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REMOVAL PROCEEDINGS: WHETHER COURTS SHOULD BLOW MUTED TRUMPET?*

Introduction

When the Nigerian military left the country's political amphitheatre in 1999, to discerning minds, there was no doubt that the emergent nascent democracy will face challenges. Democracy like any other form of government has its attendant characteristics or features as well as problems. The form of democracy which Nigerians got on May 29th, 1999 is one predicated on the 1999 Constitution of the Federal Republic of Nigeria. Constitutional democracy, as the name suggests, is one hinged on a constitution. And a constitution (here, written constitution) *is a document embodying the fundamental principles according to which a state is governed and contains the individual rights of its citizens capable of enforcement. It is a document containing the fons et origo* of the laws and rights of its people. *It is in a sense what in Kelsenian terminology may be regarded as the Grundnorm of the State. The constitution is aptly described as the supreme law of the land. This is because it is a law which does not depend upon any other law for its validity, and derives its validity and force from the collective will of the people expressed in the declaration. In the language of political science, the sovereignty of the people is vested in the Constitution 'for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equity and Justice, and for the purpose of consolidating the Unity of our people'*[1]

The concept of removal of Governor and his Deputy like other fundamental issues is enshrined in the 1999 Constitution. The removal lever is in the hand of state legislatures. The removal of the Governor and his Deputy from office, which is provided for in section 188[2], is a relatively new phenomenon in our political life as a nation. It first featured in the 1979 Constitution[3] :

> ***"Now to section 170 of the Constitution. This section has been popularly termed impeachment section in relation to removal of the governor and his deputy from office. It is novel in the Constitution of Nigeria.***[4]

The learned Justice of the then Federal Court of Appeal[5], Adenekan Ademola, J.C.A., gave an apt yet illuminating origin of this concept :

> ***It has its origin in the political thought and constitutional law of medieval Europe and the constitutional Law of England in the 16th to 18th century. It was transplanted to the American soil during the settlement of the colonies on that Continent. It was a powerful weapon in the hands of Parliament in its fight against the king and the Executive in its desire to control and tame despotism from these quarters. It is now thought obsolete a method in getting rid of ministers and servants of the king. But in our present situation in this Country one must not discountenance its potentialities. In England the House of Commons is the accuser and the prosecutor before the House of Lords which tries the offender and hands down judgement. In the judicial set up in England, the House of Lords take part in the proceedings in the House of Lords and this fact and other considerations may in my view be responsible for the lack of judicial control or interference in impeachment proceedings in the country. I find no reported case ... I confess I do not know the details of the American experience. However impeachment in both countries is a political exercise.***[6]

The fever of impeachment was first felt in Nigeria in Kaduna State[7] under the 1979 Constitution. Subsequent to Nigerian Fourth Republic, which crept in on May 29th, 1999, some State Governors in the Federation have experience the bitter pill of impeachment.

The pivot of this paper will revolve around:

(i) whether the jurisdiction of the courts is ousted in regard to the removal of a Governor or Deputy Governor from office under the Constitution of Nigeria, 1999;

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[1] Per A.G . Karibi – Whyte, J.C.A., Alhaji Abdukadir Balarabe Musa v. Auta Hamza, [1982] 3 NCLR p. 250

[2] Constitution of the Federal Republic of Nigeria, 1999

[3] C.F.R.N., 1979, S.170.

[4] Per Adenekan Ademola, J.C.A., reading the lead judgement in Alhaji Abdulkadir Balarabe Musa v. Auta Hamza, supra, p.244.

[5] Under the C.F.R.N., 1979, the Court of Appeal (s.217) was referred to as the Federal Court of Appeal; it is simply the Court of Appeal in the C.F.R.N., 1999.

[6] Per Adenekan Ademola, J.C.A., Musa v. Hamza, supra, pages 244-245

[7] See the case of Alhaji Abdulkadir Balarabe Musa v. Auta Hamza, supra.

(ii) A juxtaposition of the case of *Alhaji Abdulkadir Balarabe Musa v. Auta Hamza*[8] with the recent cases on removal of Governors.

The subject matter of this paper will be discussed basically against the facts of removal of State Governors of Oyo and Plateau States [9]

Alhaji Abdulkadir Balarabe Musa v. Auta Hamza and 6 others.

Indeed, as the writer pointed out earlier, the issue of removal of governors is novel in our jurisprudence. Even in the Fourth Republic, after half a decade since independence, there are very few litigated cases. Commenting on the novelty of this area of our constitutional law, the Supreme Court observed :

> ***"I want to take this opportunity to thank all counsel for their invaluable submissions to the development of this important area of our law. In my restricted knowledge, this is the first pronouncement on this fairly troublesome area of our law on the removal of Governors"***[10]

Be that as it may, this writer considers the case of *Balarabe Musa v. Hamza*[11] as a convenient preface for this paper. Some reasons abound for this; first, it was the first case in the constitutional development of Nigeria wherein the issue of removal of governor came up. Though, unlike the removal of Governor Rashidi Ladoja of Oyo State and Governor Joshua Dariye of Plateau State, which border on the validity of removal of Governors, this case (Musa v. Hamza), is on steps preparatory to remove a Governor. Second, this case has a striking similarity to the removal of Governors cases under the Nigerian Constitution, 1999. How? Section 170 (10)[12] :

> ***"No proceeding or determination of the committee of the House of Assembly or any matter thereto shall be entertained or questioned in any court."***

is on all four with section 188(10)[13]. *The case of Musa v. Hamza* [14] is predicated on the 1979 Constitution. Furthermore, even though Musa v. Hamza is a decision of the Federal Court of Appeal, the learned counsel for the appellants in Ladoja's case urged the decision in this case on the Supreme Court. The Court in turn made an incisive comment.[15] This writer will take on the Supreme Court's attitude to this case later.

Facts of Musa v. Hamza

The appellant (Alhaji Abdulkadir Balarabe Musa) in this appeal had in Kaduna High Court filed an application *ex-parte* for leave to apply for an order of prohibition prohibiting respondents (the Speaker of Kaduna State House of Assembly and some others) from proceeding with the investigation of the allegation contained in the document entitled 'Notice of Allegation of the Guilt of Alhaji Balarabe Musa regarding his gross misconduct in the performance of the functions of his office as the Governor of Kaduna State.' That all proceedings of the said investigation be stayed until after the hearing of the substantive application. Upon the matter being heard, the learned trial judge, Mr. Justice V.J. Chigbue, in a reserved ruling, granted the application for leave to file an application for order of prohibition but refused the application for stay of proceedings against the respondents. The appellant being dissatisfied with part of this ruling that is the ruling refusing the application for stay of proceedings then filed an appeal to the Federal Court of Appeal. The Court delivered a ruling refusing the prayer of the appellant asking for an interim stay of the proceedings of the Investigating Committee. At the conclusion of the reading of the ruling, learned counsel for the appellant Mr. G.O.K Ajayi, SAN began his submission on the grounds of appeal filed against the refusal by the Kaduna State High Court for a stay of proceedings.

Arguments and Submissions.

The fundamental issue that arose in the Federal Court of Appeal was the scope and extent of section 170(10) of the Constitution.[16] The learned counsel for the respondent got this correctly when he submitted :

> ***'The important point in this appeal, he stressed, is the ouster of jurisdiction of the court in this matter as contained in section 170 (10) of the Constitution; the subject matter of the motion seeks to stop the removal from office of the applicant as Governor of Kaduna State. He referred to the affidavit evidence of the applicant***

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8 (1982) 3 NCLR pages 229-258.

9 Oyo and Plateau states are among the states that make up the Federal Republic of Nigeria. The cases in questions are Inakoju v. Adeleke (2007) 29 NSCOR; Dapialong v. Dariye, 4 Constitutional Law Classicus (C.L.C)

10 Per Tobi, J.S.C., delivering the lead judgment, Inakoju v. Adeleke, NSCQR, p.118 (popularly referred to as Ladoja's case); italics mine for emphasis.

11 (1982) 3 NCLR, pages 229-258.

12 C.F.R.N, 1979

13 C.F.R.N, 1999

14 Supra.

15 See Inakoju v. Adeleke, supra, per Tobi, J.S.C., pages 1059-1063

16 C.F.R.N., 1979. This section is *impari materia* to section 188(10), C.F.R.N., 1999 --- ouster of court jurisdiction vis-à-vis removal of Governors, Deputy Governor from office.

which puts this question beyond any shadow of doubt. The application before the lower Court he contended has within it focused attention to all the provision section 170 of the Constitution.

Though applicant referred in his application to section 170 (2) (b) and subsection 5 of section 170, he submitted that on the whole applicant must take the sweet as well as the bitter part of the whole of section 170 (10)[17]'

Having identified the issue, what is the argument of counsel? The counsel for the respondent submitted that he is relying heavily on subsection 10 of section 170 of the Constitution to say that if the Kaduna High Court has no jurisdiction to grant the order of prohibition asked by the applicant, the Federal Court of Appeal also has no jurisdiction to entertain, determine or grant the application.[18] Counsel further argued that the unlimited jurisdiction of the Kaduna State High Court[19] is subject to the provisions of the Constitution. He submitted that what is envisaged by section 236 (1) of the Constitution is that a specific provision of the Constitution [S.170 (10)] takes away the jurisdiction of the High Court in matters dealt with by that provision of the Constitution. Learned counsel submitted that section 170 (10) of the Constitution is all *embracing and absolute.*[20] *The operative words in the provision of the Constitution are 'entertained' or 'questioned and that these words are absolute and that the courts cannot go beyond them to find out whether certain things had been done or not.*[21]

The Court adverted the provision of section 4 (8) – which appears to be a presumption against ouster of jurisdiction of court generally, to counsel. His reply was that where the Constitution has specifically ousted the jurisdiction of the court [as it is in section 170 (10)], effect must be given to it. Learned counsel also contended that section 6(2) is also limited by section 170 (10) and submitted[22] that the general provision of the Constitution cannot derogate from the said special provision contained in section 170 (10).

Argument grounding jurisdiction.

The lead counsel for the appellant, Mr. G.O.K. Ajayi, SAN, replied to the argument of the respondents counsel that the court lacks jurisdiction.

The writer is strongly of the opinion that the argument of the appellant counsel is noteworthy. The reason being that, a quarter of a century after this judgement was given, appellant counsel's position found favour with the Supreme Court in two celebrated cases.[23] He contended vigorously that section 170 (10) does not derobe the court of its garb of jurisdiction.:

'He said this issues raises the interpretation of the words in section 170(10) of the Constitution. In considering that section of the Constitution, learned counsel said that the courts should have regard to the whole of the Constitution and that section 170 (10) should not be construed in vacuum or in isolation to the rest of the provision of the Constitution. The court must look at that section by the aid of other sections and ask itself what is meant by jurisdiction, determination, committee as used in subsection 10 of Section 170.[24]'

What the counsel is arguing in this appeal as it relates to section 170 (10) is that in the whole of section 170 the court would find that *a procedure is laid down for the removal of a Governor. It is that procedure and no other thing that must guide one in the exercise of the power to remove the Governor. The Governor, he submitted cannot and should not be removed by any other means short of what is laid down in Section 170.*[25] He, learned counsel, submitted that it would be incorrect and a colossal misreading of subsection 10 of section 170 that the court cannot question the exercise of the power of removal of the Governor whether such exercise was done legally or illegally. This interpretation, learned counsel submitted would be the antithesis of what is laid down in subsection 10 of Section 170.

Learned counsel said that there is a presumption against the ouster of jurisdiction of the court which any enactment of legislation of the National Assembly or the House of assembly may pass.[26]

Judgement

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17 Musa v. Hamza, supra, p.237.

18 Ibidem.

19 Section 236 (1), C.F.R.N., 1979.under the C.F.R.N., 1999,the jurisdiction of a State High court is limited given s.251, s.185

20 Italics mine for emphasis. As will be shown later, the Nigerian Supreme court in the Ladoja's case refused this argument.

21 Italics mine.

22 C.F.R.N., 1979: the judicial powers of a State shall be vested in the courts, to which this section relates, being courts established, subject as provided by this Constitution, for a State.

23 Inakoju v. Adeleke, supra; Dapialong v. Dariye, supra.

24 Musa v. Hamza, supra, p.240.

25 Italics for emphasis.

26 s.4(8), C.F.R.N. , 1979.

Having listened to arguments and submissions from both sides of the divide, the Federal Court of Appeal (Kaduna)[27] gave its judgement. The Court agreed with the issue in question as being correctly formed :

'This is a matter of the interpretation of a provision of the Constitution'.[28]

The Court did state that it will adopt the attitude of the Supreme Court in Nafia Rabiu v. The State[29] in its Judgement :

> ***'In the Supreme Court case of Nafiu Rabiu v. The State, Udoma, J.S.C. laid a guiding principle when he said:***
> ***"The function of the Constitution is to establish a framework and principles of government broad and general in terms intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution.[30] And where the question is whether the Constitution has used an expression in the wider or in the narrow sense, in my view, this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.***
> ***My lords, it is my view that the approach of this court to the construction of the constitution should be, and so it has been one of liberalism, probably a variation on the theme of the general maxim*** *ut regis magis valeat quam pereat. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends of the Constitution was designed to serve where another construction equally in accord and consistent with the words*[31] ***and sense of such provisions will serve to enforce and protect such ends.***[32]

Again, still on *Nafiu Rabiu v The State*, the Court said :

> ***"In Nafiu Rabiu v. The State (supra) Udoma, J.S.C. set down the norm of interpretation of our constitution. I shall employ it in considering this provision of the constitution"***[33]

Before its exposition of section 170, the Court gave a brief yet incisive nature of the proceedings under the section

> ***"In Nigeria under section 170 of the Constitution, the whole exercise is begun by members of the House. Even the Speaker who appoints the committee***[34] ***of seven person to investigate the allegation against the Governor or his deputy must have the approval of members of the House for his nominees. It is only when the committee reports that the allegation has not been proved that members of the House of Assembly are not called to finish the work it has begun.*** *The whole exercise cannot be said to guarantee independence or objectivity and impartiality by the norms of section 33 (1) of the Constitution. It is a trial by the Legislative organs of the State and the law it administers is lex Parliamenti,*[35] ***as section 170 (11) lays down; such a law is hardly the ordinary law the normal courts administer. The judgement the House give is a legislative judgement."***

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27 Consisting of Adenekan Ademola, Umar Maidama, Adolphus Godwin Karibi – Whyte, JJ.C.A.

28 Per Adenekan Ademola (read lead Judgment), Musa v. Hamza, supra, p. 243

29 (1980) 8 – 11 SC.

30 Italics not mine.

31 Italics not mine.

32 Nafiu Rabiu v. The State, supra, p. 243.

33 Per Adenekan Ademola, J.C.A., Musa v. Hamza, supra, p. 245

34 Italics mine for emphasis. It should be noted that under the C.F.R.N., 1999, unlike what is obtained under the 1979 Constitution (s. 170), the Speaker does not appoint the committee that investigates the Governor or the deputy, it is done by the Chief Judge of the State. See, section 188, C.F.R.N, 1999 generally but specifically s.188 (5). See also the case of Inakoju v. Adeleke, supra, per Niki Tobi, J.S.C., p. 1040-1043; Dupialong v. Dariye, supra,.

35 Italics mine for emphasis 'Query : if indeed and of course it is, that the legislature modus operandi of removing a Governor is bereft of independence or objectivity and impartiality, where then should the victim of this (partiality) seek refuge; if not the court?

Then, the Court asked:

> *"Does such a judgment (judgment of the legislature under S.170 that the Governor should be investigated, and / or removed [36]) come in for a review by the ordinary court of the land?*
> [37] ***That is where the true meaning and intendment of section 170 (10) comes in."*** [38]

Thereafter the court held that the obvious end that section 170 of the Constitution was designed to serve is that the Governor or his Deputy could only be removed by the act and doings of the Legislature and subsection 10 of it is put in to stop any interference with any proceedings in the House or the Committee. It follows from the premise of this that no court can entertain any proceedings or questions the determination of the House or the Committee.

Critique

The judgment of the Court in Musa v. Hamza is intriguing. Some posers could be thrown here. From the judgement, the Court, it was obvious, did not (or refuse to) advert its mind to the breach of the condition precedents.[39] So, supposing a legislative House of Assembly breaches those conditions stipulated in the Constitution as did the Kaduna State House of Assembly, the Court would still go ahead like Pontius Pilate and wash off its hands - and decline jurisdiction? Lets be more graphic; lets assume that in a bid to remove a Governor, a House of Assembly decides to ignore the provision of subsection (4) of section 170 to the effect that a motion of the House that the allegation against the Governor *shall not be declared as having passed unless it is supported by the votes of not less than two-thirds of all the members of the House of Assembly.*[40] If instead of two-thirds, only one-third votes were obtained, would the court still go ahead and declare want of jurisdiction? If the answer to these posers are in the affirmative, then another poser rears its head: why then are these condition precedents embedded in the Constitution?

This writer holds the view that the argument and submission of the learned counsel for the appellant, Mr. G.O.K. Ajayi, SAN to the fact that the Governor cannot and should not be removed by any other means short of what is laid down, is prophetic. And as shall be seen later in this paper, is good law.

In the Musa v. Hamza's case under scrutiny, it was alleged that the notice of misconduct served upon the Governor was not dated nor was it signed as required by law. [41]

The grave import of the Court's decision is that a state Legislative House could remove a Governor according to its whim and caprice, notwithstanding the provision of the law, in accordance with the provisions of this section.'[42] It is intriguing that the court appreciated the argument of learned counsel for the appellant on the condition precedents in subsections (2) – (9) of section 170. For A.G. Karibi – Whyte, J.C.A., who also sat and heard the appeal, in His Lordship judgement, said :

> ***"Counsel dealt extensively with the statutory provisions dealing with the question of ouster of the courts jurisdiction, and submitted that even in such cases the court's jurisdiction is only ousted where the tribunal has acted within its jurisdiction. Hence in this case the jurisdiction of the court is not ousted but section 170 (10) where the proceedings or conclusions of the committee or the House of Assembly are clearly not in accordance with the provision of the Constitution,"*** [43]

However, more intriguing is that despite this appreciation, the Court refused to hold that these constitutional procedures had not been complied with. More will be said about this case later in this paper.

The case of Inakoju v. Adeleke, Rashidi Ladoja and others [44]

Perhaps this is the first case in Nigeria wherein the purported removal of a State Governor will be in issue. This case aroused much political emotion.

Facts

On the 13th December, 2005, the Oyo State House of Assembly sat at the usual Assembly complex secretariat, Ibadan. The appellant sat in a hotel in Ibadan, where they purportedly suspended the draft rules of the Oyo State House of Assembly. The appellants are some of the members of the State House of Assembly. The appellant purportedly issued a notice of allegation of misconduct against Senator Ladoja, the Governor, with the purpose of commencing removal proceedings against him. On 22nd December, 2005, without following the laid down rules, regulations and the Constitution of the Federal Republic of Nigeria, the appellants purportedly passed a motion calling for the investigation of the allegation of misconduct against Senator Ladoja without the concurrent and approval of the thirty-two members of the House of Assembly. The purported notice of allegation of misconduct against the Governor was not served on each member of the House of Assembly.

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36 The italicized words are added by the writer for clarification.
37 Italics mine for emphasis.
38 These words are in boldface type for emphasis.
39 Contained in s.170(2) – (9), C.F.R.N., 1979 *impari materia* to section 188(2) –(9), C.F.R.N., 1999.
40 Italics mine for emphasis.
41 See section 170(2), 1979 Constitution.
42 See, s.170 (1), C.F.R.N., 1979; italics mine.
43 Musa v. Hamza, supra, per A.G. Karibi –Whyte, J.C.A., p.252
44 See, 29 NSCQR pt.II.

vindicates the totality of the impeachment provision of the United States Constitution. **It is my view that the word should not be used as a substitute to the removal provisions of section 188.**[57] We should call spade its correct name of spade and not a machete because it is not one. **The analogy here is that we should call section 188 procedure one for the removal of Governor or Deputy Governor, not of impeachment.**[58]

This writer shares the sentiment of the learned Justice. Even section 191(1) cited by learned counsel to the respondent in response to the query of the learned Justice contains both words *'impeachment'* and *'removal'* of the Governor from office for any other reason in accordance with section 188 or 189 of this Constitution'. This being so, it is tenable to say that if both words mean the same thing, then both would not have been used in the section. This becomes clearer given the fact that each of both words does not follow the other in section 191(1). The word 'impeachment' may just be fashionable. Perhaps, this appears to be the remark of Adenekan Ademola, J.C.A., while commenting on section 170(10) of the Nigerian 1979 Constitution :

> 'This section has been popularly termed *impeachment*[59] section in relation to removal of the Governor and his deputy from office'[60]

Musdapher, J.S.C., who also heard the appeal, seems not to share the view of his learned brother, Niki Tobi, J.S.C., on the issue. He said :

> 'impeachment here means removal of an elected officer, as a matter of fact, the word *"impeachment"*[61] does not appear in section 188 of the Constitution but *there is no need to split hairs*,[62] removal means impeachment.[63]'

However, His Lordship, after quoting Black's Law Dictionary definition of impeachment (to which Tobi, J.S.C., also referred, see above), conceded that:

> 'But section 188 of our Constitution is not worded like that, (i.e. impeachment as defined by Black's Law Dictionary[64]) the allegation under section 188 is that the officer alleged to have conducted himself in a perverse and delinquent manner amounting to gross misconduct " in the performance of the functions of his office."

On this issue, this writer shares the opinion of Niki Tobi, J.S.C.

Before laying this matter to rest, it should be pointed out that this distinction (between 'impeachment' and 'removal') is important given the trend of argument by counsel for the appellant. The learned counsel, it would be safely said, predicated his argument to a large degree on American jurisprudence with respect to the removal of a Governor :

> 'Learned Senior Advocate cited some cases decided on the United State Constitution and referred to Tribe's book on American Constitutional Law, 2nd Edition (1988), pages 289-296. I think I should take the liberty to quote paragraph 5. 10(a) of the appellant's brief :
>
> In the interpretation of section 188 of the 1999 Constitution, it is necessary to understand the history and development of impeachment process under the American Presidential Constitution from **where it was adopted into the 1979 and 1999 Constitutions.**[65] The United States Supreme Court held in *Ritter v. United States 84 Ct.Cl. 293 (1936) Cert. Denied, 300 US 668 (1937)* that 'the Senate was the sole tribunal that could take jurisdiction of the articles of *impeachment*[66] presented to that body against the plaintiff and its decision is final'. The United States Supreme Court bars judicial review of Impeachment under the political doctrine ...'[67]

Reacting to the above position taken by the learned counsel, His Lordship, Tobi, J.S.C., said he was not comfortable with it, given the fact that that position was not supported by Report of the Constitution Drafting Committee.[68]:

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57 Boldface type for emphasis.
58 Boldface type for emphasis; Inakoju v. Adeleke, supra, per Niki Tobi, J.S.C., p. 1038
59 Italics mine for emphasis.
60 See, Musa v. Hamza, Supra, p. 244
61 Italics mine for emphasis.
62 Italics mine for emphasis.
63 Inakoju v. Adeleke, supra, p.1154, per Musdapher, J.S.C.
64 Word inserted by the writer for clarification.
65 Boldface type for emphasis by the writer.
66 Italics mine for emphasis.
67 Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1054-1055
68 Reports of the Constitution Drafting Committee, vol. II (1976) pages 67-69

'... I disagree entirely with him that the impeachment "provisions in our 1979 and 1999 Constitutions were adopted from the impeachment process of the American Presidential Constitution. There could be a possibility of adoption but certainly there was no adoption; *not at all.*'[69]

His Lordship, still on the distinction, continued ;

'Let me go into more specifics on the issue. I will do so by quoting the very short impeachment provision in the Constitution of the United State. Article 1, section 3 provides :

"6. The Senate has the sole power to try all impeachments, when sitting for that purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two thirds of the members present.

1. Judgement in cases of impeachment *shall extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States*[70]; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgement and punishment according to law.[71]

Consequently, His Lordship rightly decline to apply the decisions of the United States Courts on the provision of the United States Constitution on impeachment as such cases are only of persuasive authority and not binding – an incidence of statehood and sovereignty. Apart from this, a case is decided on the facts before the court and the facts of the case erect the *ratio decidendi* of the case. And so the cases cited by learned Senior Advocate were decided on the provisions of the United States Constitution which are clearly different from our section 188. One clear difference is that our section 188 does not contain the word "impeachment". That apart, *Article 1, section 3 of the Constitution of the United State does not provide for the details of our section 188.*[72] That apart, our section 188 does not provide for the situation in Article1, section 3(7).

Another difference between the Constitution of the United Sates of America and that of Nigeria is in respect of the quorum for the removal of the officer holder.

In the United States of America Constitution, the quorum is *two-thirds of the members present.*[73] In our Constitution is it *two-thirds of all the members of the House.*[74] Another difference – what is the nature of the exercise (removal/impeachment)? The answer to this question was answered by Adenekan Ademola, J.C.A. (though he meant Nigeria and England; this answer could be extended to Nigeria and the United Stated of America) :

'However, impeachment in both countries is a political exercise'[75]

However, against the doctrine of political exercise, a Law Lord added a rider:

' ... American jurisprudence has much developed the political question doctrine in their case law, so much so that it has taken a very firm root in their legal system. The political question doctrine is still in its embryonic stage in Nigeria. Let us not push it too hard to avoid the possibility of a still – birth.'[76]

The Central Issue: The Attitude of the Supreme Court

Now to the crux of this paper: whether courts have jurisdiction. Let us preface this part of the paper by examining how well the apex court understood the nature of removal of a Governor and ousting of courts jurisdiction. Like it was stated above, removal is a political question. The Court took cognizance of this:

"There is no doubt that the removal of an elected public officer by impeachment involves serious political considerations, *but the entire considerations may not be purely political, they may involve legal questions.*[77]

The Court took a voyage to another legal clime, and stated the opinion of the Malaysian Supreme Court[78] :

"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 naïve, in my view, not to regard them as partly political but in my opinion, they are not wholly political in nature, their

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[69] Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1054-1055

[70] Italics mine for emphasis.

[71] Inakoju v. Adeleke, supra, per Niki Tobi, J.S.C. p. 1055-1056.

[72] Italics mine for emphasis.

[73] Italics mine for emphasis.

[74] Italics mine for emphasis.

[75] Musa v. Hamza, supra, p.245, per Adenekan Ademola, J.C.A., delivering the lead judgement.

[76] Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1054-1058.

[77] Italics mine; per Musdapher, J.S.C., Inakoju v. Adeleke, supra, p.1152

[78] See the case of Mustapha v. Mohammed (1987) LRC (const) 16

trial and decision thereon would involve construction of the Federal and State Constitutions and consideration of legal principles, and the legal issues of misrepresentation, conspiracy, fraud and duress, all of which fall within the jurisdiction and function of the court. The main issues of appointment and dismissal and the other issues mentioned in the fore-going paragraph are, in my view, legal matters, although in the circumstances, *some of them may smack of political flavour*[79], *but this factor alone*, in my view, *does not have the effect of* ousting the jurisdiction of the court."[80]

According to Musdapher, J.S.C., impeachment or removal of an elected public officer is a very serious and weighty business. Throughout the history of the United States of America there were only fourteen impeachments and attempted impeachment most of them concerned judicial office holders, there was a Senator in 1798, and the impeachment of President Andrew Johnson is well known. In recent times there was the unsuccessful impeachment of President Bill Clinton.[81]

Jurisdiction

Jurisdiction is a radical and crucial question of competence for if the court has no jurisdiction to hear the case, the proceedings are and remain a nullity *ab initio*, however, well conducted and brilliantly decided they might be as a defect in competence is not intrinsic, but rather extrinsic, to the entire adjudication.[82]

In determining the jurisdiction of a court in respect of matters before it, the court process to be considered is the pleadings of the plaintiff, which is the statement of claim. As this action is commenced by originating summons the court process to be used is the affidavit in support of the summons. In other words, the court will not examine a counter – affidavit even if filed. And in this case, no counter-affidavit was filed. Given this, the learned trial Judge, Ige, J. had no choice but to consider the affidavit in support of the originating summons, which stand for all intents and purposes, as vindicating the plaintiff's claim.[83]

In determining the jurisdiction of a court in relation to a constitutional provision, *the court must take into consideration the totality of the enabling section or sections and not subsections in isolation.* This is because the journey to the jurisdiction of the court in the constitutions, at times, could be cumbersome and not straight or simple. We should recall here the argument of G.O.K. Ajayi, S.A.N., before the Federal Court of Appeal, in the case of *Musa v. Hamza*. The learned counsel urged the argument of the totality of section 170, 1979 Nigerian Constitution upon the court. The court declined this argument and stated that that was permissible prior to the 1979 Constitution to enquire whether there was an ouster of jurisdiction in a general statute. And that it was not permissible to indulge in such exercise (whether there was ouster of court's jurisdiction) while dealing with a clause dealing with ouster of jurisdiction in the Constitutional Law of Nigeria.[84]

The learned Justice further hinged his judgement on a dictum of Fatai Williams, C.J.N. in *Senator Adesanya v. President of the Federal Republic of Nigeria*.[85]

> "... Furthermore, there is provision that no proceedings or determination of the Committee appointed to investigate allegations of misconduct made against the President or Vice-President, Governor or Deputy Governor, or any matter relating thereto shall be entertained in any court. (Section 132 (1) and 170 (10) refers).[86]

Apart from the fact that this dictum is an *obiter*, a fact readily acknowledged by Adenekan Ademola, J.C.A., this writer contends that it application here is misconceived, with due respect. How? The issue contended here is not whether the jurisdiction of the court is removed or ousted. It is ousted, period; rather it is that the court has jurisdiction to check out whether it jurisdiction was *validly ousted*.[87] If it is validly ousted, then, the above dictum of the learned C.J.N. becomes operative. Otherwise the court has jurisdiction.

The Court of Appeal in Ladoja's case, unlike the Federal Court of Appeal (in Musa v. Hamza) appreciated the law correctly, for the learned Justice, Ogebe, J.C.A., who delivered the lead judgement said :

> 'It is my view that the trial court had serious questions to consider before hastily throwing out the suit. For example it was alleged that 18 defendants / respondents met in a hotel to commence impeachment proceedings, the court had a duty to determine whether proceedings before such a group amounted to proceedings of

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[79] All the italics in this quote are by the writer, and they are for emphasis.
[80] Cited by Musdapher, J.S.C., Inakoju v. Adeleke, supra, p.1152.
[81] Per Musdapher, J.S.C., Inakoju v. Adeleke, supra, p. 1152.
[82] See the dictum of Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1052.
[83] Inakoju v. Adeleke, supra, p. 1051.
[84] See, per Adenekan Ademola, J.C.A., Musa v. Hamza, supra, p. 246.
[85] Delivered 15th May, 1981, popularly known as the Ovie - Whisky case
[86] Per Fatai – Williams, C.J.N; in Adesanya v. President of the Federal Republic of Nigeria, cited by Adenekan Ademola, J.C.A. in Musa v. Hamza, supra, p.246.
[87] Italics mine for emphasis.

> Oyo State House of Assembly. It was also alleged that the House of Assembly in Oyo State had 32 members and for the removal of a Governor which requires the resolution of two third majority of all members of the House, the court had a duty to inquire whether a factional meeting of 18 members constituted the required two-third majority of all members.[88] **The Court also had to consider whether impeachment proceedings in which the Speaker of the House of Assembly is excluded from his leading role as provided for in section 188 of the Constitution can amount to proper proceedings of impeachment.[89]** For all I have said in this judgement, I have no hesitation in holding **that the learned trial Judge was wrong in declining jurisdiction. Indeed, he had jurisdiction to examine the claim in the light of section 188 subsection 1-9 of the 1999 Constitution and if he was not satisfied that the impeachment proceedings were instituted in compliance thereof, he has jurisdiction to intervene to ensure compliance. If on the other hand, there was compliance with the pre-impeachment process then what happened thereafter was the internal affairs of the House of Assembly and he would have no jurisdiction to intervene.[90]**

Indeed, the learned trial Judge, like the learned Justice of the Federal Court of Appeal, Adenekan Ademola, J.C.A., erred in law. The Supreme Court re-echoes the above dictum when the Court said.

> 'It is good law that where the Constitution or a statute provides for a precondition to the attainment of a particular situation, the pre-condition must be fulfilled or satisfied before the particular situation will be said to have been attained or reached. Our common and popular pet expression is "condition precedent" which must be fulfilled before the completion of the journey, which is the terminus and in our context that terminus is section 188(10)'

As it has been shown in the course of this paper, the counsel for the appellants in the Ladoja's case urged upon the Supreme Court the attitude of the Federal Court of Appeal in the case of Musa v. Hamza. On this, the erudite learned Justice, Niki Tobi, J.S.C.; made a very brilliant point as per the error inherent in that judgment. This statement which we shall read shortly) of His Lordship on the error in Musa v. Hamza may well be an *obiter dictum* – but it is one that commands the respect of this writer and one that this writer pay attention to because none of the other Justices of the Supreme Court dissented from that part of his judgment.

Given the weight placed on this case by learned counsel for the appellant, His Lordship[91] quoted the Federal Court of Appeal extensively.

> It is important to state clearly that whatever the Supreme Law of the land has vested unequivocally and in clear words in any of its principal departments cannot lightly be taken away by means of any construction extraneous and exotic to the expressed intentions and aspirations of the Constitution. That the Constitution has vested the power to remove the Governor or Deputy Governor in the State House of Assembly is not questioned. Section 170(1) provides as follows –
>
> 'The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this section.'
>
> Then the provision of subsections (2) - (9) spells out the circumstances for the removal or non-removal. The *proceedings* for the removal of the Governor or his Deputy in my view seems to *commence*, when a notice of any allegation in writing and signed by not less than one-third of the members of the 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 miscounduct in the performance of the functions of his office specifying detailed particulars of such gross misconduct (section 170(2)). All the ensuing *proceedings* of the service on the Governor with a notice of the copy thereof within 7 days and his reply to every members of the House of Assembly, section (170)(2), and a resolution of the House of Assembly, within 14 days of presentation of the notice to the Speaker; whether allegation shall be investigated –

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[88] Italics is of the writer's for emphasis.
[89] Boldface type by the writer for emphasis.
[90] Boldface type by the writer for sake of emphasis; Inakoju v. Adeleke, supra, p. 1052-1053.
[91] Niki Tobi, J.S.C.

section 170 (3); and supprting by not less than two-thirds majority of all the members of the House of Assembly – section 170(4). Within 7 days of this motion, the committee of 7 persons shall be appointed by the Speaker with the approval of the House of Assembly, to conduct the investigation. *All these are actions exclusively within the competence of the Legislature.* It is relevant to observe that the section preserves the fundamental rights of the Governor to defend himself before the committee. Section 170(3). It is in this regard that the submission of Dr. Odje that appellant is a special person who is not subject to the jurisdiction of the courts becomes pertinent.[92]

The Supreme Court, per Niki Tobi, J.S.C., said the learned Justice of the Federal Court of Appeal fell into serious error. According to the apex Court, the Court of Appeal in the above dictum seems to have mixed up the expression: *procedures*[93] and *proceedings*.[94] *Procedure*[95] **is the set of actions necessary for doing something.**[96] **It is also the method and order of directing business in an official meeting**[97]**. On the contrary**[98]**,** *proceedings*[99] **are the records of activities.**[100] **In this definition, procedure**[101] **generally comes before**[102] *proceedings.*[103] **Putting it in another language,**[104] *proceedings*[105] **are built on the** *procedure*[106] **established for the particular activity or business.**[107]

Having made the distinction (between procedure and proceedings), the court continued:

> 'The arrangement of section 188 vindicate the above position *(the difference between procedure and proceedings*[108]*).* I have taken the difference between the two expressions. *While section 188 (7) (a) provided for the first word "Procedure".* **Section 188(8) provides for the second word "proceedings"**[109] The Court of Appeal mixed up the two expressions when the court taking section 170 of the 1979 Constitution **held that the proceedings for the removal of the Governor or his Deputy commences with a notice of any allegation in writing is presented to the Speaker, including the appointment of 7 persons by the Speaker to conduct the investigation.**[110] In my humble view, **section 188 (1) to (6) sets out the procedure to be adopted in the removal process.**[111] The proceedings commence from section 188(7) and ends in section 188(9).[112] In my view, **proceedings will commence from section 188(7) when the panel of 7 members call the first witness to testify in the investigation of the allegation. And continues until the conclusion of the deliberation of the report of the House."**[113]

According to the Court, section 188(10) ouster clause is clearly on *proceedings*[114] or determination of the Panel of the House. It does not relate to or affect the *procedure*[115] spelt out in section 188 (1) to (6). The Court said that it cannot in

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92 All the italicised words are the writer's for emphasis; quoted by Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1060-1061

93 Italics mine for emphasis.

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95 Italics mine for emphasis.

96 Boldface type mine for emphasis.

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108 The word in bracket is mine for clarification.

109 Boldface type mine for emphasis.

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111 Boldface type mine for emphasis.

112 Italics mine for emphasis.

113 Boldface type mine for emphasis. Per Niki Tobi, J.S.C., Inakoju v. Adeleke (Ladoja's case), supra, p. 1061-62.

114 Italics mine for emphasis.

the interpretation of specific provisions of the Constitution, gallivant above or around what the makers of the Constitution do not say or intend.

It should be noted here, that in the case of Musa v. Hamza, the learned counsel for the appellant, G.O.K. Ajayi, SAN, made copious reference to section 6 (6) (a) (b)[116] :

> 'Learned counsel then dwelt on section 6 (6) (a) of the constitution, he agreed to a suggestion from the court that the section is limited to the inherent powers and functions of the court of law. He submitted that the inherent powers of the court in England are not codified in statute like some of the powers in Nigeria courts. He submitted that the Constitution of 1979 is protecting those inherent powers in the Nigerian courts and one of those inherent powers which the Constitution is protecting belonging to the High court is the right to control inferior courts by prerogative orders, in Kaduna State, learned counsel submitted that a section of the High court Law i.e. section 13 vested in the High Court all the inherent powers that are in Her majesty courts in England ... He said that section 6 (6) (a) of the Constitution is not affected by the proviso of section 170 (10) of the Constitution in respect of control by the High Court of Kaduna State on inferior courts by way of prerogative orders.
>
> While commenting on section 6 (6) (b) of the constitution read along with section 236 of the Constitution, learned counsel submitted that these enactments had brought drastic changes in the jurisdiction of the High Court of the State established by the 1979 constitution. He therefore submitted that section 170 (10) of the Constitution does not oust the jurisdiction of the High Court in these matters.[117]

Why this writer quoted the above *in extenso* is due to the fact that the section {s.(6)(6)(a) (b)}, the rejected cornerstone, was used by the supreme Court. First, let us have the court's reaction to the above :

> 'In short section 6 (6) (a) cannot be relied upon to grant an application for any of the prerogative orders. In my view the proviso of section 170 (10) of the Constitution dues not conflict with section 6 (6) (a) of the Constitution nor does it derogate from it'[118]
>
> I do not think that section 6 (6) (b) of the constitution is of any assistance here.

Hear the Supreme Court:

> 'Ouster clauses are generally regarded as antitheses to democracy as the judicial system regards them as unusual and unfriendly. When ouster clauses are provided in statues, *the courts invoke section 6 as barometer to police their constitutionality or constitutionalism*,'[119]

Though, despite the dictum of the learned Law Lord above, the Court agreed that in instances (as in section 188) wherein the jurisdiction of the courts have been ousted by the Constitution itself, then the courts hold their heads and arms in despair and desperation. Their jurisdiction is to give effect to the ouster clause because that is what is in the Constitution or what the Constitution says.

In all, the Court held that in the circumstances of this case, *the wrong procedure adopted*[120] *is clearly* outside the section 188 (10) ouster clause.

The Wrong Procedure Adopted

The Court held that it would have held that its Jurisdiction was ousted by virtue of section 188 (10) but for the wrong procedure adopted by the House of Assembly in the purported removal of the Governor. What were the wrong procedure?

1. **Place of meeting**. The holding of the meeting by the appellants at D' Rovans Hotel, Ring Road, instead of on the floor of the House of Assembly. According to the Supreme Court[121] on this point, it is the intention of the Constitution that the House of Assembly will sit in the building provided for it and for that purpose. By the provision of section 104[122] of the Constitution, the House of Assembly shall sit for a period of not less than one hundred and eighty one days in a year. By section 103 (1), the Governor of a state may attend a meeting of the House of Assembly either to deliver an address on State affairs or to make such statement on the policy of government as he may consider to be of importance to the

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115 Italics mine for emphasis.
116 C.F.R.N., 1979
117 Per Adenekan Ademola, J.C.A., Musa v. Hamza, supra, p. 241.
118 Ibidem.
119 Per Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 1062.
120 Italics mine for emphasis.
121 Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p. 117
122 C.F.R.N., 1999

State. The combined reading of these two sections, shows that the intention of the Constitution is to make the House of Assembly sit physically in the building provided for that purpose:

> 'The Governor is elected by the people the electorates. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this the public will see watching from the gallery. It should not be a hidden affair in a hotel room.'[123]

This writer considers the exposition made by the Court (on the legislature) in respect of meetings on the removal of a Governor, important, as to quote it extensively:

> 'A legislature is not a secret organization or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgement and public opinion. The public nature and content of the Legislature is emphasized by the gallery where member of the public sit to watch the proceedings. Although, I concede the point that a legislature has the right to clear the gallery in certain deliberation for security reasons, I do not think proceedings for the removal of a Governor should be hidden from the public.'[124]

Thereafter, the Court asked some salient questions, given the fact of the case:

> 'I want to ask a few questions on the mace. Was the mace at the D'Rovans Hotel? If it was there, was that the proper place? If it was not there, can parliamentary decisions be taken constitutionally without the mace. If the mace was there, who carried it? Was the sergeant at- Arms there? I have still one or two more questions to ask about the D'Rovans Hotel meeting, but I think I should stop here. As there is no evidence when the meeting was held. I shall not go there. But I should say here that proceedings of a House of Assembly should be held in parliamentary hours. This is the period the Rules have provided that the House should sit. On no account should proceedings of a House be held in unparliamentary hour, that is, during the period not provided for in the rules. For instance, a House of Assembly has no business to perform in the odd hours of mid- night or in the early hours of the morning before the parliamentary hours prescribed by the rules.'[125]

2. **The absence of constitutional notice of allegation:**. There was the absence of a constitutional notice of allegation against the Governor. Section 188(2) clearly provides for a notice of allegation which must be presented to the Speaker for action within 7 days of his receipt of the notice. Who received the section 188(2) notice as the Speaker was not in the D'Rovans Hotel meeting? Can a notice of allegation not presented within the provision of section 188(2) be constitutional?[126]
3. **The non- service of a constitutional notice of allegation against the Governor.** Closely related to the issue of constitutional notice of allegation is the non-service of same. The Court queried:

> 'Was the provision complied with the absence of the speaker? Again, who served the notice and when was it served? Was section 188(3) complied with? If so, who conducted the proceedings leading to the motion that the allegation against the Governor be investigated or not?'[127]

4. **The failure to obtain the constitutionally required two-thirds majority of all members of the House for the removal of the Governor. Was section 188(9) complied with?**

> 'Was section 188 (9) complied with? in other words and putting it bluntly in naked figures, did the 18 members that purportedly removed the 3rd respondent constitute two-thirds majority of all members of the Oyo State House of Assembly?'[128]

5. **The non-involvement of the Speaker in the so-called proceedings leading to the removal of the Governor**.:

> 'Why was the Speaker not involved in the removal of the 3rd respondent? Was the Speaker constitutionally removed from his position qua office in accordance with section 92 (2) (c) of the Constitution? In the grounds of preliminary objection, the

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[123] Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p.1066
[124] Ibidem.
[125] Ibidem.
[126] Inakoju v. Adeleke, supra, p.1067
[127] Ibidem, per Tobi, J.S.C., p. 1067
[128] Ibidem, per Tobi, J.S.C., p. 1067

appellants said that the Speaker was removed on 13th December, 2005, how many members removed him? Did the number up to the two- thirds fraction within the meaning of section 92(2) of the Constitution ? Is the Speaker just one cleaner in the Oyo State House of Assembly that can be removed just for the asking? Can the appellants[129] answer the above questions correctly?

6. **The unconstitutional procedure adopted in the suspension of Order of the House of Assembly, in other words, the unconstitutional application of Rule 23 of the Draft Rules of the Oyo State House of Assembly.**

Enough on the purported removal of Governor Rashidi Ladoja. Lets move to another removal epic.

The Purported Removal of Dariye.

The theatricals of the removal of a Governor shifted to Plateau State, Nigeria. The case of Dariye[130] (Governor Joshua Dariye of Plateau) leaves one with a sour taste in the mouth. This is because an average or fairly intelligent person would wonder greatly, whether our so called legislators are really sincere as regards the course of democracy in this country. One also wonders about the level of their intelligence quotient. The legislators of the Plateau State House of Assembly could and should have taken a cue from the judgement of the Supreme Court against their counterparts in the House of Assembly of Oyo State in their bid to remove Governor Ladoja from office. Why would they not learn from history? The Supreme Court dismissed the appeal in Ladoja's case on the 7th December, 2006, gave its reasons on the 12th of January, 2007. By 13th day of December, 2006, the dramatis personae in the Dariye's case were already in court. Do our politicians learn? Are they capable of learning? Are they made irredeemably blind by filthy lucre? Is it that section 188 of the Constitution is a complex algebraic equation that they cannot understand it? One can go on and on asking questions? This writer is not alone in this game of question asking. The Supreme Court, too, wonders :

> 'Are we still in the learning process? What type of lessons will the appellants *(legislature of Oyo State House of Assembly)*[131] still need on section 188? About four months to the end of a two-term of four years each making a total of eight years, or even a single term of four years, legislators cannot express ignorance of the provision of section 188 they cannot say that they are still learning the provisions or they need more tutorials on the section. Unfortunately no teachers will be available to them. A worst student of history can be a master of the subject after a period of four to eight years. If he still remains a novice of the subject after such a period, then history will not forgive him in its judgement.'[132]

Our politicians really needed to be bashed. Our courts, particularly the Supreme Court, have not been found wanting in this regard. A case readily comes to the mind of this writer wherein the Supreme Court took a swipe at Nigerian politicians :

> 'The political parties in Nigeria are the creation of the Constitution. They therefore have an important stake in flying high and loftily the banner of the rule of law. In this case the PDP did not live up to that standard. It did everything possible to subvert the rule of law, frustrate Ameachi and hold the court before the general public as supine and irrelevant. Sadly, I.N.E.C. and Omehia also did the same.'[133]

Another Law Lord, Aderemi, J.S.C, added his voice :

> '... I wish to say that in all countries of the world which operate under the rule of law, politics is always adapted to the law of the land and not the laws to politics. Let our political operators allow this time- honored principle to sink well into their heads and hearts. The vicious acts of the dramatis personae in this case that have led to this unfortunate and time- wasting court case must not be allowed to repeat themselves. No decent and polished characters can be credited with such vicious acts.'[134]

So in keeping with the tradition of the Court, the Supreme Court after expounding the law in Ladoja's case, lampooned the members of Oyo State House of Assembly:

> 'The Legislature is the custodian of a country's constitution .... one major role of a custodian is to keep under lock and key the property under him so that it is not desecrated or abused. The legislator is expected to pet the provision of the Constitution like the way the mother pets her day-old baby. The legislature is expected to abide by the provision of the constitution ....

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129 Ibidem.
130 Ibidem.
131 The italicized words are the writer's for classification.
132 Per Tobi, J.S.C., Inakoju v. Adeleke, supra, p1114-1115
133 Per Oguntade, J.S.C., Amaechi, v. I.N.E.C, (2008) 5 NWLR (pt. 1080) p.321
134 Ibidem, p. 454, per Aderemi, J.S.C.

> And so, when the Legislature, the custodian, is responsible for the desecration and abuse of the provision of the Constitutions in terms of patent violation and breach, society and its people are the victims and sufferers; and in this particular context the Oyo State society and the respondents particularly the 3rd respondent.' [135]

No doubt, the truthful picture of the Oyo State Legislature as painted above by the Supreme Court, is sordid. Against this gloomy atmosphere, the court offers an antidote:

> 'Fortunately, society and its people are not totally helpless as the judiciary in the performance of its judicial functions under section 6 of the Constitution, is alive to check acts of violation, breach and indiscretion on the part of the Legislature. That is what I have done in this judgment. **I do hope that this judgment will remove the apparent wolf in the appellants as members at The House of Assembly at Oyo State. I am done.'** [136]

A tale of two cases

.Before delving into Dariye's case, this writer considers it imperative to have a comparative view of it and Ladoja's .Both cases are strikingly similar in many respects.

The panel of Justices that heard Ladoja's case is not wholly different from that of Dariye's. Three out of the seven Justices who heard the case of Ladoja also were part of the panel of seven Justices that heard the case of Governor Dariye.

In either of the cases, there was a unanimous judgement, though in Ladoja's case, Oguntade, J.S.C., dissented partially. His Lordship allowed the appeal partially. He, like his other six learned brothers, held that the jurisdiction of the court is not ousted, given the violation of the conditions precedent in section 188 (2) (3) (4) (9)[137] by the concerned legislators. But he set aside the judgment of the Court of Appeal in so far as it relates to the determination on the merit of the substantive suit. According to him, that part of the judgement is a nullity as the court below has no jurisdiction to give it.

On the facts, both cases are about the actions (or procedures) and proceedings of legislators bent on the removal of Governors. The facts of the cases may not be identical; they are however similar. However, the main issues are identicals:

> 'The central issue in this appeal is whether the actions of the 8 members of the Plateau State House of Assembly was in conformity, with section 188 of the 1999 constitution.'[138]

Similarly:

> 'The real question in controversy in this appeal is whether the removal of the 3rd respondent (Governor Ladoja) complied with section 188 of the 1999 constitution or whether it was in violation or in breach of that section.[139]

Still, in Musa v. Hamza:[140]

> "The important point in this appeal, he stressed, is the ouster of jurisdiction of the court in this matter as contained in section 170 (10) of the constitution. [141]

Both cases (Ladoja's and Dariye's) are birds of the same feather.

Facts of Dariye's case.

The Plateau House of Assembly has twenty four members. Between 25th and 26th July, 2006, fourteen members out of the twenty four members of the said House (including the Speaker and Deputy Speaker) cross-carpeted from the Peoples Democratic Party (P.D.P) under whose platform they were elected to the House in 2003 to Advance Congress of Democrats (A.C.D). Thereafter, removal process of Governor Dariye commenced on the 5th of October, 2006 with a Notice of allegation of gross misconduct served on him whilst the House had only ten members: fourteen members having cross-carpeted as said above. Suffice to say that the Notice of allegations of gross misconduct was signed by eight of the ten remaining members of the House. While the removal process lasted, eight out of the ten members supported and voted in favour of all processes of the removal of Chief Joshua Dariye as Governor of Plateau State on the 13th of November, 2006. Dissatisfied with the outcome, Dariye initiated an action at the High Court of Plateau State by originating summons filed on 27th November, 2006. The appellants (the concerned legislators) responded by filing a Notice of Preliminary objection on the 12th day of December, 2006 which was opposed by counter-affidavit. On the 15/12/2006 the trial High Court made the following order :

> 'Having considered the exigence of the time and the facts that this is an originating summons. I order that both parties submit their written briefs on the suit along with

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[135] Per Niki Tobi, J.S.C., Inakoju v. Adeleke, supra, p1115

[136] Ibidem. Italics mine for emphasis.

[137] C.F.R.N., 1999.

[138] Per Katsina- Alu, J.S.C., Dapialong v. Dariye, supra, p. 395

[139] Per, Niki Tobi, J.S.C (read lead judgment), Inakoju v. Adeleke (Ladoja's cases), supra, p.1086

[140] supra.

[141] Musa v. Hamza, supra, p.237

that of the preliminary objection. If it does not succeed, the substantive suit may be heard and considered. I rely on the procedure adopted in the case of Adeleke v. Oyo State Government.'

The appellants were not satisfied with the above order given by the learned trial judge, Damulak, J. and therefore appealed against same to the Court of Appeal. The 1st respondent (Dariye) filed a respondent's notice on the 21st day of December, 2006 and urged the court to invoke the provisions of section 16 of the Court of Appeal Act to hear both the Preliminary objection and the originating summons together. It should also be noted that the appellant did request the Court of Appeal to also invoke its power under section 16 of the Court of Appeal Act to hear and determine the preliminary objection in the "Reliefs Sought" in their Notice of Appeal to the Court of Appeal. At the end the Court of Appeal determined the appeal, the preliminary objection and the originating summons in the judgement subject of the instant appeal. The Court of Appeal dismissed the appellants' appeal as well as the preliminary objection and granted the reliefs of the 1st respondent (Governor Dariye) in the originating summons, after a detailed consideration of the facts and issues involved and arguments of both counsel thereon in their respective briefs of argument filed in the matter. In acting as stated above, the Court of Appeal was exercising its power under section 16 of the Court of Appeal Act. The appellants still aggrieved have further appealed to the Supreme Court.

Treatment of Issue

The central or basic issue in this case is as stated above, that is, the proper interpretation and determination of what constitutes the quorum of the Plateau State House of Assembly for purposes of removal proceedings under section 188 of the 1999 Constitution in view of the minimum and maximum numbers of any State House of Assembly in Nigeria as contained in section 91 of the 1999 Constitution; also to be considered is the interpretation of section 102 of the same Constitution dealing with vacancy in the House of Assembly.

The argument of the learned counsel for Dariye could be summed up as follows: He contended that by virtue of section 91 of the 1999 Constitution particularly the proviso thereto, it is mandatory that State House of Assembly in Nigeria must have a total membership of at least twenty four and not more than forty members; that it is not disputed that the Plateau State House of Assembly has twenty four and that two-third of twenty–four is sixteen members; that members envisaged under section 188 of the 1999 Constitution is not two-third of all members of the House of twenty four which is sixteen members; that the court should use the holistic approach to the interpretation of section 188 of the 1999 Constitution so as to determine the actual meaning of the word 'two-thirds of all the members of the House' particularly as the phrase is used in other sections such as 9(2) and (3); 143 (4) and (9) and also section 305; that the seats of the fourteen members of the House had not become automatically vacant by operation of law and that the case of Oloyo v. Alegbe[142] is not applicable to the facts of this case particularly as section 109 (1) [143]is different from 103 (1) [144] on which the case of Oloyo v. Alegbe[145] was decided.

The argument of the learned lead counsel for the appellants, Chief Gani Fawehinmi, SAN, is that the vacancy did not affect the capacity of the eight members to carry out the removal process as eight is more than two-thirds of ten members.

Judgement

The Supreme Court found as facts that the procedures and proceedings of the concerned law-makers in the bid to oust Chief Dariye from office were fraught with constitutional irregularities. It is clear that whereas the initiation of the removal process requires the signature of not less than one-third of the members of the House of Assembly on the notice of written allegation of gross misconduct against the Governor or Deputy Governor intended to be removed, the actual removal of the said Governor or Deputy Governor require the support of not less than two-thirds majority of all its members. The members of the Plateau State House of Assembly who sought to remove the State Executive Governor were in wanton breach of this section:

> 'Can it be said that the term **"one third of the members"** and **"two-thirds majority of all its members"** mean the same thing? If so why not simply use the same expression in the two subsections? I am of the view that the words used are very clear and very unambiguous and should be given their literal meanings, I am of the view that when subsection (s) of section 188 is compared with subsection (9) of section 188 it becomes clear that the expression of "the members" and "all the members" do not mean the same thing. I hold the further view that the expression "all the members" refers to the members and voting at the House of Assembly on any particular day after forming the required quorum for the transaction of legislative business which is 1/3 of all the members as provided for in section 96(1) of the 1999 Constitution. The same expression is used in section 9(2) and (3) in relation to

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142 (1985) 6 N.C.L.R, 61

143 1999 Constitution of Nigeria.

144 1979 Constitution of Nigeria.

145 Supra.

creation of state; section 143(4) and (9) in relation to the removal of the President or Vice President of the Federal Republic of Nigeria; section 188(9) in relation to motion to investigate the allegation; and section 305 dealing with the procedure for declaration of State of Emergency, all under the 1999 Constitution. In all the above situations, it appears that the intention of the framers of the Constitution is that the numbers of the members required to transact the particular business of the legislature is a percentage or proportion of the total number or the totality of the assigned membership of the House under the Constitution, in the instant case it is two-thirds of ALL the members of the Plateau State House of Assembly which is made up of twenty four members; that is 16. It is not in doubt that the word "ALL" means; entire, complete, the whole number of; everyone of;'[146]

In all, the Court held that the removal proceedings commenced and concluded by eight out of the members of the Plateau State House of Assembly was done in flagrant breach of the provisions of the 1999 Constitution; that the Court has jurisdiction to determine whether its jurisdiction was actually ousted - and its jurisdiction will actually be ousted only when those condition precedents are strictly observed.[147]

Conclusion

Removal proceedings and litigations arising thereof will always be an interesting theme in Nigeria, nay anywhere in the world. It is tucked into written constitutions to serve as a safety valve to check the excesses of the occupants of political office. As the aphorism goes, power corrupts and absolute power corrupts absolutely. The legislature, composed of the people representatives, under the tripartite arrangement of separation of power, is designated to check the excesses of the executive arm of government. However, this must be done within the dictates of the Constitution; otherwise, the exercise of legislative power (of removal of Governor or Deputy Governor), will result to legislative lawlessness - the very thing the Constitution sets out to prevent. The danger this poses, we have seen in the cases analysed in this paper, particularly that of Oyo State; wherein a so-called political godfather (no thanks to our politics of brigandage and thuggery) pulled the lever of political power in a manner reminiscent of buccaneers.

What would the situation have been like, supposing the courts, in a removal proceedings, have their jurisdiction removed without qualification? Anarchy, period.

The law aside, is it not more in accordance with common sense that power (here the power to remove a Governor or Deputy Governor) should be bridled by the courts. Democracy simply means power (and exercise of it) based on law (the Constitution).

Indeed, like in Amaechi v. I.N.E.C., the Supreme Court rose to the occasion and, commendably expounded the law.

As this writer was about concluding this paper, a legislative magic happened in Ogun State on September 6th 2010. It has happened again- legislative lawlessness! This time around it is the House of Assembly of Ogun State of Nigeria. The House for sometime now has been in a row with the State Executive Governor over the approval of one hundred billion naira bond, the bond of which the Governor desire earnestly to get from the stock market. The House of Assembly is constituted of twenty six members. Fifteen members are against the Governor obtaining the said bond, of which the Speaker is part of. In a move typical of Nigeria politics and politicians, members of the House, alleged to be loyal to the Governor, stunned people in sane societies. Nine members of the House purportedly removed the Speaker of the House, and fourteen others.

A new Speaker was purportedly appointed. Subsequently, it was alleged that the controversial bond was approved. Among many questions begging for answers is: how many members of the House can validly and constitutionally remove the Speaker against the provision of section 92 (2) (c) ? [148] Lest we forget, it was also reported that the purported removal of the Speaker and others were conducted without the Mace of the House! In respect of removal of the Speaker, the Constitution stipulates that two-third majority of the members of the House can conduct this. Is nine the two-third of twenty-six? This writer ask the question that Niki Tobi, J.S.C., in Inakoju v. Adeleke, rhetorically queried – is the Speaker a cleaner in the Oyo State House of Assembly that can be removed just by the asking?

As the country turns fifty years of nationhood (and the year 2011 being an election year) ugly incidents like this should agitate our minds, if indeed we want real democracy, otherwise we shall continue to have a different variant of democracy – the type late General Sanni Abacha (may his soul rest in....) wanted for Nigerians. It is called home-grown democracy, only the soil of Nigeria can grow such.

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[146] Per W.S.N. Onnoghen, J.S.C., delivering the lead judgement, Dapialong v. Dariaye, supra, p.393

[147] Section 188(2) – (9), C.F.R.N., 1999

[148] C.F.R.N., 1999; see The Punch Newspaper Wednesday Sept 8, 2010, p. 54; The Punch Newspaper, Monday Sept., 13, 2010, p. 11