

## **An Evaluation of Judicial Intervention in The Impeachment Process in Constitutional Democracies: A Case of Nigeria**

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doi: <https://doi.org/10.37745/gjplr.2013/vol11n67688>

Published January 13 2024

**Citation:** Mohammed I., Oyinwola K.A., Dewan D.U., and Sulaiman A.M. (2023) An Evaluation of Judicial Intervention in The Impeachment Process in Constitutional Democracies: A Case of Nigeria, *Global Journal of Politics and Law Research*, Vol.11, No.6, pp.76-88

**ABSTRACT:** *Impeachment is an effective mechanism for checks and balances in a constitutional democracy. It is settled that the courts have no power to intervene in the process by questioning the exercise of the powers of the legislature. However, there has been a gradual departure from the general norm in recent years. The involvement of the courts in the impeachment process provides an opportunity to review the legislative process of the impeachment to prevent legislative rascality or abuse of the process and infringing on the fundamental rights of the target of the impeachment. Thus, judicial involvement in the process underscores the importance of the constitutional doctrine of checks and balances. Notable decided cases in Nigeria on impeachment proceedings since the case of *Adegbenro v Akintola*, were examined and reviewed. Relevant constitutional provisions on impeachment and judicial decisions thereon were highlighted. It was noted that impeachment could not, hitherto, be a subject of litigation in any court in Nigeria on account of constitutional ouster clauses. It was noted further that even though ouster clauses, are regarded as impediments to the administration of justice and by extension democracy, the courts were quick to invoke ouster clauses to decline jurisdiction in matters relating to impeachment. However, the paper found that the decision in *Inakoju v Adeleke*, which decided that ouster clauses need to be properly scrutinised by courts, besides being a watershed in the judicial approach to impeachment cases, is capable of checkmating the legislature's seeming highhandedness in the impeachment process in Nigeria.*

**KEYWORDS:** impeachment process, attitude of courts, impeachment cases, Nigeria

### **INTRODUCTION**

Accountability is one of the essential features of democracy. Without accountability, governance is potentially arbitrary and self-serving. The idea of accountability in any democracy is tied to the

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principle of separation of powers, which is to the effect that no one arm of government may dominate the other.<sup>1</sup> The doctrine of separation of power entails the division of labour in government and the basis for each arm of the government to check-make the other through checks and balances.<sup>2</sup> In line with the principle of separation of power and the doctrine of checks and balances, the 1999 Constitution empower the National Assembly and State Houses of Assembly to hold the President and his Vice, the Governors and their Deputies respectively accountable for breach of public trust through impeachment/removal.<sup>3</sup> This is against the background of the constitutional immunity from prosecution conferred on the President, Vice President as well as the Governors and their Deputies while holding office.<sup>4</sup> Impeachment/removal is thus an essential mechanism in a democratic dispensation for ensuring accountability and transparency in governance. It is pertinent to note that while impeachment can help strengthen and entrench democracies, it can also threaten or undermine democracy.

The exercise of this power by the legislature to hold the Executive arm of government to account has been the subject of immense abuse in Nigeria since the advent of democracy. Despite interventions by Courts in Nigeria, cases of abuse of the process of impeachment by the legislature, especially at the state level, have continued unhindered. This work examines the impacts of impeachment on democracy, the role of the court in the process and the effect of the provisions of the constitution which oust the power of the courts to review impeachment procedure vis-à-vis decisions of courts, to distil the exact confines of the pre-conditions for the exercise of the power to impeach by the legislature.

### **Impeachment and Removal**

Impeachment/removal has been described as the legislature's tool against the heads of the executive. Impeachment in Nigeria is the process of removing a President or his Vice, a Governor or his Deputy by the legislative arm of the government. The Nigerian presidential system was adopted from the United States. In the United States, if there is significant evidence against the President, the House of Representatives can decide to impeach the President by formally charging them. These charges are similar to a formal indictment in a regular criminal case. Once the charges are brought against the President, they must stand trial, with the Senate acting as the judge. If two-thirds of the Senate find the President guilty, they will be convicted and removed from office.<sup>5</sup> Thus, impeachment precedes removal from office.

Impeachment/removal proceeding is deeply rooted in the history of the Constitution. It derives from the idea of jurisprudential thought of constitutionalism. Dan Plesch<sup>6</sup> observed that:

The process originated in the House of Commons in the late 14th century...a committee was created to investigate ancient rights of the House of Commons that could again be put to use, and by the 1620s

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<sup>1</sup> There principally three arms of the government namely; the legislature, the executive and the judiciary

<sup>2</sup> See sections 4, 5 and 6 of the 1999 Constitution of the Federal Republic of Nigeria (as altered) for the primary functions/powers of the legislative, executive and judicial arms of the government.

<sup>3</sup> See sections 143 and 188 of the 1999 Constitution

<sup>4</sup> See section 308(1)-(3) of the 1999 Constitution

<sup>5</sup> Krasner, M.A., et al., *American Government Structure and Process* (Macmillan Publishing Co. Inc. New York 1977) P.57-58

<sup>6</sup> Dan Plesch, 'There is always Impeachment', *The Guardian Newspaper*, January 28, 2004

impeachment was revived as a way of pursuing Charles's ministers, especially the Earl of Strafford. Impeachment then remained a procedure used from time to time until the eve of the Victorian era, in the early 1800s.

Similarly, in the 1974 report written by the Judiciary Committee of the US Congress in the aftermath of the Watergate Nixon impeachment crisis, the committee examined the historical origins of the process, and its report states that;

The English Parliamentary Practice - It played a continuing role in the struggles between the King and Parliament that resulted in the formation of the unwritten English constitution. In this respect, impeachment was one of the tools used by the English Parliament to create a more responsive and responsible government and to redress imbalances when they occurred. The phrase did not reappear in impeachment proceedings until 1450.<sup>7</sup>

In Nigeria, as earlier noted, the relevant sections 188 and 143 dealing with removal proceedings do not mention 'impeachment' and nowhere in the constitution is the word defined. The court while noting the absence of the word 'impeachment' in sections 188 and 143 of the Constitution in the case of *Inakoju v. Adeleke*<sup>8</sup> held thus;

It is the use of the word "impeachment". The word is used freely and indiscriminately by the parties. The two courts below also used the expression freely, though not indiscriminately. Where do they get the word in section 183 of the Constitution, I ask? It is clear from the section I have stated above that there is no such word in the section. And so, ask once again, where do all counsel and the courts get the word? ... Section 188 is not so worded. The section covers both civil and criminal conduct. Therefore, the word should not be used as a substitute for the removal provision of section 188 and section 188 procedures should simply be referred to as one for removal of Governor, not impeachment.

It is clear from the foregoing that impeachment is not a substitute for removal even in Nigeria. However, what can be assumed is that since 'impeachment' precedes removal from office, the impeachment process is embedded in the procedure for removal contained in sections 188 and 143. However, what is not clear is how the office of the President or his Vice, Governor or Deputy can become vacant only because of impeachment, among others, as provided under sections 146(1) and 191.<sup>9</sup>

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<sup>7</sup> Zoe Lofgren, 'Flashback to 1974: Constitutional Ground for Presidential Impeachment' *Washington Post* <[www.washingtonpost.com/wp-srv/politics/special/clinton/stories/watergatedoc.htm](http://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/watergatedoc.htm)> Accessed 13th December, 2022.

<sup>8</sup> (2007) 4 NWLR (Pt 1025) 423

<sup>9</sup> Section 146(1) provides that the Vice President shall hold the office of the President if the office of the President becomes vacant because of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason following section 143 or 144'. Underlined is ours.

### **Impeachment in a Constitutional Democracy**

Indeed, the importance of impeachment in constitutional democracies cannot be overemphasised. As a mechanism for checking the executive arm of government, impeachment seeks to ensure that executive authority is not in conflict with the provisions of the Constitution. Executive authorities usually enjoy constitutional protection from criminal and civil proceedings during their term of office. For example, section 308 of the Constitution of the Federal Republic of Nigeria 1999 provides that:

- (1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section -
  - (a) civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;
  - (b) A person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and
  - (c) No process of any court requiring or compelling the appearance of a person to whom this section applies shall be applied for or issued:

Provided that in ascertaining whether any period of limitation has expired for any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

- (2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.
- (3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

Notwithstanding the constitutional immunity against criminal prosecution, the President, Vice President, Governor and Deputy Governor respectively can still be removed from office through impeachment. Accordingly, the presence of impeachment provisions in the constitution can discourage the executive authorities from hiding behind constitutional protection to engage in corrupt and other scandalous acts with impunity.<sup>10</sup> Impeachment provisions can allow the removal of an executive authority who refuses to respect the constitutional term limit of office or who seeks to be a life President. Pedro Castillo, the erstwhile president of Peru was removed from office through impeachment when he attempted to change the country's constitutional order to rule by decree.<sup>11</sup> While impeachment has helped to preserve democracy in countries like Peru, South Korea, Brazil,

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<sup>10</sup> Lianos, M. 'The Political Limits of Presidential Impeachment: Lessons from Latin America' <https://www.giga-hamburg.de/en/publications/giga-focus/political-limits-presidential-impeachment-lessons-latin-america> Accessed on May 29, 2023

<sup>11</sup> Why was Peru President Pedro Castillo impeached? <https://www.aljazeera.com/news/2022/12/8/why-was-peru-president-pedro-castillo-impeached> Accessed on June 5, 2023

Paraguay<sup>12</sup>, it could have prevented taking extra-legal means such as coup d'état in countries Mali, Burkina Faso, Egypt, Zimbabwe and Nigeria because weak democratic institutions, corruption and unsatisfactory performance in political and economic governance have been identified as some of the reasons for an extra-legal change of government in those countries<sup>13</sup>

In as much as legislative impeachment power is an important tool in preserving democracy, it can equally be harmful to democracy particularly when it is abused or misused or it is influenced by ideological differences or 'political opportunism' as was the case in the impeachment of Dilma Rousseff of Brazil in 2016 and Carlos Andres Perez of Venezuela in 1993.<sup>14</sup> Furthermore, when impeachment power is not exercised –due to undue influence or political loyalty- even when there are ample reasons justifying the exercise, it will threaten the survival of democracy by weakening the democratic structure. For example, in the impeachment of former South Korean President Park Geun-Hye, because her political party controlled 43% of the membership National Assembly, the members Assembly did not pass the motion for her impeachment until after the country embarked on mass demonstration.<sup>15</sup>

It is pertinent to note that impeachment is not an absolute panacea to democratic challenges relating removal from office of an incumbent on grounds of corrupt or unconstitutional actions. Where the ground(s) of removal from office relates to only the incumbent, impeachment may solve the problem. However, if the ground(s) is linked not only to the incumbent but to the government generally, removing the incumbent alone may not redress the mischief and may culminate in political instability.<sup>16</sup>

### **Judicial Intervention in the Impeachment Process**

In most constitutional democracies impeachment proceeding is exclusively within the purview of the legislative arm of government. In other words, the sole power of impeachment is vested in the legislature. Thus, the general norm is that the courts cannot temper with parliamentary power of impeachment. This position was echoed in the case of *Nixon v. United States*, Chief Justice William Rehnquist stated that where the legislative arm of the government exercises impeachment power, the

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<sup>12</sup> Tom Ginsburg, Aziz Huq, David Landau 'The Uses and Abuses of Presidential Impeachment' [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2226&context=public\\_law\\_and\\_legal\\_theory](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2226&context=public_law_and_legal_theory) Accessed on May 29, 2023

<sup>13</sup> 'Why West Africa has had so many coups and how to prevent more' <https://theconversation.com/why-west-africa-has-had-so-many-coups-and-how-to-prevent-more-176577>

see also 'What causes Africa's coups? That is the question' <https://issafrica.org/iss-today/what-causes-africas-coups-that-is-the-question> Accessed on June 4, 2023

<sup>14</sup> John M. Carey, Et al 'The threat of impeachment can push presidents out the door. But there's a catch.' <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/11/the-threat-of-impeachment-can-push-presidents-out-the-door-but-theres-a-catch/> Accessed on June 5, 2023

<sup>15</sup> Constance Lee, 'Court-Centred Constitutionalism in Emerging Democracy: Lessons from South Korea and the Impeachment Case of 2016/17' <https://blog-iacl-aicd.org/2019-posts/2019/4/17/court-centred-constitutionalism-in-an-emerging-democracy-lessons-from-south-korea-and-the-impeachment-case-of-201617> Accessed on June 5, 2023

<sup>16</sup> Lianos, M. 'The Political Limits of Presidential Impeachment: Lessons from Latin America' <https://www.giga-hamburg.de/en/publications/giga-focus/political-limits-presidential-impeachment-lessons-latin-america> Accessed on June 10, 2023

court lacks the jurisdiction to entertain a case relating to the exercise of the power.<sup>17</sup> However, Justices Harry Blackmun, Bryon White and David Souter are of the view that a situation may arise from the conduct of impeachment by the Senate that would warrant judicial intervention. According to them, such a situation may be in the form of conducting impeachment in total disregard to the procedure stipulated by the provisions of the constitution.<sup>18</sup> In a case initiated by the South African opposition parties seeking a court order compelling the South African parliament to commence the impeaching process against President Jacob Zuma, the South African constitutional court in a majority ruling held inter alia that the parliament should clear the road for impeaching the president but the court lacks the power to compel the parliament to impeach the president or dictate to the parliament on how to carry out the impeachment.<sup>19</sup>

It is interesting to note that in recent years there appears to be what can be described as a departure from the traditional norm of non-judicial intervention in the impeachment process. In 2017, the South Korean constitution affirmed its power to intervene in the impeachment process. When President Park Guen-hue brought an action to her impeachment by the South Korean parliament, the court unanimously upheld the impeachment.<sup>20</sup>

#### **Procedure for the Removal of President or Vice President in Nigeria**

The procedure for the removal of the President, Vice President, and Governor or Deputy is fundamentally the same, except that the process at the National Assembly, as regards the removal of the President from office, requires the involvement of both the House of Representatives and the Senate, whereas the removal of a Governor requires the participation of the House of Assembly which is unicameral.<sup>21</sup> Nevertheless, section 188 of the Constitution provides thus:

- (1) The Governor or Deputy Governor of a State may be removed from office under the provisions of this section.
- (2) Whenever a notice of any allegation is in written is signed by not less than one-third of the members of the House of Assembly-
  - (a) Is presented to the Speaker of the House of Assembly of the State;
  - (b) Stating that the holder of such office is guilty of gross misconduct in the performance of the function of his office, detailed particulars of which shall be specified.

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<sup>17</sup> James D. Robenalt 'The Supreme Court can Review an Unfair Impeachment Trial' [https://www.washingtonpost.com/outlook/the-supreme-court-can-review-an-unfair-impeachment-trial/2020/01/10/00dae97c-32fa-11ea-91fd-82d4e04a3fac\\_story.html](https://www.washingtonpost.com/outlook/the-supreme-court-can-review-an-unfair-impeachment-trial/2020/01/10/00dae97c-32fa-11ea-91fd-82d4e04a3fac_story.html) Accessed on 27/10/2023

<sup>18</sup>Ibid

<sup>19</sup> Wale Odunsi, Zuma: 'Courts Rules on South Africa President's Impeachment Proceedings' <https://dailypost.ng/2017/12/30/zuma-courts-rules-south-africa-presidents-impeachment-proceedings/> Accessed on 28/10/2023

<sup>20</sup> Brian Padden, 'South Korean Court Upholds Presidential Impeachment; Park Ousted' <https://www.voanews.com/a/south-korea-court-ends-park-presidency/3758328.html>. Accessed on 28/10/2023

<sup>21</sup> See sections 143 and 188 of the 1999 Constitution

Within seven days of the receipt of the notice of allegation as contained above, the speaker of the House of Assembly shall cause the service of the notice on the holder of the office and each member of the House of Assembly including any statement made in defence of such allegation by the holder of the office.<sup>22</sup> Furthermore, within fourteen days of the presentation of the notice to the speaker, the House shall resolve by motion, without any debate whether or not the allegation shall be investigated.<sup>23</sup> The said motion must be supported by the votes of not less than two-thirds majority of all the members of the House of Assembly otherwise the motion would not be deemed to have been passed.<sup>24</sup> If the motion is passed, within seven days of the passing of the motion, the Speaker of the House of Assembly shall request the Chief Judge of the State to appoint a panel of seven persons to investigate the allegation. The members of the panel to be appointed shall be persons, who in the opinion of the Chief Judge, are of unquestionable character and integrity, not members of any public service, legislative house or political party.<sup>25</sup> The panel so appointed shall exercise the function following the procedure as may be prescribed by the National Assembly and report its findings to the House of Assembly within three months.<sup>26</sup>

It should be noted that the Constitution states that the holder of an office whose conduct is being investigated by the panel set to investigate the allegation, shall have the right to defend himself in person and by legal practitioners of his own choice.<sup>27</sup> Where the panel reports that the allegation has not been proved, no further proceedings shall be taken in the matter.<sup>28</sup> However, where the panel reports that the allegation has been proved, within fourteen days of the receipt of the report, the House shall consider the report and if the report is supported by not less than a two-thirds majority of the members of the House of Assembly, the report is adopted and the holder of the office stands removed from the office.

While the Constitution makes impeachment/ removal a means of checking the excesses of the executive arm by the legislature, the same Constitution under section 143(10) and section 188(10) appears to have prevented the judicial arm from checking any impeachment process concerning the powers of the National Assembly and State House of Assembly. Specifically, Section 143(10) provides: 'No proceedings or determination of the panel or the National Assembly or any matter relating thereto shall be entertained or questioned in Court.' Section 188 (10) states that: 'No proceedings or determination of the panel or the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any Court.'

### **The Impeachment Process and Judicial Intervention in Nigeria**

Impeachment/ removal of the executive in Nigeria first came to limelight in the First Republic. It remarkably began in the case of *Adegbenro v Akintola*<sup>29</sup>. The fact of the case is as follows. Sir Aderemi removed Chief Akintola from the office of Premier and appointed Alhaji Dauda Adegbenro to the position. Akintola's supporters allegedly went wild and unleashed violence in the region while

<sup>22</sup> Section 188 (2) (b) 1999 Constitution

<sup>23</sup> See section 188(3) 1999 Constitution

<sup>24</sup> *Ibid.*, 188(4)

<sup>25</sup> *Ibid.*, 188(5)

<sup>26</sup> *Ibid.*, 188(7)

<sup>27,28</sup> Section 143(6) and Section 188(6) Constitution of the Federal Republic of Nigeria, 1999

<sup>28</sup> See section 188(8) of the 1999 Constitution

<sup>29</sup> (1963) All NLR 305

supporters of Awolowo reportedly retaliated. Akintola sued Adegbenro and the Action Group (AG) leadership, and the Federal Supreme Court decided that he had been wrongly removed.

Exercising a right conferred by Section 114 of the then Constitution of Western Nigeria, Adegbenro appealed to the Privy Council, where the judgement was overturned in his favour on the interpretation of S. 33 (10) (a) of the then Constitution.<sup>30</sup> This proviso was later amended by the Constitution of Western Nigeria (Amendment) Law, 1963 retroactively in a manner which settled the question of the Premiership in Akintola's favour, but without mention of the court suit or the costs awarded by the Privy Council to Alhaji Adegbenro.

It suffices to say that the case above marked a new beginning in the impeachment/removal processes in Nigeria's parliamentary as well as judicial cum legal system. After this case, the issue of impeachment/ removal, for a considerable number of years went in abeyance until it reappeared in the parliamentary session once more in the Second Republic in the notorious case of *Balarabe Musa v Auta Hamza*.<sup>31</sup> In that case, the Plaintiff had appealed against the refusal of the High Court of Kaduna State to stay proceedings of the Investigating Committee appointed by the Speaker of the Kaduna State House of Assembly. The issue for determination before the Court of Appeal was the effect of section 170 (10) of the 1979 Constitution which ousted the jurisdiction of the court. The court, per Adenekan Ademola, JCA (as he then was) summarized the prevailing position of the law and the attitude of the court thus;

The court's authority possessed neither of the purse nor the sword, ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the court's complete detachment, in fact, and appearance, from political settlements... In this situation, as in others of like nature; appeal for relief does not belong here. The appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives. In any event, there is nothing neither judicially more unseemly nor more self-defeating than for this court to make *in terrorem* pronouncements to indulge in mere rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope...

For the avoidance of doubt, the position of the court became lucid and clearer in the words of Ademola, JCA who, reflecting the attitude of the court, maintained that:

For the court to enter a political ticket, as the invitation made to it clearly implies in my view, be asking its gate and its wall to be painted with mud and the throne of justice from where the judgment is delivered with mire.

This also reverberated in the words of V. J. O Chigbue, J. who declared thus:

<sup>30</sup> 'Western Region Crisis: How Awolowo, Akintola Parted Ways' *National Mirror*, October 8, 2012 <[issu.com/73092/docs/Monday\\_october\\_8\\_2012/46](http://issu.com/73092/docs/Monday_october_8_2012/46)> (Accessed on December 12, 2022)

<sup>31</sup> (1982) 3 NCLR



'My hands are tied by it as I hold that the exercise in question was a purely legislative constitutional affair, quite outside the jurisdiction of this honourable court. I have no jurisdiction to look into and determine the issue raised by the applicant. I therefore decline to assume jurisdiction to entertain them.'<sup>32</sup>

### **Did the Court Get It Wrong?**

The Court of Appeal in *Balarabe Musa v Kaduna State House of Assembly*<sup>33</sup> declared that the impeachment of a state governor was a purely legislative /constitutional affair which was outside the jurisdiction of the courts. Consequently, the court in that case declined jurisdiction in the face of an illegal and unconstitutional removal of Governor Balarabe Musa by the Kaduna State House of Assembly. Despite the intense criticism of this decision by eminent constitutional lawyers, unfortunately, the position remained the law and was used as precedent until it was subsequently overturned.<sup>34</sup>

It is quite unfortunate that before this period, the court saw the issue of removal of the executive as a no-go area, as it was considered to be outside the jurisdiction of the courts. Perhaps, it needs to be brought to mind that, the judiciary and its interpretive role are made, essentially to attain justice, and the courts of law must define and apply justice based on the interpretation of the contents of the law. This would provide aggrieved citizens the opportunity to have recourse to courts of law for remedy, for either trial or correction of injustice or abuse. Express statutory provision such as the ouster clause provides the template for abuse of such right as the gate is firmly shut for citizens' resort to the courts.

Essentially, ouster clauses function to stifle or abate the jurisdiction of courts in respect of some issues, thereby jeopardizing the practice of judicial review. One would expect that the court would leave its comfort zone and exert judicial activism through the exercise of judicial review instead of declining jurisdiction and declaring that its hand was tied when obviously, there was no rope with which it was bound. In this regard, it is submitted, with due respect, that the court got it wrong at this period.

### **Impeachment Processes in the Fourth Republic and Judicial Attitude.**

After long periods of Military rule, relative stability returned to the country and the transition to civil rule began in 1999. The position of law and the attitude of the court as laid down in *Balarabe Musa v Auta Hamza*<sup>35</sup> as regards the ouster of the court's jurisdiction in impeachment/ removal processes remained the law in this period consequently, this period can further be subdivided into pre-Inakoju and post-Inakoju's case.

#### **Pre-Inakoju's Era.**

The case of *Abaribe v The Speaker, Abia State House of Assembly & Ors*<sup>36</sup> is a true reflection of the attitude of the judiciary to impeachment/removal proceedings in the pre-Inakoju case. In that case, the Abia State House of Assembly had commenced removal proceedings against the Appellant who was the Deputy Governor of Abia State at that time. The appellant instituted an action at the State High

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<sup>32</sup> Ibid.

<sup>33</sup> (1982) 3 NCLR 450

<sup>34</sup> See for example Nwabueze, B.O., *Nigeria's Presidential Constitution 1979-1983*, (Longman), 1985, P. 339-340)

<sup>35</sup> (1982) 3 NCLR

<sup>36</sup> (2002)14 NWLR (Pt788) 466

Court for the enforcement of his fundamental rights. He contended, *inter alia*, that he was not given time as required by the constitution to respond to the allegations. The issue of jurisdiction was raised at the High Court and the court resolved it against the appellant. On appeal, the Court of Appeal in its judgment followed the decision in *Balarabe Musa's* case and upheld the lower court's decision.

The Court of Appeal per Pats Acholonu, JCA (as he then was) stated in the lead judgment thus:

'The worrying aspect of this all-embracing provision seems to imply that the court may not even look into the issue as to whether the duly laid down procedure has been followed.'<sup>37</sup>

In these two cases (*Balarabe Musa's and Abaribe's*), the court relied on the provisions of section 170(10) and section 188(10) of the 1979 and 1999 Constitutions respectively and held that it was purely a matter within the competence of the legislature, consequently, the court declined jurisdiction in Abaribe's case. Thereafter, a series of impeachments/ removal followed, following this line. The most remarkable being the impeachment/ removal of the then Governor of Oyo State, Senator Rashid Ladoja. It is noteworthy, that before Ladoja's case, there were other cases of impeachment/ removal proceedings including those of Governors Joshua Dariye (Plateau State), Peter Obi (Anambra State), Diepreye Alameyeseigha (Bayelsa State) and Ayodele Fayose (Ekiti State).<sup>38</sup> Other impeachments/ removal proceedings include the following; Deputy Governors: Abdullahi Arugungu (Kebbi State), Iyiola Omisore (Osun State), John Okpa (Cross Rivers State) and Enyinnaya Abaribe (Abia State).

### **The Remarkable Turn of Events and Appraisal of the Case of *Inakoju v Adeleke***

The decision in *Inakoju v Adeleke*<sup>39</sup> completely changed not only the former position of the law but also the attitude of the court towards ouster clauses in impeachment/ removal proceedings. The apex court set aside the previous standpoints as judicial errors and substituted instead purposeful interpretation, marking a remarkable turn of events in the attitude of the courts to impeachment/ removal proceedings in Nigeria.

#### **Facts of the Case**

The 3<sup>rd</sup> respondent was the elected Governor of Oyo State. His four-year term of office started in May 2003 and was to end in May 2007. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were respectively the Speaker and Deputy Speaker of the Oyo State House of Assembly while the 18 appellants were members. Towards the end of 2005, the members of the Oyo State House of Assembly became polarized due to political disagreement. Consequently, the 32-member house was divided into two factions, consisting of 18 appellants on one faction and the 2 respondents together with the remaining 12 members of the House on the other faction.

On the 13<sup>th</sup> December 2005, the 18 legislators opposed to the 3<sup>rd</sup> respondent met and sat at D'Rovans Hotel, in Ibadan where they raised a notice of allegation of gross misconduct against the 3<sup>rd</sup> respondent without the involvement of the 1<sup>st</sup> and 2<sup>nd</sup> respondents who were the Speaker and Deputy Speaker respectively. The notice was served on the 3<sup>rd</sup> respondent via a Newspaper advertisement and thereafter

<sup>37</sup> Ibid at pg. 488 Paras D-E

<sup>38</sup> However, Ladoja, Dariye and Obi successfully challenged their removal and were re-instated.

<sup>39</sup> (2007) 4 NWLR (Pt 1025) 423.

requested the Acting Chief Judge of Oyo State to set up a seven-member panel to investigate the allegation. The Acting Chief Judge inaugurated the panel on 4<sup>th</sup> January 2006. The panel sat for two days without any oral evidence from anybody and thereafter submitted its report to the 18 faction legislators early on 12<sup>th</sup> January 2006. The factional group of 18 members passed the resolution by which they impeached the 3<sup>rd</sup> respondent.

### The Decision of the Court

Consequent to the above fact, the court gave a holistic approach to the interpretation of ouster clauses. The court maintained that when interpreting the provision of an ouster clause in a statute, including the Constitution, the courts are entitled to scrutinize every aspect of such provision to ensure that everything done under such statute is done strictly in compliance with the provision of the Statute. *Katsina-Alu, JSC (Rtd)* at page 661 of the judgment held thus;<sup>40</sup>

I think it is only right that in interpreting it, the whole section must be taken into account. Sub-sections 1 - 9 state clearly what must be done before a Governor may be removed from office. It is only when these conditions are religiously fulfilled will a Governor be said to have been removed from office. When the Governor has been constitutionally removed, then and only then will sub-section 10 come into play. It ousts the jurisdiction of the court to question such valid removal from office.

Per Akintan, JSC was not silent on this point. Thus, he posited on page 688 that;

‘It is not in doubt that Section 188(10) creates an ouster clause in those rights of an aggrieved person to challenge actions carried out under such provisions are expressly taken away by the provision. The attitude of the Courts to such provisions is that they are regarded with extreme caution since they are regarded as unwarranted affronts and unnecessary challenges to the jurisdiction of the courts which the courts guard jealously. (Emphasis is ours)

### What difference does it make?

It is important at this juncture to compare the attitude of the court in the cases of *Inakoju v. Adeleke* and *Balarabe Musa v. Hamza*. In *Balarabe Musa’s* case, the court **believed** that section 6 (2) of the 1979 Constitution refers to the courts established under that section, subject to any other provision in the Constitution and therefore it was subject to section 170(10) of the 1979 Constitution which purported to oust its jurisdiction. The court instead refused to agree that section 6 (2) and section 6 (6) (a) of the 1979 constitution have whittled down the effect of Section 170(10) and maintained that assuming that both sections conflict with each other, section 170(10) will prevail under the well-known rule of construction based on the maxim *generalia specialibus non-derogant*, i.e., where two sections are inconsistent, with one being general and the other special, the latter usually prevails. The court then maintained that:

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<sup>40</sup> Ibid.

Section 6 in general does not abrogate section 170(10) of the Constitution. The words therein are clear and unambiguous and the word 'decision' and 'determination' are meant to oust the jurisdiction of the superior court.

Predicated on this, the court declined jurisdiction, the reason, as was held, being that ‘...jurisdiction has been taken away by the combined effect of Section 170(10).’

Consequent on this, one may be tempted to conclude that the decision in *Balarabe Musa’s* case should have been the true reflection of what the position of law should be, as brilliantly canvassed by the court, and *Inakoju vs Adeleke* was a derogation from this clear path.<sup>41</sup> However, it should be stressed that when ouster clauses are found in statutes, the courts usually invoke section 6 of the constitution dealing with judicial power to stamp their authority.

The courts become helpless when the Constitution itself provides for ouster clauses, such as in sections 143(10) and 188(10) of the 1999 Constitution. In such situations, it is our humble view that the court should not decline jurisdiction since the court has jurisdiction to determine whether or not it has jurisdiction. This view is further buttressed by the Supreme Court<sup>42</sup> a case wherein the court held that:

... a court may, by statute, lack jurisdiction to deal with a particular matter, but it has jurisdiction to decide whether or not it has jurisdiction to deal with such matter.

Hence, ouster clauses should not take away the inherent jurisdiction of the court. Although the courts can give effect to those ouster clauses, it is entitled to see to it that such provisions were donated in the statute and ensure that all the provisions have been complied with. Aside, since the provision of the Constitution is not to be read in isolation, the provision of section 188(10)<sup>43</sup> should be read together with the preceding provisions in so far as the sub-section is only a part of that section and it cannot be read in isolation.

More so, the ouster clause found in sections 143(10) and 188(10) of the 1999 Constitution applies only to proceedings or determination of the Panel or the House, the court can question every breach that can be shown not to come within the proceeding and determination of the panel and or of the House in respect of the impeachment/removal. It is our humble opinion that the law-makers do not intend to put the provisions<sup>44</sup> thereto for them to be violated, rather, they are to be complied with. Besides, the legislature itself would not intend that the provision of the Constitution be violated with impunity without being actionable. Therefore, it suffices to say that before the provision of section 188(10) which contains the ouster clause could be invoked there must have been strict compliance with the preceding provisions sections 188(1) to (9). In this case, the court, in its decision, in keeping with the

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<sup>41</sup> It is important to note that in *Balarabe Musa v Auta Hamza*, the court relied on the principle; *generalia specialibus non derogat* and held that section 170(10) should prevail over section 6. Whereas in *Inakoju vs Adeleke*, the court relied on Section 6 as the constitutional basis to assume jurisdiction.

<sup>42</sup> *Barclays Bank Nig Plc v Central Bank* (1976) NSCC 291 and see also *Agip Nig Ltd v A G Lagos* (1977) NSCC 442

<sup>43</sup> CFRN 1999 (as amended)

<sup>44</sup> Section 188(2)-(9).

jurisprudence of the wider world and its legal system, has set a new path for democracy to roam. The need for courts of law to do substantial justice has become more imperative when considering the provision of the Constitution - the fons et origo of any democracy. Onnoghen, JSC, subscribed to this position in his dictum<sup>45</sup> when he declared: 'Is it not said that justice delayed is justice denied? The reign of technical justice is over. On the throne now sits substantial justice.'

For the first time, in the history of the presidential system in Nigeria, constitutional provision dealing with the removal of elected political office holders was given adjudicative interpretation, thereby heralding the regime of 'substantial justice'. This decision indeed is laudable.

## CONCLUSION

It can safely be said that tremendous progress has been made in Nigeria in terms of impeachment/removal proceedings. The jurisprudence evolved from an era of the ouster of the court's jurisdiction to an era when courts assumed jurisdiction in cases of removal or impeachment as borne out by Inakoju's case. It is submitted that the judgment in the case of Inakoju reflects a new regime where courts are more willing to intervene to resolve crises arising from impeachments.

The spate of indiscriminate impeachment of governors has, partly as a result of the new regime of judicial activism, greatly reduced. However, the impeachment of speakers of houses of assembly has now reached disturbing levels in Nigeria and it has tended to threaten the stability of the government and Nigeria's nascent democracy. It is suggested that the gains achieved in dealing with the cases of impeachment of executives can be leveraged to stem the tide of frequent and indiscriminate impeachment of speakers of state houses of assemblies in Nigeria. To achieve this, such cases must be submitted to courts for adjudication and the courts are enjoined to ensure the constitution is strictly complied with in each case to deepen Nigeria's democratic practice.

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<sup>45</sup> *Dapialong & Os v. Dariye & Ors* (supra)