serving Governor is a weighty matter, and the service of the notice is fundamental to the whole process, one would expect the defendant to keep records of the service of the notice they said was effected on the plaintiff not a mere denial in an affidavit to his averment that he has not been served…*

This is where the tragedy in the exercise of legislative powers that is, the provision of section 188 (2) applicable in the case under review is as clear as it can be. The issue is why was the holder of the office in question not served? Where was the notice alleging gross misconduct if one existed? Was it destroyed and probably misplaced, or did the legislature in its rush to remove the governor from office forget to effect service as required by law? Whatever the reason, the House of Assembly ought not to have carried on without complying with the law in exercising its authority.[3] It shows again that reasons other than those lawfully specified are sometimes brought to bear on this important aspect of the constitutional process.

Similarly, the issue of the nature of service is relevant. Although the Constitution is silent on the question of whether or not personal service is the only means of service allowed, the Courts appear to be unanimously in support of personal service on the holder of the office. In this regard, the court in *Balonwu v Obi*[4] condemned the publication of the notice of allegations of gross misconduct in the newspapers, holding that any notice not personally served cannot support the valid removal of the governor.

This view on personal service, in a way, represents the ideal, even if it is sometimes far from practicable. While it is admitted that the constitutional requirement of service is sacrosanct to the entire removal process, the near impossibility of personal service should not be entirely overlooked. In deserving circumstances, especially where the alleged executive head is avoiding personal service and he is doing his bit to frustrate all attempts to serve him personally,[5] service by substituted means may be considered.

Failure to recognize the position for what it is, is to countenance the possible altercation that may occur between the legislature and the executive over the service of notice. This is more so, where the public

[1] Omosehin, K. O.; op. cit. 22
[2] (2007) 8 NWLR, Pt 1036, 239
[3] See Balonwu v. Obi (2003) 5 NWLR, Pt 102, 188
[4] Supra
[5] Omosehin, K. O. op. cit. p. 25

office holder is sure that nothing less than personal service on him, would be valid in law to support his removal and that he only needs to avoid service for seven days to lay everything relating to the attempt to remove him from office to rest.

If therefore the notice of allegation of gross misconduct cannot be served within seven days, as prescribed by the Constitution, it becomes a dead document, completely devoid of content. This is irrespective of whether an attempt was made to effect personal service or not. The problem is that this aspect of the impeachment process is open to abuse. Since nothing apart from a personal sense of responsibility compels a public office holder to make himself available, he might decide to frustrate service. What if he travels for medical checkup within the time? What if he proceeds on leave or just refuses to see the process server? With the aura of demigods with which our leaders carry themselves, it is likely that protocol and security will be considered more important than the service of notice alleging misconduct of a chief executive. It is sometimes the reason behind the permanent war between the legislature and the executive.

7. The Investigating Panel of Inquiry

Power is vested in the Chief Justice of Nigeria or the Chief Judge of a State to appoint a Panel of Inquiry consisting of seven persons under Sections 143 (5) and 188 (5) of the Constitution at the request of either the Senate President, or the Speaker of the House of Assembly.

The seven persons to be appointed by the Chief Justice of Nigeria or the Chief Judge must, in his opinion, be persons of unquestionable integrity, not being members of any public service, legislative house or political party. The discretion is entirely that of the Chief Justice or Judge to appoint these ones as he is not bound to confer with the Senate President or the Speaker of the House of Assembly to perform this function.

The power must be exercised fairly, validly and without fear or favour. For example, where there is evidence that a member of the panel is an employee of the State, the discretion as to his appointment cannot be said to be validly exercised. It has been said that a person who has publicly commented on the conduct of the public office holder and has strongly condemned same cannot rightly be a member of the panel of inquiry. To empanel such a person is to give him a long awaited opportunity to articulate his detestation, and to vent his anger on the accused person who he has already condemned in his mind.[1] These are safeguards that have their root in the Constitution. What is not clear however is the position of the law when the spouse or any other close relation of a member of the investigating panel is a card carrying member of a political party. If the wife or husband of a member were to be allowed to belong actively to a political party; then the possibility of abuse and prejudice which the Constitution seeks to prevent, exists.

How can cases of favoritism and abuse be entirely avoided when a panelists' wife or sibling is a member of a political party? If there is the possibility of bias where a member of the panel is a member of a political party, there is no reason why such bias will not taint judgment where the wife or husband is the member of the political party given the great effect and influence of conjugal relations. Concerning the personal attributes of members of the investigating panel, the Constitution sets a very high standard. Those to be appointed must be persons of unquestionable integrity. They must be persons unblemished, untainted and undefiled in character. They must be transparently honest, trustworthy and above board. In *Inakoju v. Adeleke*[2], the Supreme Court held that:

> *A person who believes in vengeance or vendetta is not one of unquestionable character. An overzealous human being with speculative, extremities, or idealisms, will not be a person of unquestionable integrity because some of his speculative or extremities or idealisms may turn out to be utopian and will be a bad way of judging a Governor in a realistic way is the running of the state.*

[1] Ibid
[2] Supra

The question to ask is where can such persons be found? Is there a man or a woman whose integrity cannot be questioned? Is the Chief Justice of Nigeria or the Chief Judge of a State capable on their own to determine the question? The truth is that not many among those appointed to serve on investigating panels have proved to be persons of integrity in the light of the Constitution. Some in fact have been a little more than puppets in the hands of their appointors even when the stakes are high.

More worrisome is the position of the Chief Justice of Nigeria or the Chief Judge of a State in the appointment and Constitution of the investigating panel. Under our laws, the judiciary is a branch or organ of government. Those who occupy the exalted offices of the Chief Justice of Nigeria or the Chief Judge of the State are persons appointed by the President and State Governors respectively. They are heads of their various Courts courtesy of their appointors. How dispassionate then can these judges be when called upon to play a role in the removal of the President or State Governor? Will they have the courage to do the needful particularly when they are not expected to bite the finger from which they feed?

The anomaly is there to see. The present constitutional arrangement offers little safeguard against compromise.

8. Jurisdiction of The Court

Sections 143 (10) and 188(10) of the Constitution expressly ousts the jurisdiction of the courts to entertain matters dealing with or relating to the impeachment of public office holders. The exact letters of the law are:

> *No proceedings or determination of the panel or of the National Assembly. (or the House of Assembly) or my matter relating thereto shall be entertained or questioned in any court.*

A public office holder be he the President, Vice president, Governor or Deputy Governor who is removed from office is by the above precluded from instituting proceedings in a Court of Law against the determination of either the panel or the concerned legislature. This is irrespective of whether he has a genuine cause for complaint or not.

What this implies is that a public office holder who is removed under the provisions of Sections 143 and 188 of the 1999 Constitution will not, should not and must not be heard by the Court even when aggrieved. The right of access to Court to which every citizen of Nigeria is entitled is effectively curtailed and denied.

The judiciary is itself prevented from performing its institutional obligation of ensuring strict compliance with the law and granting remedy to the aggrieved.[1]

According to Lindley, *MR. in Roberts v. G. W. District council*[2:]

> *I am aware of no duty of the court which is more important to enforce than its power of keeping public officials and public bodies within their rights. The moment public bodies exceed their rights, they do so to the injury and oppression of private individuals, and those persons are entitled to be protected from injury arising from such operations of public bodies.*

[1] The position is directly contrary to the maxim 'ubi jus ibi remedium that is where there is a right, there is a remedy
[2] (1899) L.R.Z. Ch.D, 614

Akaahs, JCA in Adeleke v. Oyo State House of Assembly[1] similarly observed that:

> *A close scrutiny of section 188 of the 1999 Constitution reveals that the procedure for impeachment of the Governor or his Deputy is not purely a legislative function since the chief judge of a state also has a role to play. In this regard therefore, I am of the considered view that where the action of the state House of Assembly in initiating impeachment proceedings is being questioned or the chief judge in consulting the panel to probe allegations of gross misconduct, the courts are entitled to ascertain whether those who voted for investigation to be carried out reached the two-thirds of the membership of the House. In the same vein the exercise of discretion by the chief judge of empanelling the 7 members if challenged can be looked into by the court. The court should also have power to ascertain if two - thirds of the members voted to remove the incumbent Governor.*

Once the court has jurisdiction conferred by law in a matter, there is no reason why it should not exercise it. It is even beyond dispute that the court has jurisdiction to determine whether it has jurisdiction in any matter or suit. It is therefore curious that the organic law of the land - the Constitution of the Federal Republic of Nigeria, 1999 has proceeded to oust the jurisdiction of the Courts established there under in any and every matter relating to impeachment. How will the oppressed find succour if he feels justly cheated? Why will the Courts be invited to fold their arms and do nothing in the face of injustice?

According to Niki Tobi, JSC in *Attorney-General, Abia State v. Attorney-General of the Federation*[2]:

> *Where the National Assembly qua legislature moves from the constitutional purview of Section 4(2) of the Constitution or vice versa as it relates to the House of Assembly of a State in respect of Section 4(7) and issue or question of constitutionality…arises, and Court of Law in the exercise of their judicial powers, when asked by a party, will move in to stop any excess in exercise of legislative power… this is what I am doing and Section 6 of the Constitution is my authority for doing so… As a judge, I am hired to interpret the laws of this country which includes the constitution …where there is infraction of the law, I have a constitutional duty to say so and I must say so.*

Galadima, JCA(as he then was) in *Alamieyeseigha v. Igoniwarie (N0.2*[3] also said that:

> *They cannot be totally ignored in impeachment proceedings. No court of law can close its eyes to the infringement of the constitution. The court is the primary custodian of the constitution. It must guard jealously all the provisions of the constitution. If any arm of government ... acts un constitutionally, the court his inherent power under section 6(6) of the 1999 constitution to intervene.*

As Uwaifo, JCA (as he then was) noted,[4] once an illegality is allowed to go unchallenged by

[1] Supra
[2] (2006) 16 NWLR, Pt 1005, 265, 382
[3] (2007) 7 NWLR, Pt 1034, 534.
[4] See Bamidele v Commissioner for Local Government (1994) 2 NWLR, Pt. 328, 568, 586

whosoever is affected, more serious infractions will soon be committed. In due course, the Constitution will be rendered irrelevant and that will mean a slide into authoritarianism. All this can come about just because the Law and the Constitution were not observed and the non-observance was connived at or acquiesced in, and the Court in a competent action did nothing about it.

That is what it will mean if we continue to have a Law that forbids or disallows proceedings against the legislature or a panel of inquiry in an impeachment proceeding. The Nation cannot afford to muzzle its Courts for a moment or for any reason. It is noteworthy and most gratifying that on the 21st of November 2014, the Supreme Court in recognition of the need to uphold justice and fair play, intervened and nullified the process that led to the removal of the Deputy Governor of Taraba State, Sani Abubakar Danladi from office. In a unanimous judgment, it declared the process through which Danladi was impeached unconstitutional and sacked Garba Umar who took his place on that score. It is hoped that the lead provided by the Apex Court will embolden our courts to rise to the occasion and do justice in all deserving cases.

9. Conclusion

The several requirements for the removal of a public office holder have been considered herein within the context of the Constitution of the Federal Republic of Nigeria, 1999. The legal framework for bringing a charge of gross misconduct against the President, Vice president, Governor and Deputy Governor has also been analyzed in the light of what is permissible.

We have given attention to the various functionaries involved in the impeachment process, the constitutional obligation they have to see it through, as well as the inveterate problems that have been and are likely to be encountered if the law remains as it is.

Our expectation in all of these is that steps will be taken at the level of government to enhance the process and transform impeachment into a proper instrument of control.

We no longer wish to hear about proceedings taking place at midnight, in private homes, hotel rooms, and other strange enclosures. Accordingly, the time is due for the constitution to clearly state the place of meeting for the removal of public office holders.

The impeachment of anyone charged with a public duty is a serious business that must not be trivialized or taken with levity. As has been said:

> *Impeachment is not an inquest of office, a political process for turning out a president whom a majority of the House and two thirds of the senate simply cannot abide. It is certainly not, nor was it ever intended to be an extraordinary device for registering a vote of no confidence.*[1]

Appropriately then, public office holders should be removed from office only when their conduct is truly reprehensible and blameworthy. Allegations that are purely political and those motivated by malice must be discountenanced, as they have no place in the process.

On the other hand, misfits that have been found to be involved in gross misconduct and in constant breach of the constitution must be made to feel the impeachment provisions by being eased out of the exalted offices of the President, Vice President, Governor, and Deputy Governor in the Federal Republic of Nigeria. That, in every case, should be after the prescriptions set out in Sections 143 and 188 of the Constitution have been scrupulously followed.

[1] See Rossiter, C "The American Presidency" 1960, pp.52-3.

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