

AN APPRAISAL OF THE CONSTITUTIONAL POWERS OF A GOVERNOR TO
SUSPEND OR REMOVE THE STATE CHIEF JUDGE

Akanmu Jamiu Aralamon²¹³

ABSTRACT

In a democratic system of government, the constitution usually vests powers in the hands of State governors to appoint, suspend or remove a chief Judge of the state, for having been incapacitated in the performance of his/her duties due to factors such as gross misconduct, sickness, or miscarriage of justice.

The constitution is a grundnorm in which every power and authority in the State is rooted, and all other laws are subject to its provisions therein. Thus, enacted rules and powers which contravene the provisions of the constitution will be considered null and void.

Furthermore, it is on the plethora of the constitutional powers, that formulate the principles of separation of powers for the administration of government are grounded. The principles entails that, no organ of the government should interfere with the duties, and powers of the other, and Nigeria in its constitutional authority, provided the powers and procedures to appoint, suspend, or removing of the sitting chief Judge of a state in the federation, and specifically in chapter VII (7) of the Constitution of the Federal Republic of Nigeria 1999, as (amended) 2011.

Therefore, this paper will feature introduction, doctrine of checks and balances, Power of a governor to appoint and remove a Chief judge, grounds for the removal, and conclusion.

²¹³ Osun State University; akanmujamiu2020@gmail.com

Keywords: Power of Governor to appoint and remove a Chief judge, Conditions for the removal of a chief Judge, and conclusion.

1. 0. INTRODUCTION

The removal of judicial officers from office over misconduct by the executive is not new, and there are myriad precedents at both the federal and state levels. Sometimes around January 2019, the formal President Muhammadu Buhari suspended the then Chief Justice of Nigeria, Walter Nkanu Samuel Onnoghen, over an allegation of false declaration of his assets, an action in contravention with the provisions of the constitution, and he was immediately replaced by Justice Tanko Muhammad as the acting chief justice.

This action, which seems invidious to some parts of the people, generated quite a lot of constitutional crisis, while the nub of the issue surrounding the controversy was whether the suspension was in fact executed in accordance with due process.

The suspension, however, does not indicate an end to further removals, whose validity and legality are subject to debate. The same recurred at the state level.

In Kwara State, around 2009, the then Kwara State Chief Judge, Justice Raliat Elelu Habeeb, was suspended by Governor Bukola Saraki during his administration. Abia State Chief Judge in 2018, Justice Theresa Uzokwe was also suspended over judicial misconduct, an allegation that was later affirmed and was subsequently sacked by the National Judicial Council. The recent faction between the judiciary and the executive in Osun State over the purported suspension of the State Chief Judge, Justice Oyebola Ojo, for alleged gross misconduct is another.

This particular issue has sparked different public reactions and preconceptions on the legality of her suspension by the governor.

The essence of this article is to unravel and examine the constitutional validity or otherwise of the power of the governor to appoint and suspend the Chief Judge of the State.

2.0. THE DOCTRINE OF CHECKS AND BALANCES

The three branches of the government, in the process of discharging their functions, have been subjected to different allegations of misconduct, embezzlement, and excessive abuse of authority, which, if go unchecked, is capable of bringing about the total breakdown of the rule of law.

Hence on the basis of the doctrine of checks and balances, which arises as an outgrowth of the classical theory of separation of powers, the powers of the three branches of the government are not absolute and are subject to review and checks.

The purpose of the doctrine is to ensure that governmental powers will not be used in an abusive manner. Checks and balances are the constitutional controls that separate branches of government to ensure that they have limiting power over each other so that no branch will become supreme or encroach on and exercise the power of another, and each arm serves as a check on the misuse of power by the other, hence, in all of our constitutions, the judiciary, executive and legislature are clearly separated and entrusted to a separate organ or body, for instance;

Section 4 vests the legislative powers of the Federation in the hands of the National Assembly, which consists of a senate and a House of Representatives.

Section 5 vests executive powers in the presidents and the governors. Section 6 vests judicial powers in the courts established by the constitution.²¹⁴

3.0. THE CONSTITUTIONAL POWERS OF A STATE GOVERNOR TO APPOINT A CHIEF JUDGE

The governor of a state wields and enjoys a great deal of significant executive powers, such as the power of appointment and removal, prerogative of mercy, making of regulations, and immunity from legal proceedings among others.

It is necessary at this stage to ask whether the powers of the governor also extend to the power to appoint, suspend, or remove a Chief Judge of a State.

The virtue of the provisions of Sections 270(2)(a) and 271(1) of the 1999 Constitution establish the office of a State Chief Judge, whose appointment shall be made by the Governor of the state on the recommendation of the National Judicial Council, subject to confirmation of the appointment by the House of the Assembly of the State.²¹⁵

Section 271 states that;

(1) The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council, subject to confirmation of the appointment by the House of Assembly of the State.

²¹⁴ The Constitution of the federal Republic of Nigeria 1999, (Amended)2011.

²¹⁵ Ibid no. 1.

The wording of the above section attests to the fact that a governor lacks executive power to directly or single-handedly appoint anyone of his choice as the State Chief Judge unless the National Judicial Council first recommends such and the House subsequently consents and confirms the same.

The National Judicial Council is an integral part of the judicial system in Nigeria according to Section 158 and paragraph 21²¹⁶ which grant provisions for the powers and functions of the National Judicial Council such as, recommending the appointment of judicial officers, exercising disciplinary action over judicial officers; and recommending the removal of judicial officers among others. Hence, an appointment of a Chief Judge of a State by a governor without the above process remains invalid, **unconstitutional, and cannot stand. Now that the governor's power to** appoint the Chief Justice of the state in conformity with the provisions of the constitution has been established, it needs to be further stretched here to determine whether such power should be construed to include the power to remove or suspend the Chief Judge of the state.

And since it is not new that the executive branch is usually the body that appoints and inaugurates natural persons to office, therefore, it is not far-fetched to say that where any appointee conducts himself in a manner that the appointor finds unacceptable, the latter may not hesitate in his power to fire him. However, there are instances where an appointor cannot directly remove a default officer without first recourse to another body.

²¹⁶ The third scheduled of the Constitution of the Federal Republic of Nigeria 1999 (amended) 2011

4.0. POWERS OF THE STATE GOVERNOR TO REMOVE CHIEF JUDGE AT THE STATE LEVEL

The state Governors, being the chief executive officer of the states, are saddled with powers not limited to the execution of the governmental policies, but also to appoint and remove any judicial officer who by virtue of either disease of the mind, or body making him incapable of performs his official duties, then the chief executive officer of that state can judiciously and judicially remove that sitting judicial officer, and also replace him accordingly with the recommendation of the Judicial service commission of that state, and approve therein by the state house of Assembly of that state.²¹⁷

5.0. GROUNDS FOR THE REMOVAL OF A CHIEF JUDGE

The removal of judicial officers from office, shall not been on mere speculation as its stands, but rather rooted in a reasonable ground, and with authorized power to do so.

- Incapable to perform official duties:

A sitting chief Judge or judicial officer of a state, who is incapable of discharging his official duties as required of him to perform diligently for the administration of justice for that state, either due to insanity, sickness, or misconduct, contrary to the code of conduct, can be removed by the state Governor subject to the Power vested on him to do so, by the constitution.²¹⁸

²¹⁷ Section 292(1)(a) ii, of the Constitution of the Federal Republic of Nigeria 1999, (Amended) 2011.

²¹⁸ Ibid no.4

- Acting and representing Clients before a court, or Tribunals:

An active chief Judge of a state, can also be removed from sitting as a chief Judge of a state, where it is firmly assured that, he stands before any court of Law, or Tribunals, representing a litigants of either prosecuting, or defending such clients in judicial litigation, then he is entitled to be remove by the Governor of that state therein.²¹⁹

Therefore, the first condition that must be satisfied in the process of removing a judicial officer is that the Governor, acting on the recommendation of the Judicial Council, that the judicial officer be so removed for his inability to discharge his functions arising either from infirmity of mind or body or for misconduct or contravention of the code of conduct.

However, where there is no such recommendation of the National Judicial Council, the governor shall be acting on an address supported by a two-thirds majority of the House of Assembly of the State, praying that he be so removed for his inability to discharge the functions of his office or appointment arising either from infirmity of mind or of body or for misconduct or contravention of the Code of Conduct.

Hence, any removal or suspension of the judicial officers with disregard to the above mandatory process will be void and be pronounced unconstitutional notwithstanding the provisions of Section 11 of the Interpretation Act,²²⁰ which confers upon an appointor the power to appoint as well as the power to remove or suspend at the same time as this Act is of no any effect and totally irrelevant to this instant case having regard to the supremacy of the constitution over any other

²¹⁹ Ibid no. 4, Subsection (2).

²²⁰ Interpretation Act, 2004.

statute or act and being the groundnorm by the virtue of Section 1(3) of the 1999 constitution as amended with which other enactments derive their validity from, and as such that any inconsistency with it shall be declared void.

The Court in *ADESINA OKE & ANOR v SHITTU ATOLOYE & ORS*²²¹ affirms the irrelevance of the Section 11 of the interpretation act in interpreting the power of suspension over judicial officers since the constitution contains express provisions on the disciplinary power over judicial officers.

The proper approach of the court to interpretation of statutory provisions, as held by the Court of Appeal in the case of *VISITOR IMO STATE UNIVERSITY v OKONKWO&ORS*,²²² it is trite law that provisions of a constitution or statute must be construed literally, giving the words in such a constitution or statute their ordinary grammatical meanings, unless that would lead to some absurdity.

There are considerable numbers of precedents in support of the compulsory constitutional requirements the governor must satisfy before proceeding to remove or suspend the Chief Judge of the State.

The law is settled in the case of *Elelu-Habeeb & Anor v A.G. Federation & Anor*²²³, The Court held that the Chief Judge of a State cannot be removed under any guise without recourse to the National Judicial Council.

²²¹ 1985

²²² (2014) LCN/6823(CA)

²²³ (2012) 12 NWLR.

Also, in *Nganjiwa v FRN*,²²⁴ the court reiterates that any misconduct attached to the office and functions of judicial officers must first be reported to and determined by the National Judicial Council.

In other words, an unlawful and unconstitutional removal that is either politically motivated, malicious, or for other ludicrous and unreasonable excuses that is not within the ambit of the laid down procedures enshrined in the constitution is a blatant violation and abuse of the rule of law, a judge in Nigeria shall not be removed without the involvement of the National Judicial Council, the Senate, or the State House of Assembly, as the case may be, regardless of the level of the allegations of misconduct.

CONCLUSION

In conclusion, the significance of the provisions of Section 201 and 292 in the administration of government is to offer transparency in the process of the operation of law and to ensure strict adherence to the rule of law and the means of upholding the rule of natural justice by holding defaulters accountable and facing the consequences of their act of insubordination in accordance with the provisions of the constitution.

The judiciary being the last hope of the masses in the pursuit of justice must be fair and free from every misconduct and impropriety and must be ready to portrays and upholds the course of law to ensure proper dispensation of justice, a judicial officer occupies a very unique and sacred position

²²⁴ (2017) LPELR-43391.

in the society, occupying this position means that a high level of integrity, honesty and accountability is expected from judicial officers.