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# An Analysis of the Judicial Review of the Impeachment Procedures in Anambra, Oyo, and Plateau in Nigeria's Fourth Republic

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## ABSTRACT

**Background:** The Nigeria's presidentialism recognises the interdependence of the three branches of government: the legislature, the executive and the judiciary, in a system of separated but shared powers. In furtherance of its oversight role, the Constitution grants the legislature the power, through a prescribed procedure, to remove the heads of the executive guilty of gross misconduct while in office. However, some state legislatures removed their governors in violation of the constitutional requirements. This prompted judicial intervention in interpreting the actions of the legislatures *vis a vis* the constitutional provisions. This paper reviews the intervention of the judiciary in the cases of impeachment of the governors of Anambra, Oyo and plateau States, Nigeria. **Materials and Methods:** This is a qualitative study with primary and secondary data generated from court judgments, public and archival materials, key informants' interviews and extant literature. **Result:** Upon judicial review of the three cases, the judiciary declared the legislative process that led to the removal of the governors unconstitutional and ordered their restoration. However, the decisions of the courts were based on the violation of the constitutional procedures rather than on the merits of the allegations of gross misconduct. The Constitution ousts the jurisdiction of the courts to inquire into the allegations of gross misconduct. The paper discovered that while the judicial review gave reprieve to the governors, the pronouncements were indication that the legislature could rebound and exercise their power according to the set rules. **Conclusion:** The paper concluded that the breach of the constitutional procedure by the legislature was an indication that the lawmakers were not originally interested in the effective exercise of the oversight power of impeachment to advance accountability. The lawmakers were motivated by the pursuit of self-interest rather than desire for the public good. The indictment of the legislature by the outcomes of judicial review was an indication that the members of the legislature were not independent minded as envisaged by the constitution to make decisions in the interest of the public.

**Keywords:** Judiciary, Corruption, Accountability, Legislature, Oversight, Impeachment.

## Introduction

At the beginning of Nigeria's Fourth Republic in 1999, there were expectations of a more refined political activity in the operation of the presidential constitution. The political experience of the Second Republic presidential democracy left the polity in disarray as the military once again took power in a dawn coup in December 31, 1983. The First Republic divisive politics had caught the attention of the military in January 1966 and overthrew the first post-independence democratic government (Bappah 2016).

In the First Republic, the removal of the Premier of the Western Region, Ladoke Akintola, in May 1962, by the Governor, Oba Adesoji Aderemi, degenerated into national political crisis (Fagbadebo 2016). Similarly, the removal of Balarabe Musa, the governor of Kaduna State in the Second Republic, generated the first impeachment crisis in Nigeria's presidential system. In these two cases, the judiciary played the constitutional role of an arbiter and interpreter of the constitution.

The Presidential system exhibits the concept of separated but shared power among three organs of government: legislature, executive, and judiciary. In this system, the judiciary plays the role of policing the actions of the two political branches. Justice Dahiru Musdapher, JSC, expressed this much when he said:

Whenever politicians begin to engage in self destruction, bastardizing the rule of law and the flagrant abuse and disregard of the constitutional provisions, the courts have the duty as the custodians of the constitution to intervene and appropriately pronounce on the legality of the legislative function be it impeachment or otherwise ((2007) 1 S. C. (pt 1), p 185).

In other words, the legislature and the executive have the constitutional rights and responsibilities to validly formulate and implement public policies when their actions are not detrimental to the constitutional provisions. In addition, if they do otherwise, the judiciary will intervene.

The legislature and the executive have the constitutional responsibilities to oversee policy formulation and implementation and the general administration of the government, the judiciary only acts when conflicts arise in the exercise of their powers. The tripartite governmental arrangement in Nigeria's presidential system provides the space for each branch of the government to operate within the bounds of its respective constitutionally assigned responsibilities. One of the major sources of conflict between the legislature and the judiciary is the issue of legislative oversight of executive activities. One of such is the legislative power to remove erring elected members of the executive branch of government (Fagbadebo 2019; Alabi 2014).

Judicial intervention in political process in Nigeria is constitutional, in the spirit of the ideals of the doctrine of checks and balances. A series of controversies characterised the legislative actions in respect of removal of elected members of the executive branch of the government. In Nigeria's presidential system, the Constitution prescribes the removal of the governor of a state and his/her deputy through the legislative process. Section 188 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, provides for the procedures for such legislative action. In the early part of the Fourth Republic, this constitutional provision has been central to a series of legal and political arguments because of the lack of judicial precedents and interpretations of its intentment.

The legislatures in some states removed their Governors and deputy governors under controversial circumstances. The legal

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battles that followed this development gave rise to judicial intervention in interpreting the intendment of the framers of the constitution with respect to the removal of the heads of the executive branch of government at the national and state levels. The central proposition of the paper is that inadequate application of extant rules by the legislature would render the outcomes as invalid. Thus, the effective exercise of the legislative oversight power requires an active participation of a set of political elites who are independent minded in the legislature.

The aim of this paper is to examine the extent of abuse of legislative power in respect of the removal of the state governors. The intendment of the drafters of the impeachment provisions in the Constitution of the Federal Republic of Nigeria 1999, was to allow the space for controlling the exercise of executive power in a manner that would deepen the culture of probity and accountability. The paper also seeks to understand the actual exercise of judicial power to protect the rights of the members of the public against abuse of power by the executive and the legislature.

### Materials and Methods

This is a qualitative study with primary and secondary data generated from the judgment of the different courts that adjudicated on the impeachment cases, extant provisions of the Constitution of Nigeria, 1999, and personal interviews of key informants in the legislature and judiciary and extant literature on judicial process and presidential system. This paper reviews the pronouncements of the Nigerian judiciary on the three cases of impeachment in Anambra, Oyo, and Plateau States, the first set of legislative actions on removal of state governors upturned by the judiciary. The Judicial review of the cases brought into the fore the breaches of the constitutional procedures in respect of the constitutional provision.

The principle of separation of powers thrives when each of the three branches of government operates with a measure of independence. This would enable each to check each other in case of arbitrary exercise of powers. The interdependent exercise of power by the three branches of government, legislature, executive and the judiciary, is a controlling measure to avert the danger of concentration of power (Candelaria 2012; Madison 2008). The assumption is that each branch will be conscious of its actions in the exercise of power. While the legislative and executive branches are responsible for rule making and execution, respectively, it is the duty of the judiciary to interpret such rules in accordance to the existing constitutional stipulations. Thus, a principal function of the judiciary is to review the statutory actions and decisions of the legislature and the executive branches of government.

Judicial review is an inherent power of the judiciary to determine the constitutionality of legislative and executive actions (Alabi 2002 and 2014; Frickey and Smith 2002; Fagbadebo 2010; Fagbadebo 2019). It is a significant judicial authority to evaluate and control policy process in a constitutional system of separated powers. In constitutional democracies, the constitution remains the supreme law above any other statutes by the legislature and the executive. Judicial review strengthens the interpretive role of the judiciary in determining policy thrusts that violate the constitution with a view to protecting the rights of the people.

The general assumption is that the two political branches of government could be abuse the exercise of power for the pursuit of personal gains. In view of this, a somewhat neutral umpire was required to defend the public against the tyranny of the legislature and the executive (Madison 2008). This is more important when issues involved require the instrumentality of the political process administered by the vagaries of human nature. Thus, the process is susceptible to manipulation and flagrant breach of the constitution.

Drafters of the Nigeria's presidential constitution clearly demonstrated this in section 4 (8-9) stating that 'the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law'. This provision precludes members of the legislature from arbitrary exercise of power. Nevertheless, adherence to this rule was in abeyance, especially in the cases of impeachment procedures at the state level (Fagbadebo 2016).

The judicial power, as prescribed by the Nigerian constitution, allows the courts to interfere in the interpretation of statutes as well as the actions of the other two branches of the government. Section 6 (6a) of the constitution states that the judicial powers encompass 'all inherent powers and sanctions of a court of law'. In addition, it also encompasses 'all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person' (Section 6(6b), Constitution of the Federal Republic of Nigeria 1999).

Pats-Acholonu, JCA, expressed the import of this provision thus:

It is the duty of the judiciary to keep in check the excesses of the executive and the overbearing abrasive tendencies of the legislature so that each of the three arms of government confines itself within the prescribed sphere of authority under the constitution (*Abaribe v. Abia State House of Assembly*, 2002) 14 NWLR (pt.788) 466 at page 486 paragraphs C-D).

Thus, none of the two political branches of government has the liberty to exercise its authority in abeyance to the constitutional prescriptions as well as the interpretive power of the judiciary.

Sections 143 and 188 of the Constitution of Nigeria, 1999, stipulate the proceedings and procedure for legislative actions for the removal of the president or his deputy and the governors or their deputies, respectively. Nowhere in these provisions was the word impeachment mentioned. Thus, the use of impeachment in this paper refers to the removal of a state governor or his/her deputy through the prescribed legislative process.

The members of their respective legislatures removed the governors of Anambra, Oyo, and Plateau States from office. Nevertheless, they challenged the constitutionality of the legislative process that led to their removal. Judicial interpretation of the legislative actions reversed their removals and, the Courts subsequently reinstated them.

In Anambra state, 18 out of the 30 members of the legislature on removed the Governor, Peter Obi, November 2, 2006 (Sahara Reporters, November 3, 2006; Ezeamalu 2017). In the notice of allegations of gross misconduct served on the Governor on October 16, 2006, the lawmakers alleged that the Governor violated the Constitution in the area of conflict of interest. In particular, they alleged that he influenced the placement of the money of the states in a bank where he had substantial interests (Ameh, Oke and Obasola 2006; Oni 2013). The legislators alleged further that the Governor awarded the contracts for the construction of the state secretariat and the Governor's Office Complex to his business associates. They also alleged that the governor executed projects not appropriated for by the legislature (Ameh, Oke and Obasola 2006).

Nevertheless, few days after, on October 26, 2006, 13 lawmakers, including some, who initially signed the impeachment notice, met at the House of Assembly complex, and suspended the Principal Officers of the legislature that presided over the impeachment notice (Osondu 2006). Notwithstanding this division within the members of the legislature, the factional group, supported by the Federal Government, eventually impeached the governor (Osondu 2006; Ameh et al 2006). The governor challenged his impeachment, asking the court to determine the constitutionality of

the actions of the lawmakers (5 NWLR (Pt.1028) 488 C.A). He had claimed that he did not do anything that could have warranted his removal.

In Oyo State, the governor, Rasheed Ladoja, was removed by 18 members of the 32-member legislature on January 12, 2006 (Omobowale and Olutayo 2007; Oni 2013). They alleged that the governor committed the following offences (Fagbadebo 2016):

1. Conflict of interest
2. Fraudulent conversion of public funds for private use
3. Establishment of Oyo State Road Maintenance Agency without the consent of the State House of Assembly
4. Operation of Foreign Accounts, Sponsorship of attack on Honourable Members of the House of Assembly
5. Sponsored attacks on members of the legislature
6. Undermining the integrity and constitutional power and functions of the legislature
7. Undermining the integrity of the judiciary,
8. Acts unbecoming of a Governor of Oyo State
9. Nepotism on contract
10. Chieftaincy matters,
11. Usurpation of the power of the state legislature on local government affairs,
12. Undermining the principle of separation of powers,
13. Purchase of 33 graders
14. Dereliction of duties

The lawmakers that initiated the process did not convene at the premises of the State House of Assembly but in a Hotel within Ibadan, the state capital. This legislative action was challenged to determine the constitutionality of the number of the legislators that participated in the process and the venue used by the lawmakers.

Similarly, in Plateau State, eight members out of the 24 lawmakers in the state legislature removed the governor, Joshua Dariye, on November 13, 2006 (Fagbadebo 2010, 2016; Lawan 2010). The allegations of gross misconduct levelled against him included money laundering and operation of at least eight foreign bank accounts in the United Kingdom, conversion, and diversion of state money into his private accounts for personal use. Others are false declaration of assets, jumping bail in the United Kingdom, diversion of N1.9 billion ecological funds of the state to private account, ((2007) 4 NILR 273). Nevertheless, this legislative action was a clear breach of an aspect of the constitutional requirements for the removal of the governor. Section 188 stipulates that the removal of a governor require two-thirds of all the members of the legislature to vote.

In these three cases, the lawmakers acted in breach of fundamental aspects of the provisions of section 188 of the constitution. One of such is the required number of votes needed to remove a governor. In Oyo and Anambra States, 20 out of the 32 and 30 members, respectively, were eligible to participate in the voting for the removal of the governor. In Plateau State, the required members of the legislature expected to participate was 16. The constitutional provisions in respect of the required numbers of the members to participate in the removal process are detailed and clear. Section 188 (2, 4 &9) requires 'not less than one-thirds of the members of the House of Assembly' to sign the allegations of misconduct, and 'the votes of not less than two-thirds majority of all the members of the House of Assembly' are required to approve the investigation of the allegations. Similarly, 'not less than two-thirds majority of all its members' are expected to vote for the resolution accepting the report.

The legislatures in the three states breached these procedural requirements as well as other stipulated rules prescribed by the constitution. The lawmakers acted contrary to the constitutional stipulation probably to exploit the absence of judicial precedents on

the definitive pronouncement on impeachment in Nigeria. In the Second Republic, the court upheld the impeachment of Governor Balarabe Musa of Kaduna State based on the submission of the court that impeachment was a political question, and thus precluded judicial intervention (*Musa v Hamza & 6 others*, [1982] 3 NCLR 229 (FCA); Nwabueze 1985; Lawan 2010; Egbewole and Olatunji 2012; Fagbadebo 2016).

In *Musa v Hamza & 6 others*, Justice Adetokunbo Ademola held that:

It[impeachment] is a political matter...for the court to enter into the political thicket, as the invitation made to it clearly implies, would, in my view, be asking its gates and its walls to be painted with mud; and the throne of justice, from where its judgment are delivered, polished with mire.

Similarly, Justice Adolphus Karibi-Whyte held that 'the moment the legislature commenced removal proceedings under Section 170 (2) [of the 1979 Constitution], the jurisdiction of the court was ousted...' (*Musa v Hamza & 6 others*). The implication of these judicial pronouncements was that any matter relating to impeachment was beyond judicial review. Thus, in the absence of a proper interpretation of the nature of impeachment in the Nigeria's presidential system, the initial judicial position on the cases in the Fourth Republic relied on the existing precedent of judicial self-restraint of the Second Republic. As will be seen later in subsequent section, the Supreme Court had nullified this interpretation of the role of the judiciary in adjudicating impeachment cases.

## Results

Upon judicial review of the three cases, the judiciary declared the legislative process that led to the removal of the governors unconstitutional and ordered their restoration. The court found that the legislatures involved in the impeachment of the governors did not follow the rules set out by the relevant sections of the constitution relating to the removal of state governors. The court also found that non-compliance to the impeachment procedure by the members of the legislatures constituted an infringement on the letters and spirits of the Constitution, and as such their decisions were null and void. The courts declared that the exercise of the impeachment power as stipulated by the Constitution was aimed at promoting accountability rather than an instrument of political vendetta. However, the decisions of the courts were based on the violation of the constitutional procedures rather than on the merits of the allegations of gross misconduct preferred against the governors. The Constitution ousts the jurisdiction of the courts to inquire into the allegations of gross misconduct. Specifically, the Constitution grants the legislature the power to define offences that constituted gross misconduct. Nevertheless, the courts declared that provision was not a blanket power but that such allegations should be defined within the context of the nature of the actions. While the judicial review gave reprieve to the governors, the pronouncements were indication that the legislature could rebound and exercise their power according to the set rules.

Section 170 (10) of the 1979 Constitution, which was also repeated in section 188(10) of the 1999 Constitution, stipulated that the proceedings or determination of the legislature in respect of the impeachment of a Governor and or a Deputy Governor should not be entertained by the court. In other words, the constitution ousts judicial review of impeachment proceedings. In the Second Republic, judicial pronouncements in respect of the impeachment of Balarabe Musa adhered to the doctrine of political question.

The doctrine of political question originated from the American political system as a means of insulating the judiciary from adjudicating on constitutional issues with political connotations

(Nwabueze 1985; Egbewole and Olatunji 2012). The court should abstain from 'injecting itself into the clash of political forces in political settlements' (*Baker v. Carr*, 369 US 186, pp.267-270 (1962)). The dictum is that certain issues arise in the political environment, 'are fundamentally political, and not legal, and if a question is fundamentally political...then the court will refuse to hear that case' (Finn 2006, p55).

Judicial review of political issues, nevertheless, depends on the nature of the court. An activist court would adopt a permissive approach to the definition of statute by providing a liberal interpretation of the law in relation to the action of the actors in the political branches of the government (Nwabueze 1985; Egbewole and Olatunji 2012; Fagbadebo 2016). Thus, the courts define the question of political issue in accordance to the substantive rather than technical interpretation of the law. On the other hand, a passive court would literally interpret the law. In this wise, judicial officer would adopt the doctrine of self-restraint.

The courts in Nigeria's Second Republic upheld the doctrine of political question in the interpretation of the impeachment of Balarabe Musa (Nwabueze 1985; Akinsanya 2002; Lawan 2010; Egbewole and Olatunji 2012). Justice Adolphus Karibi-Whyte and Justice Adenekan Ademola of the Court of Appeal argued in their judgments against Governor Balarabe Musa that judicial review of impeachment cases would amount to usurpation of legislative power and interfering in political process (*Musa v. Hamza & Others*, [1982] 3 NCLR 229).

This was the precedent for subsequent adjudications in impeachment cases in the early part of the Fourth Republic. In 2002, Justice Ignatius Chukwudi Pats-Acholonu, J.C.A, in his judgment on the impeachment of the Deputy Governor of Abia State, Enyinaya Abaribe, reechoed this self-restraint posture of the court. He affirmed that since impeachment was a political matter, the court should not venture 'to brazenly enter into the miasma of the political cauldron and have itself bloodied and thereby losing its respect' (*Abaribe v. Abia State House of Assembly*, (2002) 14 NWLR (pt.788) 466 at page 486 paragraphs F-G). This, he argued, was 'to ensure the equilibrium in the distribution of functions of the organs of the government', and, therefore, 'the court should exercise utmost caution in invading the area that is prohibited by the Constitution' (*Abaribe v. Abia State House of Assembly*, (2002) 14 NWLR (pt.788) 466 at page 486 paragraph H).

In 2005, 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, Rasheed Ladoja, by a splinter group of the House of Assembly. In his ruling on December 28, 2005, Justice Ige maintained that the provisions in section 188 (10-11) of the constitution ousted judicial intervention in impeachment matter (*Inakoju & 17 ORS v. Adeleke & 3 ORS 2007*) 1 S. C., (Pt 1), pp 22-23). He said:

It is not part of the duty of the court to forage into areas that ought to vest either directly or impliedly in the legislature such as the issue of impeachment which is a matter that comes within the purely internal affairs of the House of Assembly. The court will therefore decline jurisdiction in the matter (*Inakoju & 17 ORS v. Adeleke & 3 ORS 2007*) 1 S. C., (Pt 1), p. 23).

Nwabueze (1985, p. 342) has described the self-restraint posture of the court on impeachment matter in the Second Republic as 'an incredible and startling conception of the court's role in constitutional adjudication'. Similarly, Justice Niki Tobi, JSC, noted that the decisions of the courts in the previous adjudications on the matter were in error and in the interpretation of statutes (*Inakoju & 17 ORS v. Adeleke & 3 ORS 2007*) 1 S.C., (Pt 1).

## Discussion

This section presents a thematic discussion of the data. The essence of this thematic arrangement is to put into context, the various infractions of the legislatures that informed the nullification of their decisions.

### *Judicial Interpretation of Impeachment Provisions*

The intervention of the Court of Appeal and the Supreme Court in the impeachment of Governors Obi, Ladoja and Dariye, of Anambra, Oyo and Plateau State, respectively, brought into the fore, a series of legislative and judicial abuse of the constitutional rules on impeachment provisions. It is evident that the intendment of the framers of the Constitution was not to make impeachment process 'just like any other business of the House of Assembly' (*Dapianlong v Dariye (2007) 8 NWLR (Pt 1038) 332* pp. 303 & 424). Rather, the elaborate provision makes impeachment process a unique legislative action different from the other routine legislative process. However, the legislatures abused this liberty. The next section identifies and discusses the various breaches in the process.

### *Required Number of lawmakers and the authority of the Speaker*

As stated earlier, the legislatures in the three states breached the provisions relating to the number of members required to participate in impeachment procedures. Procedurally, the notice of impeachment is expected to be signed by at least one-third members of the legislature (section 188 (2), Constitution of Nigeria, 1999). The first step in impeachment procedure of a governor or a deputy governor is the service of the notice of allegation. Section 188 (1-2) states:

The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this section. Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly- is presented to the speaker of the House of Assembly of the state; stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly (Section 188 (1-2), Constitution of Nigeria, 1999).

After the alleged person must have responded to the allegations within the stipulated days, the members of the legislature would take the decision, whether to investigate the allegations or not. This decision requires a vote of at least two third members of the legislature. Section 188 (4) states:

A motion of the House of Assembly that the allegation be investigated shall not be declared as having been passed unless is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly (Section 188 (4), Constitution of Nigeria, 1999).

The adoption of this motion would lead to the composition of a panel by the Chief Judge of the State, upon the request by the Speaker, to investigate the allegations. The report of the panel would be submitted to the legislature. If the allegations were proven, two third members of the legislature would have to vote for its acceptance or otherwise. Section 188(9) states:

Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the House of Assembly shall consider the report, and if by a resolution of the House of Assembly supported by not less than two-thirds majority of all the members, the report of the Panel is adopted, then the holder of the office shall stand

removed from office as from the date of the adoption of the report (Section 188 (9), Constitution of Nigeria, 1999).

Noncompliance with this rule is enough to void the outcome of the process ((2007) 8 NWLR, pp. 303-304).

In Plateau State, fourteen, out of the twenty-four members of the legislature, including the Speaker and his deputy, announced their defection from the ruling Peoples' Democratic Party (PDP), to another registered political party, Advanced Congress of Democrats (ACD) in July 2006 (Fagbadebo 2016; (2007) 2 All N.L.R. 293). They won their election into the House of Assembly on the platform of the PDP. By virtue of section 109 (1g) of the Constitution of Nigeria, the 14 members were deemed to have vacated their seats (2007) 2 All N.L.R. 293). Thus, the House of Assembly had only ten members. On October 5, 2006, eight out of the remaining 10 members of the legislature, sat at a meeting presided over by a *Speaker Protempore*, and signed a notice containing allegations of gross misconduct against the Governor, Joshua Dariye, and eventually removed him from office on November 13, 2006.

There were two flaws associated with this process. The total number of memberships of the state legislature was 24, notwithstanding the vacancies created by the defection of the 14 lawmakers who defected to another political party. Thus, eight out of a 24-member House of Assembly could not have carried out any valid legislative decision. Walter Samuel Nkanu Onnoghen, J.S.C, in his judgment, said:

It is my view that until the vacancies created by the carpet crossing members are filled by the process of by-election, the Plateau State House of Assembly can only transact such legislative duties that require the participation of less than 2/3 majority of ALL the members of that House, which duties definitely excludes impeachment proceedings (2007) 2 All N.L.R. 293

This pronouncement, as a precedent, weakened the legislative politics of suspending volatile members to preclude them from participating in decision that required valid votes, as it also happened in Oyo State during the impeachment of Governor Rasheed Ladoja. The lawmakers presumed that the vacancy created by the suspension of any member would reduce the constitutional stipulation of the membership of the legislature.

The second flaw was the appointment of a Speaker *Protempore*, to preside over the impeachment process. The eight members of the Plateau State House of Assembly that participated in the impeachment of Governor Dariye had appointed Hon. Michael Dapialong as the Speaker *Protempore*, in the absence of the substantive speaker, Mr Simon Lalong. Justice Zainab Adamu Bulkachuwa, JCA, in her judgment, declared that it was not the contemplation of the drafters of the Constitution that a speaker *protempore* should preside over a legislative process of impeachment ((2007) 8 NWLR, pp. 303). She added that section 188 (2) (4) and (9) did not include the Speaker as a participant in the voting exercise. In Plateau State, the court discovered that the Speaker *protempore* was part of the signatories to the notice of allegations of gross misconduct thereby making him one of the participants in the voting exercises.

In the contemplation of the drafters of the Constitution, the position of the Speaker, for the purpose of impeachment, should be occupied by a person duly elected from among the members as stipulated by section 92 of the Constitution. The section states that the Speaker and the Deputy Speaker should be elected by the members of the House and their removal should be by 'the votes not less than two-thirds majority of the members of the House' (Section 92 (1-2), Constitution of Nigeria, 1999). As such, the usurpation of the power of the speaker by a *speaker protempore*, in the case of Plateau State, was an aberration. Justice Bulkachuwa, held that the position of the speaker, referred to in section 188 of the Constitution, was not a *Speaker protempore* but the duly elected Speaker of the

House ((2007) 8 NWLR, pp. 303). She contended that if the framers of the Constitution had contemplated such a situation, they would have clearly stated so.

Similarly, in Oyo State, the Speaker, Mr Adeolu Adeleke, was precluded from presiding over the proceedings that led to the impeachment of Governor Ladoja under the pretext that he was under suspension. The Supreme Court ruled that section 188 of the constitution 'does not only mention the Speaker and the members of the House of Assembly, but also gives them functions to perform in the removal processes' ((2007) 1 S. C., (Pt 1), p 89).

This interpretation also reaffirmed the importance of legislative leadership in vital proceedings. It also extolled the representative role of the lawmakers as the custodians of the collective will of the people rather than a fractional part of the political elites (Fagbadebo 2016). As true representatives of the people and key political elites in the country's political system, lawmakers are expected to act in a responsible and civilized manner (2007) 1 S. C. (pt 1), p184).

### ***The Method of Service of Notice of Allegation of Gross Misconduct***

One of the contentious issues regarding impeachment cases was the mode of service of the notice of allegation of gross misconduct. The Speaker, by virtue of section 188 (2b), is expected to serve the notice on the holder of the office. The court declared that the contemplation of the drafter of section 188 (2) of the constitution was that the notice of allegation should be served personally on the person ((2007) 5 NWLR (Pt.1028) 488 C.A). In Oyo and Anambra States, the lawmakers failed to comply with the constitutional requirement of service of the notice of allegation of gross misconduct against their governors ((2007) 1 S. C. (Pt.1), p 138; (2007) 5 NWLR (Pt.1028) 488 C.A).

In Anambra State, the Speaker, Mike Balonwu, for instance, claimed that the legislature served the governor the notice by pasting in it government offices in Awka, the State Capital, and the Liaison Offices of the State Government in Lagos and Abuja (Sowore, 2006). The Court declared this method as an act of bad faith that violated the intentment of the provisions of the constitution ((2007) 5 NWLR (Pt.1028) 488 C.A).

Ordinarily, there ought not to be any controversy over the service of such notice in view of the established channels of communication in governmental affairs and protocols. Nevertheless, the presumption was that it would be difficult to serve a Governor with such notice, personally, in the Nigerian system in view of the nature of security accorded such top government officials. Realising the import of the notice, the governor would want to evade service as the hordes of security personnel would have been on a standard instruction not to accept any document coming from the legislature during impeachment period. I witnessed this, as a principal officer in the office of the Speaker, during a process for the impeachment of a former governor of Osun State. The security personnel at the residence and office of the governor frustrated all efforts by the Clerk of the House of Assembly to serve the governor with the notice of allegations of gross misconducts.

On the contrary, however, there are other channels of official communication opened to the legislature. One of the Speakers, who presided over an impeachment proceeding, explained how he navigated the constitutional breach trap.

When the notice of impeachment was submitted to me by my colleagues who signed it, I tried to figure out how to make sure that I discharged my duty knowing that the mood in the executive was to frustrate the move. There was no stipulated means of service but I know, as a legal practitioner, it is inherent in the provision that the person should be served. I therefore sought to ensure that the governor receive the notice. We sent a copy of the notice through the Clerk of the House to be delivered to the Governor. We also

served another notice through a Courier Company, addressed personally to the governor with a mandate of receiving acknowledgment of receipt, as a valid means of service under the law (Personal Communication, May 17, 2017).

The service of the notice of allegations of gross misconduct is not limited to the alleged officer alone. The Constitution stipulates further that all other members of the legislature must also have a copy of the notice.

This was not as simple as provided. In all the three cases, the members of the legislature were operating at cross-purposes with factitious leadership. In Oyo State, the 18 members that initiated and carried out the impeachment process were meeting at a hotel while the substantive Speaker and his other 13 colleagues were meeting at the official meeting chambers of the legislature. Thus, it would be difficult for the 18 members to serve the other 13 members the notice as contemplated in the Constitution. Similarly, in Plateau State, the 8 members that conducted the impeachment could not serve the 14 members of the legislature who had defected, because they were not available, or they could not be located. In Anambra State, a member of the legislature, Mr. Ben Chuks-Nwosu, protested that the factional leadership that spearheaded the impeachment did not read the notice to the other members, and neither did he serve them the notice of allegation (Ameh et al, 2006, p.2).

#### **Legislative Definition of Gross Misconduct**

The Constitutional offence that could warrant the impeachment of a Governor or Deputy Governor was a guilt of gross misconduct (section 188 (2b), Constitution of the Federal Republic of Nigeria, 1999). Section 188(10) defines gross misconduct as 'a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion in the House of Assembly to gross misconduct'. This provision defines gross misconduct from two perspectives: constitutional breach and opinion of the lawmakers. The first perspective exhibits the need for the legislature to harness its oversight power for accountability while the second perspective provided the liberty for abuse (Nwabueze 1985; Fagbadebo 2016).

The Supreme Court interpreted gross misconduct, as envisaged by the drafters of the constitution, as glaringly noticeable misconduct 'because of obvious inexcusable badness, or objectionableness (sic) or a conduct in breach of the Constitution' ((2007) 1 S. C. (Pt 1), p183). Such breach of the constitution should include abuse of fiscal provisions of the constitution, interference with the duties of the legislature, corruption, abuse of office, and subversive conduct inimical to the implementation of the Constitution ((2007) 1 S. C. (Pt 1), p. 64).

In Oyo and Plateau States, the allegations of gross misconduct captured this definition. The allegations of abuse of office against them are still subject of litigation, years after they left office. Nevertheless, this was not the area of adjudication before the courts. It was evident; however, that in most cases of impeachment in Nigeria, and, especially those that involved the removal of Deputy Governors, the allegations of misconduct represented the interpretation of the opinion of the lawmakers (Fagbadebo 2016; Nwabueze 1985).

One former Deputy Governor removed from office by the legislature, said that the legislative definition of gross misconduct was an instrument of political victimization. He argued that the ambiguity associated with the literal interpretation of the provision had been severally abused by the law makers, especially against the Deputy Governors who have no specific constitutional role (Personal Communication, May 18, 2017). A former Speaker, who also said that the grounds for initiating impeachment process were not based on facts, corroborated this assertion. To him, 'they are grounds based

on the selfish nature of the members of the legislature' (Personal Communication, April 10, 2017). The Supreme Court ruled that

It is not a lawful or legitimate exercise of the constitutional function of section 188 for a House of Assembly to remove a Governor or Deputy Governor to achieve political purpose or one of organized vendetta clearly outside gross misconduct under the section...Section 188 is a very strong political weapon at the disposal of the House which must be used in appropriate cases of serious wrong doing on the part of Governor or Deputy Governor, which is tantamount to gross misconduct within the meaning of subsection 11 ((2007) 1 S. C. (pt 1), pp66-67).

Thus, the drafters of the Constitution did not contemplate that the lawmakers would exercise their power in the section 188 (11) as an instrument of political vendetta.

#### **Ouster of Judicial Intervention**

The earlier self-restraint approach of the judiciary to the adjudication on impeachment was premised on the literal interpretation of section 188 (10) of the Constitution. The provision stipulates that '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' (Section 188(10), Constitution of the Federal Republic of Nigeria Nigeria, 1999). Scholars have maintained that the court's interpretation of this clause was against the intendment of the drafters of the constitution (Nwabueze 1985; Alabi 2010; Alabi 2014).

In one of the judgments of the Supreme Court, Justice Walter Samuel Nkanu Onnoghen, JSC, said:

It is true that section 188(10) of the 1999 Constitution ousts the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor, but that must be subject to the rule that the legislature or the House of Assembly complied with all the Constitutional requirements in section 188 needed for the impeachment as the courts have jurisdiction to determine whether the said Constitutional requirements have been strictly complied with or not (2007) 2 All N.L.R. 293).

Justice Niki Tobi, JSC, noted that judicial officers that precluded adjudication as result of the provision, failed to pay attention to the intendment of the usage of the functional words: proceedings and procedure.

Procedure is the set of actions necessary for doing something. It is also the method -and order of directing business in an official meeting. On the contrary proceedings are the records of activities. In this definition, procedure generally comes before proceedings. Putting it in another language, proceedings are built on the procedure established for the particular activity or business. The section 188(10) ouster clause is clearly on proceedings or determination of the Panel or the House. It does not relate to or affect the procedure spelt out in section 188(1) to (6). Parliamentary proceedings which result in the Hansard cannot be the same as the procedure which Parliament invokes or adopts during the proceedings ((2007) 1NILR 121).

All the previous impeachment cases since the Second Republic were stuck at the judiciary by virtue of the misapplication of this particular provision (Alabi 2014). This particular judgment of the Supreme Court, in the words of Justice Niki Tobi, JSC, was 'the first pronouncement on this fairly troublesome area of our law on the removal of Governors' ((2007) 1NILR 121). Indeed, the two major judgments of the Supreme Court and the Court of Appeal (*Balonwu v. Obi* (2007) 5 NWLR (Pt. 1028); *Inakoju & 17 Ors. V. Adeleke & 3 Ors.* (2007) 1 S. C. (pt. 1)1) curbed the rapidity at which state legislatures arbitrarily explored the impeachment provisions to remove state governors since 2007. The judgment provided precedent for the lower courts.

On February 11, 2016, the Court of Appeal nullified the removal of a former Governor of Adamawa State, Murtala Nyako (Yusuf 2016). The Court condemned the abuse of legislative power and disobedience of court orders by the lawmakers, who removed the governor from office on July 16, 2014. In August 2014, members of the panel set up to investigate allegations of gross misconduct against the Governor of Nasarawa State, Umaru Al-Makura, declared that the Governor was not guilty of any of the allegations (Amhad 2014). Similarly, the Court of Appeal reversed the impeachment of a former Deputy-Governor of Ondo State, Ali Olanusi, because the lawmakers failed to adhere to the constitutional rules pertaining to impeachment (Johnson 2017).

### ***Breached Impeachment Procedure and Judicial Review***

The outcomes of the adjudication of the impeachment procedures in the three case studies in this paper amounted to the indictment of the lawmakers for acting in the breach of the constitutional provisions. The judicial inquests were not indication of judicial incursion into the political arena. Rather, it was an attempt to establish the propriety of the exercise of the legislative power for its intended purpose. For one, the judiciary did not bother to ascertain the constitutionality of the allegations of gross misconduct against the Governors in view of the constitutional mandate that precluded the court from such inquiry. Instead, the judgments reaffirmed the need for the legislature and the judicial officers to adhere to the dictates of the laws in the exercise of their powers. At the same time, the judicial precedent was a wakeup call for the legislatures to appropriate their constitutional oversight powers.

The allegations of abuse of power against Governors Ladoja and Dariye were not far from the truth (Fagbadebo 2016). In June 2018, the court found Joshua Dariye guilty of diverting N1.1b state funds and sentenced him to 14 years' imprisonment (Onochie and Richards 2018). Evidence presented at the court proceedings since 2007 indicated that the former governor lived beyond his official incomes while in office (Global Witness 2010). The governor himself had confessed that he diverted the state money for private use.

Some people will join me to return this money...only N800 million came to the state. I gave N100 million to PDP South-West; N100 million to North-East, is that not one billion? Between Mantu [Deputy Senate President] and me, I gave him N10 million. I told Mantu when we met in Benue that since they have decided to blackmail me, if I am asked to return this money, you should also be ready to return the N10 million I gave you (cf. Obateru 2006).

Nevertheless, the majority of the members of the legislature refused to invoke their power of oversight when the evidence was presented to them (Fagbadebo 2016).

The botched impeachment bid was not actually intended to be an oversight measure but as a political weapon of vendetta (Fagbadebo 2016). The governor was embroiled in a power tussle that rocked the leadership of his political party, the Peoples' Democratic Party (PDP) with the leadership of the party (Obateru 2006).

The majority members of the legislature who refused to investigate the allegations of corruption against him were acolytes of the governor who was embroiled in power tussle with the leadership of his political party. The eight lawmakers that eventually breached the impeachment procedures were supporters of the president, who had sought to deploy the legislative process to remove the Governor (Personal Communication, May 20, 2017). Prior to this, the president had declared a state of emergency in the state in 2004, and the Governor was suspended for six months (Kumolu 2013; Ariye, Ogbomah, Ebipre and Eric 2012).

Similarly, Rasheed Ladoja is still facing prosecution over allegations of his misdemeanors while in office (Fagbadebo 2016; Oladimeji 2016; Oladimeji 2017; Ibrahim 2017). The Economic and

Financial Crime Commission (EFCC) had alleged that he laundered a sum of N4.7 billion of state money while in office and remitted a sum of 600,000 British pounds into the account of his wife (Premium Times, 19/04.2013). The case is subsisting in court. The 18 lawmakers that initiated the impeachment of the governor acted upon the prompting of their godfather, late Alhaji Lamidi Adedibu (Fagbadebo 2016; Omobowale & Olutayo 2007). They used the botched impeachment process to remove the governor who had been embroiled in a divisive conflict with his godfather (Omobowale & Olutayo 2007). Like the case of Dariye, Ladoja fell out of favor with his benefactor, Alhaji, Adedibu, who was acclaimed to have ensured the electoral victory of the governor in 2003 (Apabiekun 2006, p.21).

The fact that the court found Dariye guilty of the allegations of corruption and Ladoja still under prosecution after they left office, was an indictment on the sincerity of the actions and determinations of their respective state legislatures to exercise their oversight powers. In the case of Obi, it was evident that the legislators exploited the divided government situation in the state remove the governor, in a similar way that the legislators removed a Balarabe Musa, Governor of Kaduna State in the Second Republic. Their actions and inactions were not intended to promote the interest of the state nor the intendment of the impeachment provisions but to accomplish the desires of the individual interests.

The intent of the drafters of the impeachment provisions in the Nigerian Constitution was to 'guarantee good governance and development and to prevent abuse of power' (2007)1 S. C. (Pt. 1), p. 183). Thus, its implementation is expected to exhibit no-partisan determination of a unifying purpose and not a sectional representation of primordial interest. The Supreme Court averred that the exercise of this legislative power was for 'the good of the state' and as such, considerations should be devoid of sentiment ((2007)1 S. C. (Pt. 1), p. 183).

A well-intentioned impeachment process, as envisaged by the drafters of the constitution, with overwhelming evidence of malfeasances against a Governor, ought not to be subjected to the rigor of judicial review. In other words, if the lawmakers were determined to exercise their oversight power in view of the evidence of allegations of gross misconduct, there was no need to engage in constitutional breaches. The case of Anambra State was an indication of a self-serving adventure. While there was no concrete allegation of misconduct against the Governor, there has not been any case of abuse of power against him.

### **Conclusion**

That the judiciary voided the impeachment of the Governors was an indication that the members of the legislature were playing politics with a very important instrument of probity and accountability. The constitutional requirements were measures to empower the members of the legislature to enforce accountability. Judicial pronouncements on the flawed legislative actions on impeachment were supposed to be another opportunity for the lawmakers to address their faults and exert their power. Rather, the lawmakers were more interested in the exercise of power to further personal interests at the expense of the public. Intra party rivalry engendered by the quest for power for personal gains have rendered the legislature as an institution failing in its constitutional responsibilities. Incessant cases of corruption and abuse of power is an indication that the legislatures have lost their political steams as effective checks against the executive for the promotion of accountability. The involvement of the judiciary has shown that independent minded public officials could only exercise the oversight instruments in the legislature effectively. The actions of the judiciary were limited to the desecration of the avowed legislative rules and



procedure and not on the allegations of corruption and gross misconduct against the Governors.

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