

## JUDICIAL REVIEW OF GOVERNORS' LADOJA AND OBI IMPEACHMENT IN NIGERIA'S FOURTH REPUBLIC

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### ABSTRACT

*Impeachment proceedings in the 1999 constitution are expectedly not subject to judicial intervention, ostensibly not to prolong the process. However, consequent upon this legal immunity, legislative arm that is constitutionally saddled with the responsibility became reckless because of legal preclusion. Without regard to due process, two Governors, Rased Ladoja and Peter Obi of Oyo and Anambra States were impeached respectively. In spite of legal immunity enjoyed by the legislature in the impeachment proceedings, the two Governors challenged their impeachments in courts and were reinstated. The study that relied on documentary sources concludes that impeachment proceedings are no longer absolutely precluded when due process is sidelined. The work therefore recommends the need to amend Sections 143 (1-11) and 188 (1-11) of the 1999 constitution to strengthen due process in order to avoid frivolous impeachment*

### INTRODUCTION

Impeachment as both constitutional and political arrangement meant to remove erring public officers from office for gross misconduct or gave violations of the constitution became part of the nation's quasi judicial cum political lexicon in the Second Republic when Nigeria embraces American's presidential system.<sup>1</sup> As a result of the entrenchment of immunity clause in Nigerian constitution particularly in Section 308 of 1999 constitution to prevent undue frivolous litigants<sup>2</sup> from hamstringing chief executive at state and federal levels, impeachment clause was enshrined to checkmate arbitrariness and abuse of powers on the part of immune officers with a view to ensuring and assuring political stability, public accountability and transparency in governance.

Hence, impeachment was enshrined in Sections 170, [1-11] and 132 (1-11) and Section 143 (1-11) and 188 (1-11) of 1979 and 1999 constitutions respectively. These sections state the procedure for the removal of the chief executives at both the federal and state levels. A critical comparison of the provisions in the two republics' constitution uncovers some fundamental differences in the provisions and procedure. Whereas, in the Second Republic, the removal of both the President, Vice President and state Governor and Deputy was restricted to the business of the legislature, for example Sections 170(5) and 132(5) empower the Senate President and Speaker of the House of Representatives to constitute the seven man committee who in his opinion are of unquestionable integrity to investigate the allegations of gross misconduct level against the President, Vice President Governor and Deputy Governor<sup>3</sup>. However, in the 1999 Constitution this was changed. The Chief Justice of the federation and Chief Judge of the state are empowered to constitute the seven man panel of investigation. Thus, impeachment which was absolutely a political instrument that restricted all the processes involved to the legislature in the second republic, now assigns role to the judiciary in the impeachment procedure in the fourth

republic. This is why impeachment is now regarded as quasi judicial and political instruments designed to prevent and violation of the constitution by political office holders.

The focus of this paper is on Section 188 (10) which precludes judicial intervention in the impeachment procedure. The subsection forecloses the proceedings or determination of the seven man panel and that of the House of Assembly or related matter to the impeachment from being challenged in any court of law.

The paper, therefore, looks critically at this sub-section in the history of impeachment in Nigeria and specifically using case study approach and documentary method thereby relying on secondary sources to examine the eventual reinterpretation and review of the subsection by competent courts and judges in the face of irrational and unreasonable abuse of the subsection by the stakeholders in impeachment process. The review changes the phase of judicial enslavery and legislative rascality in impeachment cases in Nigeria . The paper samples two cases of impeachment of the state chief executives out of the four cases they were reviewed by judiciary in Nigeria . These two cases are: Impeachment of Ladoja and Obi. The paper analyzes two impeachment cases and make some recommendations.

### **HISTORICAL ORIGIN OF IMPEACHMENT IN NIGERIA**

Contrary to wide spread belief in Nigeria that the first executive governor of Kaduna state, Alhaji Abdulkadir Balarabe Musa was the first casualty of impeachment clause in Nigeria having being found guilty of “gross misconduct” by the State’s House of Assembly. However, the first to be impeached in Nigerian political history was the speaker of the then Ondo State House of Assembly, Chief Richard Jolowo. He was impeached after being found guilty on charges of dishonesty, high handedness and gross misconduct<sup>5</sup>. Again, the deputy to Alhaji Abubakar Rimi, the Second Republic governor of Kano state, Alhaji Abba Dabo was also removed from office.

While there were many threats of impeachments against public officers in the naiton’s second Republic, the public officers actually removed from office were: Alhaji Balarabe Musa, Abba Dabo, Chief Richard Jolowo. The experience of Nigeria since 1999 contrast sharply with the above. Beginning in July1999 when the House of Representatives began the impeachment process against the former speaker, Salisu Buhari, the impeachment of public officers is a frequent phenomenon in Nigeria .

Virtually all the chief executives of the thirty-six states of the federation have faced the threat of impeachment. Indeed, quite a number of these have been impeached. In the period under investigation, not less than 5 governors, 10 deputy governors lost their seats through impeachment. These governors are Diepre Alamiyesigha, Bayelsa, Ayo Fayose, Ekiti, Rasheed Ladoja Oyo; Joshua Dariye, Plateau, Peter Obi, Anambra. The deputies that were impeached include: Abubakar Argungu, Kebbi; Iyiola Omosore, Osun; Eyinnaya Abaraibe, Ebere Udeagu, Chima Nwafor, all from Abia State . Abiodun Aluko and Abiodun Olujimi, Ekiti State ; Okey Udeh; Anambra and Olufemi Pedro, Lagos State . The former deputy governor of Lagos state was removed at the tail end of his tenure<sup>6</sup>.

Not less than three deputy governors were also threatened with impeachment which eventually led to their resignation. They were: Kofoworola Akerele Bucknor, Lagos , Obong Christopher, Akwa-Ibom. The Deputy Governor to Niyi Adebayo in Ekiti state, Paul Alabi.

Other governors who fought the battle to retain their seat are: Chimaroke Nnamani of Enugu State . Maman Kachalla of Bornu State; Bisi Akande of Osun sTate and Boni Haruna of

Adamawa State . Only three governors of the period survived either threats or actual impeachment. They are Bola Ahmed Tinubu; Lagos , Orji Uzor Kalu; Abia and Olagunsoye Oyinlola; Osun State . However, the first two governors had the highest turnover of impeachment of their deputies. In Lagos State, for example, there were three deputy governors, two of which lost their positions to impeachments. In Abia, there were four deputy governors; three lost their seats to impeachment<sup>7</sup>.

It was the same story in the thirty six Houses of Assembly. Virtually all the Speakers or Deputy Speakers suffered either threats or actual impeachment in the period under study. For example in the following states: Abia, Oyo, Delta, Edo and Enugu speakers and deputies were impeached at the same time. In some other states, their speakers were impeached twice. These states include: Bayelsa, Borno, Kano and Sokoto. While in Ekiti; Lagos ; Katsina; Benue; Plateau and Cross Rivers they have had their speakers impeached once<sup>8</sup>.

In Ondo state, the State House of Assembly worked its way into the record books with the impeachment of its speaker, Victor Olabamitan on February 28, 2006 . Within 28 hours, the new speaker, Oluwasegunota Bolarinwa had been removed and Olabamitan returned to office<sup>9</sup>. At the National Assembly, it was not different. The first two Senate Presidents, Late C. Evans Enwerem and Late Chuba Okadigbo were impeached while the third one, Pius Anyim Pius escaped by the whisker. The fourth senate president, Adolphus Wabara hurriedly resigned to forestall impending impeachment. Also, the first Speaker of the House of Representatives, Salisu Buhari was to be impeached when he too resigned. He was accused of certificate forgery and age falsification. The successor, Umar Ghali Na'abba was severally threatened with impeachment. President Olusegun Obasanjo also survived several impeachment moves against him. The impeachment moves which started in August 2002 were alive till the end of his tenure<sup>10</sup>.

In the period understudy, not less than 20 speakers, 10 Deputy Speakers, five Governors, ten deputy Governors and two senate presidents were impeached. The president and his vice too also survived several impeachment moves.

### **JUDICIAL REVIEW AND IMPEACHMENT: A CONCEPTUAL CLARIFICATION**

The idea of separation of powers as advocated by a French philosopher Montesque, was to ensure that each arm of government performs, a distinctive function in order to avoid consolidation of powers of governance into one had which is capable of promoting tyranny and accentuate human rights violation. Hence, Montesque advocated that legislature must make the law, executive to execute the law made by legislature and the judiciary to interpret the laws in case of ambiguity between the makers and the implementors of the law. It is in this arrangement that human rights can be protected and good governance guaranteed<sup>16</sup>.

However, the idea of water tight separations is non practicable and visible in modern democracy, hence a complementary concept: checks and balances was suggested by another scholar. A.V Dicey. Nnaemeka states that the doctrine of (SOP) cannot operate as a weapon against tyranny, he further states that the only remedy to abuse of powers and safeguarding of human rights and prevent tyrannical use of power is through effective supervision of the administration<sup>17</sup>. He was suggesting that each arm of government must be a check on the other. Here lies the power of judicial review granted to the judiciary. Therefore, he describes judicial review as the judicial control of administration adjudication or of administrative bodies and their powers, actions and inactions generally<sup>18</sup>. Alabi sees it as the exercise of judicial power to

curtail the actions and inactions of the other coordinate agents of government<sup>19</sup>. Oluyide and Aihe state that judicial review is the declarations of acts of a public authority that is in excess – ultra vires of the powers conferred by the enabling law, or if the power is used improperly, or taking into consideration matters that are irrelevant to the issue as null and void<sup>20</sup>.

Evans sees it as the judicial scrutiny of questions of vires and jurisdiction of law and facts. He states that the obligation to act fairly and to observe the rules of natural justice and the principles must be observed in the exercise of statutory discretion.

Nnaemeka, however, distinguishes between the administrative review of judicial and quasi judicial body on human rights and appeal. According to him, the appellate court is empowered to look into cases from the lower court or tribunal and consider it on its own merit and takes a judicial position or decision. When a decision is taken to set aside the decision of a lower court or tribunal then, the appeal court upturns the position of the lower court. Hence, what happened here is setting aside of the decision of a lower court by the appellate court<sup>21</sup> not a review of its action. In this case, the correct decision is made.

Unlike appeal, judicial review is the control and declarations as unconstitutional the actions and inactions of judicial, quasi-judicial and administrative body by judiciary<sup>22</sup>.

On the origin of the concept, Emiola traces it back to when common law was introduced or formed. This could be traced to the 17<sup>th</sup> century when the courts established that the actions or inactions of the King will be determined by the court<sup>23</sup>, it then means that as from that moment the ‘royal prerogative’ has been subjected to the review by court. Thus, the review as was conceived then and now questions the validity of the exercise of powers in accordance with the enabling statute and acts<sup>24</sup>.

On why actions and inactions of administrative bodies, judicial or quasi judicial decisions are reviewed by courts, Nnaemeka outlines the following conditions:

- a. exercise of the invested power illegally and unconstitutionally;
- b. not been rational or reasonable with the exercise of power;
- c. lack or problem of fair hearing;
- d. negatively bias towards a party in disputes;
- e. abuse of power and acting in bad faith;
- f. improper procedure in handling cases and matters

Emiola (2002) states five principles that serve as guide’s to judicial review. These are:

- a. They should not be treated as appeal
- b. Not a substitute for judgment of the body for which is decision is being reviewed
- c. The focus of review should be on the procedure and not the decision.
- d. The determination should be on legality and not on correctness of action or inaction
- e. Merits of the target activities are not the business of the court<sup>25</sup>.

## IMPEACHMENT

Impeachment as a weapon to check abuse of powers by political office holders is popular in presidential democracy. It is a measure meant to checkmate arbitrariness on the part of the immune political office holders. The immune office holders are usually governors, deputy governors, president and vice president. The concept has generated a lot of arguments among scholars, analysts and public commentators. For example, Shafritz in the study of the operational meaning of impeachment, simply says, it is a formal accusation of public officers for wrong doing. He goes further to states that the public officer must be involved in crimes and misdemeanors in the execution of his duties.

However, Omotola, in his study of impeachment as threats to Nigeria's democracy disagrees with Shafritz's conceptualization. According to him, this is an attempt to water down the weight and complexities of the phenomenon. He states that impeachment goes beyond mere accusation of crime leveled against public officers in the discharge of his duties but entails the whole network of complexities involved in the process by which the erring public officers are removed from office<sup>27</sup>.

The above is in line with Lipset idea of impeachment. He sees it as both legislative and political arrangement designed to remove public office holder after being found guilty of gross misconduct. He explains that impeachment has to do with: The method by which government officials may be removed from office when they have been formally accused of crimes on misconduct... it is usually initiated by the lower house of a legislature and is followed by trial and sometimes conviction by the upper house<sup>28</sup>.

Akinsanya in his comments and analyses on the impeachment of the first executive governor of Kaduna state, Balarabe Musa describes impeachment as potent weapon usually employed by the legislature to ensure effective control over the chief executive or his deputy by removing him from office for "gross misconduct in the performance of the functions of his office". This includes "a grave violation or breach of the provisions of the constitution or a misconduct of such nature as amounts in the opinion of the National Assembly or of the House of Assembly to gross misconduct"<sup>29</sup>.

Oshilaja on how difficult it could be to remove public officers from office through impeachment states that impeachment is both political and constitutional arrangement directed at removing erring public officers from office. However, he goes further to state that for it to be an effective weapon of the legislature to checkmate the executive, it has to be subjected to various political and constitutional interpretations before public officers can be removed from office. Oshilaja emphasizes that, it is a political instrument employed by legislature because that what constitutes operational definition of impeachable offences is at the mercy of the legislature<sup>30</sup>.

Arguing along the same line, Aiyede (2006) in his study of the legislative – executive relations in Nigeria's democracy with emphasis on second and third republics explains that impeachment is a legislative instrument that empowers it to protect and guard against the violation of the people's right by other branches of government or forces outside the government. Aiyede further states that, impeachment is one of the measures meant to strengthen legislature to be able to perform its assigned role of controlling the executive. He explains that it is because of this that the legislature is clothed with both power and authority to remove an erring president from office on the account of gross misconduct. To him, courts are disallowed from entertaining any cases on impeachment action. Aiyede added that what constitutes gross misconduct in the process of impeachment is solely determined by the legislature<sup>31</sup>.

### **IMPEACHMENT OF GOVERNOR LADOJA OF OYO STATE**

The purported impeachment of Governor Ladoja was orchestrated by crisis of confidence between him and his godfather, Late Lamidi Adedibu referred to as the strongman of Ibadan politics. The man was believed to have worked for the victory of the governor against all imaginations and the popularity of Alliance for Democracy [AD] not only in Oyo State but also in the Southwest. No sooner that Governor Ladoja settled down than crisis ensued between the two on the selection of commissioners. The godfather had opted to be allocated some positions<sup>32</sup>.

However, the governor was reported to have instructed his loyalists who he actually wanted as commissioners to register with Lamidi Adedibu as if they were Adedibu's nominees. He was said to have been aware of this political tricks. Of all the commissioners appointed in the state, that time, the commissioner of Justice and Attorney General was said to be a true loyalist of Adedibu. Besides this, the rebuffed of the desire of the godfather to allegedly wanted to deep his hand into the state treasury was also a bone of contention between the godfather and godson. Hence, cumulative offences and affront of Ladoja to permit Lamidi Adedibu to operate without limit led to open confrontation. In the ensued battled for supremacy, the two of them polarized the State House of Assembly. This led to change in the leadership of principal officers penultimate to the impeachment crisis.

The House was polarized into two factions. One faction made up of the 18 members was loyal to Adedibu and the other 14 members loyal to the governor.. The attempt to remove the governor was greeted with violence between the two camps. The premises of the House of Assembly at Agodi was literally turned into battle ground. Hence, the pro impeachment group made up of 18 members in a 32 state Assembly member moved their plenary session to an high brow hotel in the state, De Rovon Hotel, along Ring Road Ibadan . It was in this hotel that the group compiled and purportedly served the notice of allegations of impeachment on the governor.

The Notice of Allegations of Misconduct compiled by the 18 lawmakers include:

**1. Conflict of interest**

That the governor is a director in Standard Trust Bank and a major shareholder of the Bank with direct shareholding of N8,677,800.00

- Operating a current account in the bank with debit as at 24<sup>th</sup> December the day he won the gubernatorial election.

- Opened an account No. 00849378601106 at the Standard Trust Bank.

- Still remained in the management of the bank even when he was sworn in as the governor.

**2. Fraudulent Conversion of Public Funds**

- Diversion of local government allocation from the excess crude oil reserves into the said account No 00849378601106 at the Standard Trust Bank from August 2003 to May 2006.

- Non disbursement of the Excess Crude oil fund to the Local Government. "(Details attached)"

3. - The establishment of Oyo Road Maintenance Agency was created in 2004 without the consent of the State House of Assembly.

4. Operation of Foreign Accounts

**5. Sponsorship of Attack on Honourable Members of the House of Assembly.**

6. Undermining the Integrity and constitutional powers and functions of the legislature.

7. Undermining the Integrity of the Judiciary by preventing the swearing in of one Mr. Joshua Akintayo, the candidate of the Alliance for Democracy(AD) who was the elected chairman of Ibarapa East Local Government having been declared as the by the Election Appeal Tribunal.

8. Acts of unbecoming of a Governor of Oyo State.

After the compilation of the Notice of Allegations of misconduct by the 18 pro impeachment lawmakers, a letter dated December 9, 2005 and published in Nigerian Tribune of December 14, 2005 entitled "Notice of Allegation of Gross Misconduct against Senator Adewolu, Rasheed Ladoja Executive Governor of Oyo State, pursuant to Section 188 of the

constitution of the Federal Republic of Nigeria” was addressed to the Honourable speaker of the Oyo State House of Assembly informing him of the compilations of the notice by “not less than 1/3 of all the members of the Oyo state House of Assembly, hereby notify you pursuant to Section 188(2) of the constitution of the Federal Republic of Nigeria of the Notice of Allegations of Senator Rashidi Ladoja.<sup>34</sup>

However, in a swift reaction, the Oyo state Speaker in another publication in the same newspaper denied receiving any notice of allegations of gross misconduct against the governor from any person or group of persons. He, therefore, urged the members of the public to disregard the said publication.<sup>35</sup>

In another advertorial, a member of Group 18, who was appointed ‘deputy speaker’ at the De Rovon Hotel, Mr. Taiwo Oluyemi Adewale, Signed a letter conveying the Notice of Allegations of misconduct to the Governor, Senator Rashidi Ladoja. The letter is hereby reproduced. I hereby write to convey to you the receipt of the enclosed Notice of impeachment from the majority of the House of Assembly.<sup>36</sup>

The said Notice is hereby forwarded to you for your reaction in compliance with Section 188 (a and b) of the constitution of Federal Republic of Nigeria.

The notice of allegations of misconduct was in piece meal in Nigerian Tribune Newspaper for about three editions of the newspaper. Thereafter, the “Deputy speaker” forwarded the Notice of Allegations of Gross Misconduct to the Acting Chief Judge of Oyo State, Justice Afolabi Adeniran urging him to set up a seven panel as contains in Section 188.

To forestall the setting up of the panel and stop any further action, in the impeachment process, two actions were taken, first, an originating summon was brought before the Oyo State High Court and writing of a letter by 14 members loyal to Ladoja to the acting chief judge of Oyo state dissociating themselves from the so called Notice of Allegations of misconduct against Ladoja. They informed the Acting Chief Judge that there was never a congregation of the house where such decision was taken. They therefore urged him to disregard the purported notice as illegal and unconstitutional. The chief judge however, disregarded these two actions and set up a seven man panel of Investigation and directed it to look into the allegations as contained in the notice forwarded to him. The panel was made up of the following personalities.

1. Mr. Bolaji Ayorinde Esq SAN
2. Mr. Segun Ali
3. Mrs. E. A, Adegboye
4. Mr. John Alabi
5. Alhaji Sikiru Adetoro
6. Imam M. A, Adebayo<sup>37</sup>

The seventh member was said to have declined his nomination and his name was not made public. The Governor was represented by his counsel Mr. Yusuf Ali (SAN) who claimed that his client was never served with the impeachment notice as alleged and therefore urged the panel to stop the process.

However, against public outcry and tension in the polity, the panel wound up and submitted its report of guilt passed on the governor to the acting chief Judge who subsequently forwarded same to the “Deputy Speaker”. The 18 pro impeachment law makers acted on the report and Governor Ladoja was consequently impeached. The Deputy Governor, Adebayo Alao Akala was sworn in as the governor of the state.

### JUDICIAL REVIEW OF LADOJA'S IMPEACHMENT

In the bid to forestall a situation of being illegally removed from office, Governor Rasheed Ladoja opted to challenge his impeachment in Oyo state High Court. His lawyer, Mr. Yusuf Alli (SAN) filed an application in the court. The ground of the originating summon before the court was to seek for an order to prevent the acting Chief Judge of Oyo State, Justice Afolabi Adeniran from constituting a seven man panel of investigation enquiry to look into the purported notice of allegations of misconduct against him<sup>38</sup>. Others were also joined as co defendants. These were the House of Assembly as an entity, the members of the House of Assembly and the clerk of the Oyo State House of Assembly<sup>39</sup>.

The application entitles "In the matter of interpretation of the constitution of the Federal Republic of Nigeria 1999, sought other reliefs:

1. Order of the court setting aside and or undo the act of the then Chief Judge of Oyo State, Justice Afolabi Adeniran purporting to set up a seven man panel to investigate any alleged act of misconduct, the applicant in violation of the rule of law, the constitution and the judicial oath.

In the alternative, the originating summon states that: an order directing the chief judge known as 34<sup>th</sup> defendant to forthwith stop and order the 6 man panel set up by his lordship from sitting, taking steps or do any other thing on the investigation of any alleged acts of misconduct against the applicant until this Honourable court otherwise orders or the disposal of this action AND for such further or other orders as the Honourable court may make in the circumstance. This application was supported by an affidavit deposed to by one Tokunbo Oworu a legal practitioner in the Chamber of O.A. Abioye and Co. and sworn to at High Court Registry Ring Road, Ibadan

In a counter affidavit, the defendants questioned the rationality of judicial intervention on the weight of Section 188 (10) of the 1999 constitution which says that: no proceedings or determination of the panel or of the House of Assembly or any matter relating to such proceeding or determination shall be entertained or questioned in any court.

The counsels to the parties in dispute argued the case before Justice Ige. The carnal of the argument of both appellant and the respondent in this impeachment case was either the power of judicial intervention or against it as contains in Section 188 (10) which precludes judicial intervention in impeachment cases. The respondent states that for court to intervene in impeachment matter is to usurp the function of the legislative. The appellant maintains that due process have not been followed in the bid of a faction of the State House of Assembly to remove him. However, after the submission of the two parties, Justice Ige consequently dismissed the case on the ground that he lacks jurisdiction.

As a result of the inability of Governor Ladoja to secure justice at the lower court, he filed an appeal at the Court of Appeal, Ibadan Division. The case was heard and determined by five justices of the Appeal Court. They are; James Ogeniyi Ogbebe [chairman], Kinai Bayan Akaahs, Christopher M. Chikwuma –Eneh, Clara Bate Ogunbiyi and Ja'Afford Mikailu. The unanimous judgment of the court was delivered by Justice James Ogeniyi Ogbebe. The Appeal Court judgment rubbished the positions of the lower court on its stance on Section 188 (10) and other complaints brought by the Governor. The judgement entitled "Ladoja's Impeachment a Nullity".

After the judgment of the appellate court that reinstated Ladoja, the 18 lawmakers pro impeachment group filed an appeal at the Supreme Courts seeking an order of the apex court

to dismiss and set aside the judgment of the Appeal Court, Ibadan division and uphold the impeachment of Ladoja as carried out by them. However, the Supreme Court upheld the judgment of Appeal Court and ordered the reinstatement of Governor Ladoja without delay.

It should be noted that the review of Ladoja's impeachment was a landmark in Nigeria's judicial history as far as Section 188 (1-11) is concerned. Both the Appeal and Supreme Court faulted the Ouster clause as contained in Section 188(10). The two courts maintained the position that the intervention of the judiciary is foreclosed only if sub sections 1-9 are complied with in the impeachment process of both the governor and the deputy governor. The appellate position on the ouster clause is that, where any of the nine sub sections of Section 188 had been violated, a court has a duty to exercise its inherent powers to intervene. A court is the primary custodian of the constitution and if any arm of the government, including the court itself, acts unconstitutionally, the court has inherent power under Section 6(6) of the 1999 constitution to intervene.

### **IMPEACHMENT OF PETER OBI**

The man Obi, the Anambra state Governor could be described as a man with nine lives. He had suffered so much in his attempt to govern Anambra state. He has been in courts more than any other Governors (past or present). In the first instance, he was for about three years at the Election Petition Tribunal to challenge the validity of the election of Chris Ngige who was declared by INEC as the governor. He was also in court to sort out tenure determination. He was successful on the two occasions. The third attempt was to challenge the legality of his impeachment.

Therefore, it is not a surprise that, he ran into crisis with some interest groups who wanted him out at all cost. Having being difficult to deny him the mandate given to him by the majority of Anambra people, the only option is to invoke Section 188 (1-11) of the 1999 constitution to remove him from office. Hence, the failed desire to co-opt him into PDP from APGA and the desperation by the PDP to install a sympathizer who will work for Andy Uba's gubernatorial ambition fuelled the impeachment crisis.

Prior to the impeachment, there was factionalisation of the House of Assembly members into two groups. The pro and anti impeachment groups. The pro impeachment group was under the control of the speaker Mr. Mike Balonwu while the anti impeachment group was led by Mr. Chuks Nwosu. The group was made up of 15 and 13 members respectively. The pro impeachment group moved outside Anambra State to an hotel in Asaba, Delta State where they compiled their notice of allegations of misconduct against the governor<sup>43</sup>. The notice claimed to have been purportedly served on the governor contains the following allegations:

1. Violation of oath of office and constitutional obligations
2. Influenced the placement of huge sum of money belonging to Anambra government in Fidelity Bank Plc, a bank the governor has an interest as the immediate past chairman.
3. Violation of fifth schedule of the 1999 constitution by allowing his personal interest to conflict with official duties and responsibilities.
4. Award of contract to his Kinsman Mr. Anthony Akpolo for the construction of the business village without due process.
5. Award of contracts to his loyalists at a cost far exceeding the normal cost without due process the contract awarded to his campaign manager was particularly mentioned.

6. Inability to show concern for the victims of Onitsha crisis as a result of his shoot at sight order<sup>44</sup>.

These allegations were signed by 15 lawmakers and sent in the form of advertorial in some selected newspapers to governor Obi. A copy was also sent to the Anambra State Chief Judge, Justice Chuka Okoli to constitute seven man panel to investigate the allegations. The Governor headed for the court to challenge the legality of the process of his impeachment. An high court in Awka actually ruled against any attempt to remove the governor.

However, all the attempts made by Obi to stop the impeachment failed as state Chief Judge, Justice Chuka Okoli set up a six man panel as against seven provided for in the constitution. The State Assembly too, defied judicial order to stop the impeachment process. He was consequently removed by less than 2/3 members of the assembly. The governor later filed an originating summon at an Awka High Court to challenge his removal from office<sup>45</sup>.

### **JUDICIAL REVIEW OF PETER OBI'S IMPEACHMENT**

Like Governor Ladoja of Oyo State , Peter Obi had sought some reliefs from the Anambra State High Court, Awka seeking the court to declare his purported impeachment as illegal. He also asked the court to reinstate him. In an application filled before the state High Court, the Governor has questioned the process leading to his impeachment: (I) the meeting of the faction of the House of Assembly members outside the assembly chamber (II) lack of quorum among the assembly members who purportedly voted the impeachment (III) the holding of the meeting to effect the impeachment at unlegislative hours(IV) non service of the notice of allegations (VI) non service of notice of allegations on some members of the legislature among other illegality perpetrated by the House in a desperate bid to get him out of office..

Therefore, the grounds of his application before the court is to challenge the non substantial compliance with subsection 1-9 of Section 188 in effecting his impeachment.

The case was assigned to Justice Umegbolu Nriezedi by the Chief judge of the state, Justice Chika Jide ofor Okoli. However, a day to the delivery of the judgement by Justice Nriezedi, the case was to be transferred from him by the State Chief Judge, Justice Okoli. This necessitated a petition to the National Judicial Council (NJC). This subsequently stopped the transfer of the case from Justice Nriezedi's. The dust that follows the attempt to transfer the case eventually caused the Chief Judge his job. A week later, Justice Nriezedi delivered his judgement in the case. The Judge upheld the application of Peter Obi. He said that the impeachment was illegal as the legislators did not follow due process as laid down in the constitution. The judge maintained that sub-section 1-9 were not complied with. He stated further

The impeachment is a flagrant abuse of the constitution, that is not what is envisaged in section 188. So, it is a matter of fact that he was not served with the notice of allegation of impeachment that alone is enough to fault the entire process. The notice should have been served personally and not through the media<sup>46</sup>.

Justice Nri-Ezedi also faulted the panel that looked into the allegations levelled against Obi by the lawmakers that championed the impeachment. The judge said the panel did not meet the membership requirement of seven members. He also frowns at the faction of the legislators meeting outside the legislative chamber and declared as illegal, the impeachment purportedly carried out at odd hours of the day. The judge also condemned the lack of quorum that preceded the impeachment<sup>47</sup>.

Justice Nri Ezedi further stated that:

“While the impeachment process was on, a high court in the state gave an order restraining the lawmakers from going ahead with the plan, an order of the court must be obeyed as long as it subsists. Any other actions by the first to the Sixth defendants after the order was made cannot stand. This gross disobedience of court order again nullifies the impeachment. They cannot pretend not to be aware of the order<sup>48</sup>.

Having declared that the lawmakers had violated subsections (1-9 of Section 188, in their attempt to remove the governor, He therefore ordered for Obi’s immediate reinstatement and all his rights accorded him.

However, due to what can be summed up as federal might as exhibited by both the Attorney General and Minister for Justice Mr. Bayo Ojo and the Inspector General of Police (IG) Mr. Sunday Ehindero that failed to comply with the court order. The tactical delay in the implementation of the court order allowed the defendants to appeal against the judgement of the lower court at Appeal court, Enugu division. The defendants seek an order of the higher court to set aside the lower court’s decision on the impeachment of Obi. They further prayed that, the courts are excluded from interfering in impeachment cases having being ousted by Section 188 (10).<sup>49</sup>

After reviewing the appeal before it, the appellate court in a unanimous judgement delivered by Justice Bada on behalf of four others, the court ruled that the removal of Obi by a faction of the Anambra State lawmakers led by the speaker, Hon. Mike Balonwu’s was unconstitutional, null and void and of no effect. He further ruled that:

The removal of Obi by the appellant is hereby set aside. He ordered he should be reinstated with immediate effect and his rights restored by the appropriate authorities. He said to ensure genuine reconciliation between the appellant and the respondent, no cost will be awarded. Justice Bada on behalf of other judges.

stated that the appellant did not serve the notice of allegations of impeachment on the respondent as required by law, He said: “In other words, there was no proof of gross misconduct, in the circumstances, it is my view that the purported notice of impeachment published in some national dailies on November 10, 2006 fell short of what is required under section 188(2) of the constitution. The appeal of the six appellants have failed and is hereby dismissed<sup>50</sup>.

Unlike Ladoja’s case, which dragged on to the Supreme Court, the review of Obi’s impeachment stopped at the Appeal Court . He was thereafter reinstated and all his rights were accorded him including police orderly.

## **SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **Summary of Findings**

The impeachment of the two was instigated by selfish parochial and personal aggrandizement of the political class. In the case of Ladoja, it was fuelled by a section of politicians in Oyo state, as championed by Late Lamidi Adedibu. The plan was to get Ladoja out of the political reckoning in order to have access to the state’s treasury. In the case of Obi, the impeachment was part of the ruling party’s People Democratic Party (PDP) grand design to get the opposition out of power in the state in preparation for 2007 gubernatorial election. The thinking in the PDP then was that, with an opposition in power in the state, the emergence of

PDP candidate – Andy Uba may prove difficult if not impossible. Hence, the need to remove Obi even if only through trump up charges.

### **CONCLUSION OF THE PAPER**

The judicial review of the impeachment of the two governors by court of competent jurisdiction and others not the subject of this paper has contributed to the re-writing of the 1999 constitution as far as section 143 (I-II). And 188 (1-11) is concerned. The review has pointed out one of the flaws in both the 1979 and 1999 constitutions. Any attempt to review the constitution as being presently clamored for, will have to take a critical look at these sections. They are no longer absolute ouster clause but conditional one, which cannot be interpreted in isolation.

### **RECOMMENDATIONS**

Judiciary as the interpreter of laws in any political system must go beyond the letters of the law and interpret the spirit behind the law, if they must remain relevant as the hope of the common man. Until this republic, all the judges who have had cases of impeachment assigned to them have hidden under the ouster clause to deny jurisdiction. Thus, they have been looking at the letters of the law and not its spirit. They have allowed injustice to prevail, while they were slaves to laws. Therefore, there is need for critical review of sections in the 1999 constitutions if judiciary must remain relevant in its review functions. One sided interpretation of law is not the best as far as human rights, due process are concerned. Judiciary must look at the intendment of the law.

Consequently, therefore, judiciary must not let the nation and her people down in the exercise of its review function. The organ of government must remain fearless in declaring ultra vires, the actions and inactions of other arms of government when they are not in conformity with the spirit of the law, although such actions may be permitted by the letters of the law. Judiciary must not be slaves to laws that violated human rights, disregards due process and impinge on rule of law. Judiciary must, therefore, in the discharge of its functions be able to call a bluff of both the executive and legislature when they go beyond their bounds or abusive the powers invested in them. The era of technical justice must give way to substantial justice. Courts should look into the intendment of the law and not a mere interpretation of the letters.

However, to enable judiciary to be effective in the discharging of its review functions, the arm of government must be completely insulated from the claws of both the executive and the legislative.

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