REMOVAL OF JUSTICE IKPAMBESE BY THE BENUE STATE HOUSE OF ASSEMBLY WITHOUT THE NATIONAL JUDICIAL COUNCIL (NJC) RECOMMENDATION: CREATIVE WAYS FOR LAWYERS TO CLOSE PANDORA'S BOX[1]

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Abstract

Justice Ikpambese, who was the rightly appointed Chief Judge of Benue State by a resolution of the Benue State House of Assembly in a display of political gymnastics was removed without recourse to the National Judicial Council (NJC) as required by Section 292 and Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999. The immediate concern is the constitutionality of such action seeing that the Constitution itself is not silent on the procedure to be followed for appointment and removal of judges in Nigeria. This anomaly by the politicians cannot be allowed to continue as this is not the first time this sort of event is happening in Nigeria as we saw with Justice Walter Oonoghen. This paper adopted doctrinal research methodology. In this article the challenge is described as Pandora Box, a can of worms that has been opened but unlike Pandora box a can of worms that can actually be closed if the right approach is taken by stakeholders interested in the preservation of the principle of separation of power in the Nation.

Key Terms: Pandora Box, Judicial Independence, Judiciary, Separation of Powers.

1.0 Introduction

Pandora box though mythical, being one of the most popular stories in Greek mythology, serves as a reminder that there are some courses of action that may lead to more disaster and become too catastrophic to reverse. No other Greek myth or legend is more familiar than that of Pandora. The story goes that Pandora was the first Woman, the beautiful mischief; she opens the forbidden box and then evil flies out.[2] The proverbial Pandora box here is the deliberate unconstitutional removal of Chief Judges that seem to be a regular recurrence. The case of ***Elelu Habeeb & Anor v Attorney***

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[2] J E Harrison, 'Pandora's Box' *The Journal of Hellenic Studies* (1990) (20) 99 – 244.

General of the Federation & Ors[3] is one where a sitting Governor attempted to remove the Chief Judge of Kwara State but the removal was challenged up to the Supreme Court and the removal was held to be unconstitutional. Other similar instances where the Executive arm have attempted to remove the head of the Judiciary are many but another worrying issue also is when the Executive arm displace an uncompromising senior judge who is supposed to be the Chief Judge just to force in a Junior Judge more compliant with the whims and caprices of the Executive arm. This particular phenomenon is even more rampant than the removal of Judges because it involves a lot of blackmail and behind the scenes politicking. A curious case was the case involving Hon. Justice Akon Ikpeme of Cross River State where the Cross River State government under the leadership of Ben Ayade sought to block the swearing in of Hon. Justice Akon Ikpeme as Chief Judge of Cross River State for a more Junior Judge whose turn had not yet come. Due to outcry from concerned institutions including the Nigerian Bar Association (NBA), the action was arrested and Hon. Justice Akon. The Hon. Justice Akon Ikpeme conundrum is still fresh in the annals of judicial history when Cross River State Governor Benedict Ayade played politics with the judiciary even after the National Judicial Council (NJC) approval of Hon Justice Akon Ikpeme.[4] After this came the Hon. Justice Walter Onnoghen controversial removal through the back door using the Code of Conduct Tribunal (CCB)[5] totally bypassing the NJC shaking the core of the Nigerian Judiciary. Apparently, the assault against the Judiciary is a deliberate attempt by the politicians in the executive and legislative arm to ride roughshod over the judiciary and emasculate it so they can have their way to govern in impunity. The only true gate keeper that can prevent this impunity is the corpus of lawyers best represented than in the NBA and none other. This article considers how the repeated attacks on the heads of the judiciary can be stopped once and for all. The article is designed to chronicle past experiences and draw out the lessons for the future. The research is divided into clear subheads described as steps for easy elucidation with reference to judicial authorities where relevant. Recommendations that if applied can salvage the already dire situation shall be made at the end. It is pertinent to consider the constitutional requirement for removal, NJC role and the Benue State situation

[3] (2012) 13 N.W.L.R (PT. 1318) 423

[4] E Edem, 'Cross River Constitutional Crisis Looms as Assembly Rejects Chief Judge' *Daily Post* (Lagos, 03 February, 2020) <https://dailypost.ng/2020/03/02/cross-river-constitutional-crisis-looms-as-assembly-rejects-chief-judge/ > accessed March 2, 2025

[5] *Attorney General of Cross River State v Attorney General of the Federal Republic of Nigeria* (2019) 5 Monthly Judgment of the Supreme Court (M.J.S.C) (PT.1)

including lessons that could help in ending the repeated unconstitutional sacking of chief Judges.

2.0 Chief Judge Removal; Pandora's Box

The chaos in the judiciary caused by the wrongful removal of the chief judge Hon. Justice Ikpambese of Benue State is the pandora 's box referred to herein. . Rather than allow the judiciary to focus on the issues decaying the Nigerian society the Executive arm of government inspired by some unscrupulous politicians keep pissing in the halls of justice by going after the heads of the judiciary at state and federal levels.

In some jurisdictions, judges are removable by a legislative resolution or address. This can be described simply as impeachment without more. Impeachment originated as a medieval English process, according to which parliament could remove the king's officers or advisors for 'high crimes and misdemeanours. Typically, there are different systems depending on the jurisdiction but the most prominent is having two-thirds majority of the legislature whether in the state or federation vote on the resolution to remove a Chief Judge. In places like Malta and India,[6] among other the requirement is for two-thirds majority vote to pass an address requesting the removal of a Chief Judge.[7] In the Benue State case the Judge was removed by a majority vote of the Benue State House of Assembly without any input whatsoever by the NJC pursuant to the provisions of the CFRN 1999 (As amended). Specifically, the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018) section 292(1a) and paragraph 21(c) (d) (f) Part 1 of the Third Schedule to the Constitution.[8]

The incessant intervention of the Executive into the affairs of the Judiciary unconstitutionally is a distortion of the doctrine of separation of powers which is the very fundament of the entire democratic framework. It is important to briefly consider how the system is supposed to work and how the status quo is a distortion.

3.0 Judicial Heist and Perversion of The Doctrine of Separation of Power

A democracy is government by the people, either directly or indirectly through representative capacity[9] on the one hand while constitutional democracy is government

[6] Constitution of Malta, article 97; Constitution of India, article 124

[7] E Bulmer,*Judicial Tenure, Removal, Immunity and Accountability* (International Institute for Democracy and Electoral Assistance (International IDEA) 2017) 10.

[8] Constitution of the Federal Republic of Nigeria 1999 (As Amended).

[9] B A Garner(ed), *Black's Law Dictionary* (9th edn, WEST Publishing) 974.

run on the tenets of the ultimate organic law of the land known as the Constitution. The Executive, the Legislature, and the Judiciary make up the three arms of government in an ideal modern democracy. Democracies all over the world are united on the view that putting separation of power into practice can ultimately reduce chances of tyranny, arbitrary rule[10]or even hijack of the entire government apparatus by one arm evidently emasculating all the other arms. Since this is not Government Class 101 no need to go the lengths in detailing the roles of all the arms. However, the judicial arm is responsible for interpreting the law made by the legislature which is then executed by the Executive arm of government. In an ideal constitutional democracy, the ultimate power resides in the people. The phrase 'We the people', as used in most preamble to national constitutions, is not mere embroidery but a show of collective will of the people from whence the real power derives. Section 14 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereinafter referred to as '**CFRN 1999'**) entrenches the idea that Nigeria as a nation runs on the tenets of a constitutional democracy, especially when it provides that:

> The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. It is hereby declared that:
> (a) Sovereignty belongs to the people of Nigeria from which government through the constitution derives all its power and authority.
> (b) the security and welfare of the people shall be the primary purpose of government: and
> (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.[11]

Ideally the king of the jungle ought to be the people as they have the real power but years of corruption and sycophancy have turned the tables around. One can then dare to say that elected officials have gone rogue becoming the Lion of the jungle while the people have become the antelope suffering under the raw exercise of power of the executive government. An ideal constitutional democracy should be run on sound constitutional tenets strictly adhered to from law making, to law enforcement, to law implementation. No one individual or arm of government should act arbitrarily on their whims and caprices. Unfortunately, Nigeria is a nation with a chequered history of democratic rule,[12] one could successfully opine that years of stress under colonialism and the jackboots of the military has really messed up with our minds - how true? The

[10] S. N. Agu 'Separation of Powers in Baron de Montesquieu' Philosophical Appraisal' *Indonesia Journal of Interdisciplinary Research in Science and Technology* (2024) (2) (9) 10 – 38.

[11]CFRN 1999 (As amended), sections 14 (1) and (2) (a), (b) and (c).

CFRN 1999 (as amended) succinctly made the doctrine of separation of power a fundamental principle of state governance even making sure that whole parts and whole sections are dedicated to various arms of government. Section 4 CFRN 1999 (as amended) deals with the legislature and the legislative powers with the National and State Assemblies in charge here, while section 5 CFRN 1999 (as amended) vests executive powers in the President and Governors leaving judicial powers with the judicial arm per section 6 CFRN 1999 (as amended). This kind of separation of powers of government can demonstrably be described as horizontal separation of powers.[13] Section 4 (6) CFRN 1999 (as amended) provides that the legislative powers of a state shall be vested in the House of Assembly of the State empowered to make laws for the peace order and good government of the state.[14] The State House of Assembly is however limited to matters not on the exclusive legislative[15] list but allowed to legislate on matters in the concurrent list[16] and other matters it is so empowered by the CFRN to make laws on.[17] Section 4 (8) CFRN subjects the legislative powers of the State Houses of Assembly and National Assembly to the jurisdiction of courts of law and judicial tribunals established by law, and accordingly the legislature shall not enact laws that purport or attempt to oust the jurisdiction of the judicial tribunal established by law.[18] In an ideal constitutional democracy checks and balances and legislative oversight is the rule rather than the exception. Oversight function is a surveillance mechanism by the legislature on the activities of the executive in the spirit of doctrine of separation of powers.[19]

As an addendum to the foregoing, it is important to emphasize the point that there has been a complete subversion of the original intent of the creators of the separation of power doctrine. Instead of oversight, the Executive laden with unscrupulous politicians have sought to bring the judiciary under its thumb for selfish ends. The fishing for

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[12] V. C Maduekwe and Others, 'Judiciary and the Theory of Separation of Powers in Nigeria (The Fourth Republic)' *British Journal of Education* (2016) (4) (8) 84.

[13] Ibid, p 91.

[14] Constitution of the Federal Republic of Nigeria 1999 (As Amended) section 4 (7).

[15] Constitution of the Federal Republic of Nigeria 1999 (As Amended), section 4 (7) (a).

[16] Constitution of the Federal Republic of Nigeria 1999 (As Amended) section 4 (7) (b).

[17] CFRN 1999 (As amended), Section 4 (7) (c).

[18] CFRN 1999 (As amended), Section 4 (8).

[19] A O Kazeem, 'Legislative Oversight Functions in Nigeria- Odyssey of Hunters Becoming the Hunted' *AUDJ*, (2013) (9)(2) 82.

judgments in faraway jurisdiction in political cases is a typical example of the mess being made on the judiciary by the executive.

4. 0 Closing Pandora's Box; Lacuna In The Judiciary

An attempt to close Pandora's box would involve first a cleansing of the evil already plaguing the judiciary internally. There are plethora of challenges that already bedevil the judiciary that needs to be curbed immediately to return confidence to this arm of government and stop the other arms of government from interfering.. It is important to emphasize these few challenges briefly before making recommendations on how exactly to close Pandora's box. The challenge to wholly automate our court systems even at the Apex court the Supreme Court of Nigeria is elusive because as the apex court, it is supposed to be the most technologically advanced and sophisticated than any other in Nigeria. The failed efforts at digitalizing the entire justice sub – sector seems related to challenges associated with information technology (IT) infrastructure and technical knowledge issues.[20] A very modern accessible error-free efficient court system requires the use of technology.[21] Unfortunately, currently the level of technology incorporation is abysmal compared to technological gains. Some of the challenges noted are described below.

4.1 Judges and Short Hand Notes - In Nigeria today despite the possible options of hiring stenographers or expert typists to record proceedings or in the alternative access quick time recording technology to capture proceedings judges are still obligated to copy or write down every word uttered by counsel and parties. This is the greatest burden to bench because it leaves the judges and magistrates tired and exhausted even before the docket list is exhausted. The advantage of digitalizing notes taking in court proceedings is basically better use of time and soundness of mind of the adjudicating individual. An exhausted judge or magistrate is prone to error and easy anger on the bench.

4.2 Power Electricity Infrastructure - After several years of Nigeria's socio-political history electricity has been her challenge and this challenge has affected the capability of courts to function maximally because even when technology is introduced the capacity for consistent usage may be hampered by lack of consistent power supply. Gadgets run on power supply, video, audio, communication infrastructure also depend

[20] F. Drabo, 'The Digitalization of Court Processes in African Regional and Sub regional Judicial Institutions' (Waldren Dissertations and Doctoral Studies Collection, 2021) 4.

[21] Attorney General of British Columbia, *Court Digital Transformation Strategy 2019 – 23* (Ministry of the Attorney General of British Columbia, 2023) 4.

on power supply. It is therefore easy to see how the absence of consistent power supply in courtrooms can be a hindrance to the incorporation of technology.

4.3 Non-Contemplation of Sophisticated Usage of Technology in Rules of Court or the Evidence Act - The Rules of Courts from the Supreme Court Rules, Federal High Court Rules, and States High Courts Rules are structured without much contemplation of one hundred percent digitalization and technological usage. The ideal thing would be for the Rules of Court to have a part on possible usage of technology but many of the Rules do not even bother pre-empting the situations. We have seen practice directions being used especially during the covid period but even these practice directions only created directions on zoom calls as part of the virtual hearing platforms and nothing more sophisticated than general language. One of the major changes that would encourage the incorporation of technology into Nigerian court rooms systems would be for the Rules of Court to make provisions that do not just encourage virtual hearing and e-filling but also encourage the adoption of all shades of technology from basic usages to hearing and post hearing usages. Apparently, on line hearing is made too optional and the e-serving of process needs to be made compulsory also.

4.4 Ill- equipped Courtroom Personnel - The current recruitment program for court room staff is as basic as it can be and it is clear that there are no trainings in the area of technology. This issue of ill-equipped court room personnel is a lacuna that must be filled, if technology is to be wholly successfully incorporated or integrated into our court system. Many court personnel are not adequately equipped or trained for the job.

5.0 Conclusion and Recommendations

Corruption in the judiciary spurred by the political class is gradually destroying democracy and justice that the judicial arm ought to protect and safeguard. The earlier this issue is looked into and tackled the better the judiciary. These assaults by the executive on judges, like the Benue State incident should be a concern to lawyers and the entire citizens as that threatens the foundation of democracy in Nigeria. It is recommended pro bono services should be rendered to the Judiciary to fight for the right of Chief Judges against unconstitutional removal. Constitutional reforms that would guarantee clear independence of the judiciary and real financial autonomy, not theoretical autonomy is recommended. Media regulation to shun fake news affecting the integrity of the judiciary, in order to restore the confidence of the common man.