THE PRESIDENT AND THE VICE-PRESIDENT: LOSS OF OFFICE BY REASON OF REMOVAL: ANALYTICAL DISCOURSE OF PROCEDURE

BY

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INTRODUCTION

In Nigeria, as in many other constitutional democracies, the powers of government are created by the Constitution. It is not unusual for the Constitution to create institutions for the purpose of the exercise of such powers. Usually, the Constitution allocates the powers to the various institutions so created. Power allocation to any particular institution reflects the purpose or function of the institution. Accordingly, the power to make laws is usually allocated to the legislature, being the institution created in that behalf; the power to execute the laws goes normally to the executive, as the institution created therefore; and, as is always the case, the power to adjudicate upon or resolve disputes is allocated to the judiciary, being the institution created in that behalf[1]. Following these, the Constitution stipulates the qualifying condition to be satisfied by any person desiring exercise or partake in the exercise of the powers so created and for this purpose,[2] it is not unusual for the Constitution to specify the rounds on which the holder of any such offices may lose same either on his own motion or at the instance of an appropriate authority[3], in addition to the specification of the procedure therefore.

In Nigeria, for instance, effect has continued to be given to actualization of State powers and matters incidental thereto, as per the 1999 Constitution since the return to constitutional democracy in 1999. One of the areas in which this actualization has featured in recent times[4] is that of removal of State Governors from the office. It is common knowledge that the States affected so far are Bayelsa, Oyo, Ekiti, Anambra and Plateau. It is however, observed that the procedure adopted in the removal or the fact of the removed in itself? It is also observed, that there is a seeming mix-up in the application of phrase 'removal from office' and the word 'impeachment' when the legislature discontinue the occupation of office of the President or a Governor in

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[1] Sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999 as altered ("the 1999 Constitution") are examples of this constitutional pattern; same applies to the Constitution of the United States as seen in Article I sections I, II and III thereof. Chapters III, V, VII, VIII and IX of the Basic Law for the Federal Republic of Germany, 1994 presents similar pattern

[2] Examples of this are found in sections 65, 106 and 131 of the 1999 Constitution

[3] Sections 65, 69, 143, 144, 188 and 231 (3) of the 1999 Constitution respectively, furnish appropriate examples of the various matters for which they provide in the constitutional scheme.

[4] As at the end of February 2007.

consequence of the proof of the allegation against such an occupant.

So far, the phenomenon of removal from office has not featured in respect of the President or Vice-president ("the holder of the office") in Nigeria. Notably, however, an elaborate framework therefore, embodying the procedure thereof, is provided in section 143 of the 1999 Constitution. The present writer considers it desirable to undertake an analytical discourse of the procedure prescribed for the purpose. This author believes that the outcome of such an exercise would promote an enhanced appreciation and perhaps, the application of the various procedures in appropriate circumstances. It is these and related problems that this work sets out to consider.

In Nigeria, the holder of the office may lose the office either by way of removal or that of cessation to hold office. This is by virtue of the provisions of sections 143 and 144 respectively, of the 1999 Constitution. As per the former, the holder of the office is removed from the office where both Houses of the National Assembly adopts a report of a Panel of seven persons in which allegation against him is proved. The latter obtains when by a resolution passed by not less than two-thirds majority of all the members of the executive council of the Federation it is declared that the holder of the office is incapable of discharging the functions of his office. The focus of this work is the former.

REMOVAL FROM OFFICE - THE PROCEDURE THEREFOR

This mode of loss of the office is prescribed by section 143 of the 1999 Constitution. The said prescription is reproduced in full hereunder. The reproduction is for the purposes of clarity and ease of references.

Section 143

1. The President or Vice-President may be removed from office in accordance with the provisions of this section.

2. Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly:
   (a) is presented to the President of the Senate;
   (b) stating that the holder of the office of President or Vice-president is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

3. Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by

motion without any debate whether or not the allegation shall be investigated.

4. A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

5. Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section.

6. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.

7. A Panel appointed under this section shall -
   (a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly; and
   (b) within three months of its appointment report its findings to each House of the National Assembly.

8. Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceeding shall be taken in respect of the matter.

9. Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

10. No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court

11. In this section - "gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.

This mode is constructed around proven guilt of the holder of the office. The procedure therefore is quite elaborate. It is set in motion by way of a written notice of any allegation signed by not less than one third

of the members of the National Assembly[5] and presented to the President

of Senate. The allegation contained in the notice is required to state that the holder of the office against whom same is raised is guilty of gross misconduct. It is a constitutional requirement that the gross misconduct[6] in question must have been committed in the course of the performance of the functions[7] of his office. These are the matters with which section 143(2) of the 1999 Constitution is concerned.

The minimum requirement as to the number of signatories to the notice of allegation in relation to the membership of the National Assembly is quite clear. The sense in this observation is sufficiently aided and/or buttressed by the wordings of section 56(1) of the same Constitution. In the words thereof:

> *Except as otherwise provided in this constitution, any question proposed for decision in the Senate or the House of Representatives shall be determined by the required majority of the members present and voting*[8].

The words of number in section 143(2) namely, not less than one-third, determinable fraction of a definite whole number. Invariably, the whole number in question is that of the National Assembly. In contrast, the words of number in section 56(1), namely, the required majority of the members present and voting, are indefinite.

The consequence of each of these situations is quite notable. The definite character of the former results in or is capable of resulting in an indisputable answer as to what the minimum number of signatories to the notice of allegation is intended to be. In other words, the figure with reference to which the question as to what the prescribed minimum number of signatories is to be worked out is easily obtainable. Same can hardly be said of the figure with reference to which the majority prescription in section 56(1) is to be determined. The not less than one-third prescribed by the introductory statement of section 143(2) is, for all intents and purposes, a reference to the total number or aggregate of the members of both houses of the National Assembly, i.e., the Senate and the House of Representatives. It is submitted that the absence of the quantifier, ALL, from the words, MEMBERS OF THE NATIONAL ASSEMBLY, is seen as not injurious to this construction. One needs not go too far in an effort to interpret the statement under consideration before conceiving the fact that the word, ALL, is intended. Knowledge of the number of Federal Constituencies and Senatorial districts in Nigeria, baring vacancies, may suffice to yield the figure from which the prescribed

[5]National Assembly is defined by section 318 (1) of the 1999 Constitution as the Senate and the House of Representatives established thereby

[6]Gross misconduct is said by section 143 (11) of the same constitution t mean a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct

[7]Functions as per section 318 (1) of the same constitution, includes power and duty

[8]Emphasis nine

Not less than one-third of the members of the National Assembly is to be

worked out. On the other hand, the determination of the figure from which the majority requirement in section 56(1) of the 1999 Constitution entails the ascertainment of the number of members present and voting in the particular meeting with respect to which the need for the determination arises.

This construction, it is submitted, is the one that will best carry out the object and purpose of the prescription under consideration. The alternative thereof will be a fraction of the entire membership of the National Assembly. There is no doubt whatsoever that the makers of the 1999 Constitution would have provided in express terms in that behalf, had that been what they contemplated. In other words, the makers of the said constitution could not have made a provision featuring a prescription of fraction of an unspecified other fraction. On the other hand, to state that the base number from which the prescribed fraction is to be determined *is all the members* imports certainty into the matter. Besides, a provision requiring one-third of a given whole number is wider than another provision requiring one-third or any fraction of the same given whole number.

Invariably, it is desirable that a notice of allegation against the holder of the office be signed by not less than one-third of the entire membership of the National Assembly, as against one third of any fraction thereof. A notice of allegation signed by not less than one third of the entire membership of the National Assembly, as against not less than one third of any fraction of the entire membership of the National Assembly cannot be said to project a broad support therefore. Yet, broad support for a notice of allegation among the members of the National Assembly is perceived as a cardinal intention of the prescription in view. This is necessary, considering the enormous time and resources involved in the investigation of the allegations. Broad support for notice of allegation is capable of serving as justification for such time and resources being expended, even if the holder of the office is exculpated at the end of the investigation. In the case of Hon. Abraham Adeolu Adeleke and 3 Others v. Oyo State House of Assembly and 18 Others[9], the Court of Appeal (Ibadan Division) cherished the approach of broad interpretation of the Constitution. This was shown in the concurring judgment of Akaahs, JCA[9], when he quoted the statement of Idigbe JSC., in *Nafiu Rabiu v. Kano* State[11] that:

> *Where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the court should always lean where the justice of the case so demands to the broader interpretation unless there is*

[9] {2006}16 NWLR (Pt. 1006) 608

[10] Ibid at p. 683

[11] {1980}8 – 11 SC 30

something in the context or in the rest of the constitution to indicate that the narrower interpretation will best carry out its object and purpose[12].

This principle, usually referred to as *beneficial construction* was dwelt upon by the Court in the case of Savannah Bank of Nigeria Limited and 1 Other[13] V. Ammel 0. Aljilo and 1 Other wherein it was stated that;

This is the tendency of the courts, when faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully and a narrow meaning which carries it out less fully or not at all to choose the former[14].

The rejection of any construction which fails to lead to the full or to the total failure of the, attainment of the object or objective of any provision of statute or Constitution is anchored on good or sustainable principle. A provision of statute or the Constitution which is bereft of an object or objective, is no less than a salt without a taste, or, to say the least an aimless or unfocused provision. It is a provision that ought not be there in the first instance. It endangers the understanding that the legislature do not legislate in vain.

NOTICE OF ALLEGATION

Section 143(2) of the 1999 Constitution requires that a notice of any allegation made there-under be in writing and signed as prescribed thereby. The requirement of writing, it is opined, is intended to meet the need for certainty of the specific allegation levelled on the holder of the office. The need for certainty arises in consequence of the necessity to underscore the reality of the existence of the allegation as such.

As various subsections of the section under consideration show, the notice of allegation is to be presented to President of Senate, served on the holder of the Office and on each member of the National Assembly and presented before the investigative panel, when appointed. This, it is submitted, equally give rise to the need for the notice of allegation to be in writing. Writing, again, it is submitted, facilitates transmission of information.

Like section 143(2) of the 1999 Constitution, the English Statute of Frauds, 1677 prescribed the requirement of writing in respect of specified matters in contractual relationships. As per section 4 of the said statute:

No[15] *action shall be brought whereby to charge any*

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[12] Ibid at p. 195

[13] {1989} 1 NWLR (Pt. 97) 305

[14] Ibid 2 at p. 333

executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of any other person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditament, or any interest in or concerning them; or upon any agreement that is not to be performed upon the space of one year from the making thereof; agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed, by the party to be charged therewith, or some other person thereunto by him lawfully authorized[16]

The learned author, Professor I.E. Sagay, gave some hints as to the purpose of the Statute of Frauds. According to him:

The Statute of frauds was originally enacted to arrest the prevailing practice whereby unscrupulous litigants pursued false or groundless claims with the aid of false evidence. Where evidence is purely oral, the court is usually left in the invidious situation of deciding from the demeanour and countenance of the parties which evidence to accept and which to reject. The Statute was intended to eliminate such arbitrariness and the attendant injustice by requiring evidence of an alleged claim in writing, before enforcing the claim.

From the above, which the present author identifies with, it may be inferred that the requirement of writing in section 143(2) of the 1999 Constitution is intended to create empirical condition for the determination of whether a notice of allegation is capable of being sustained or is *prima facie* groundless.

EFFECT OF NON-COMPLIANCE

Neither section 143(2) of the 1999 Constitution nor any other provision thereof prescribes any effect of non-compliance with the requirement of writing. It is, however, a notorious fact that law-makers do not make any provision of law in vain. It is equally a notorious fact that default in respect of mandatory requirement of a written law, is hardly of no effect. It is, consequently, opined that in relation to the provision under consideration here, a default in compliance therewith

[15] Emphasis by the present Writer.

[16] Culled from Saagay, I. E., Nigerian Law of Contract (Ibadan, Abuja, Benin City, Lagos, Owerri: Spectrum Books Limited, 1993)pp.203-204.

[17] Ibid, p.203

renders the notice of allegation ineligible for presentation to the President of Senate that being the next step, when same is regularly drawn up. In other words, the National Assembly cannot act on, for instance, an oral submission(s) purporting to amount to a notice of allegation against the holder of the office. For, in cases of non-compliance with the requirement of writing in section 4 of the English Statute of Frauds, 1677, it was stated by English courts that the contracts involved are unenforceable[18].

Treitel's statement on the matter agrees with judicial stance thereon. According to him, "Failure to comply with the requirements just described[19] does not make the contract void but only unenforceable[20]. This expression extends to the requirement of signature.

ELECTRONIC DOCUMENT

It is the opinion of this writer that the formal requirements on notice of allegation under section 143(2) of the 1999 Constitution are satisfiable or, indeed, satisfied, where such document is made electronically. This view is made against the backdrop of the silence of the subsection under consideration and the said Constitution as a whole on the formal requirement of electronic documents prepared thereunder. It finds accommodation under section 84 of the Evidence Act, 2011.

There is a known English authority on the said requirements. It is the case of *Victor Chandler International v. Customs and Excise Commissioner.* In that case, it was held that electronically stored information can, in law, constitute a "document". Treitel, commented on the specific issue of signature in respect of the said holding. In doing this, he relied on the advise of the English Law Commission over the matter of electronic document[22]. He writes that: "The requirement of "signature" can likewise be satisfied in the case of electronic Documents: e.g. by a digital signature, typing a name into an electronic document or even by clicking on a website botton[23]." On the question as to whether or not such a signature satisfies the requirement, Treitel, ; writes that:

> *Whether the requirement is actually so satisfied depends in these cases on the common law test of what constitutes a signature: i.e. on whether the act in question was done with the intention of authenticating the electronic document.*

This writer holds the view that in an age wherein a hard copy of a document can be electronically stored by means of scanning, the question of signature on an electronic document is a resolved.

CONTENT OF NOTICE

[18]Leroux v. Brown (1852) 12 C.B. 801; Elias v. George Sahely & Co. (Barbados) Ltd. 1983 I A.C. 646

[19]The Requirements of writing and signature in section 4 of the English Statue of Fraud 1677

[20]Treitel, G. The Law of Contract (11th edition) (London: Thomson Sweet and Maxwell, 2003) p. 185

[21]{2001}I WLR 1296

[22]In a paper titled: Electronic Commerce: Formal Requirements in Commercial Contracts (December, 2001)

[23]Treitel, G. op.cit p 186

The rule in this regard is prescribed in section 143(2)(b) of the 1999 Constitution. It requires a notice of allegation to state that the holder of the office against whom it is drawn is guilty of gross misconduct. The guilt arose in the course of the office holder's performance of the functions of his office. It is required that detailed particulars of the alleged misconduct be specified therein. Gross misconduct is stated by section 143(11) of the said Constitution to mean ".. a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct." It follows that by its nature, the content of a notice of allegation may originate from a duality of sources, namely, the Constitution and the statute. The content of any particular notice may originate exclusively from a single source or from a combination of sources.

GRAVE VIOLATION OR BREACH

One of the situations that may give rise to a notice of allegation being drawn up is that of a perceived breach arising from a perceived grave violation or breach of any of the provisions of the 1999 Constitution. The term, violation, is interpreted to mean "an infraction or breach of the law; a transgression. The act of breaking or dishonouring the law.[24]" On its own part, a breach is "a violation or infraction of a law or obligation.[25]" It is inferred from these interpretations that the terms, violation and breach are not really far from each other in meaning. There is, therefore, the implication that the word, or, which occurs between those words in section 143(11) of the 1999 Constitution creates *alternatives,* by reason of which it is truly a disjunctive.

This means that a choice of any of both words in a notice of allegation will suffice. Making the violation or breach of any of the provisions of the 1999 Constitution a basis for a notice of allegation being drawn up has concrete constitutional implication. The implication is that the terms, violation or breach, is thereby taken from the ambit of the definitions whereby *obligation* is involved. Obligation comes in by virtue of the Oath of Offices of the holder of the office, in the Seventh Schedule to the 1999 Constitution. By the said Oath, the holder of the office is bound to "... preserve, protect and defend the Constitution of the Federal Republic of Nigeria ...." The effect of this is the imposition of an obligation on the holder of the office to act in accordance therewith, and not otherwise. It follows that whenever the holder of the office deals with any of the provisions of the 1999

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[24]Garner, B.A et al (ed) Blacks's Law Dictionary (7th edn) 9St. Paul, Minn; West Group, 1999) p. 1564

[25]Ibid p. 182 edcration of Nigeria, 2004.

Constitution in any manner that is inconsistent with the preservation, protection and defence of same, he is actually acting in violation or breach thereof.

MISCONDUCT

Gross misconduct, as defined by section 143(11) of the 1999 Constitution has two ambits. The first ambit is grave violation or breach of the Constitution. This has been discussed above. The second ambit "... is a misconduct of such nature as amounts *in the opinion of the National Assembly* to gross misconduct." By the wordings of this ambit, discretion is created in favour of the National Assembly to determine when a misconduct amounts to a gross misconduct.

The discretion contemplated by the provision under consideration seems to be heavily political in nature. Otherwise, it is difficult to comprehend the manner in which an act which is only a misconduct would, without more, metamorphoses into a 'gross misconduct'.

It is possible to have a situation where there is a stand-off between the holder of the office and the legislature. A situation can equally exist wherein a feeling of dissatisfaction is prevalent within the electorates in respect of the holder of the office and the same feeling is shared by the majority of the members of the legislature. In any such situation, proof of grave violation or breach of any provision of the Constitution may not readily be available. It is opined that where any such situation exists, that holder of the office is vulnerable to having a notice of allegation raised against him, under the second ambit of the definition of gross misconduct in section 143(11) of the 1999 Constitution. This, it is submitted is constitutional.

It is also an issue as to whether the ambit under consideration could serve as an avenue for a notice of allegation being raised against the holder of the office under an Act of the National Assembly. Notably, both holders of the office subscribe to their respective oath as such whereby each of them swear/affirm to discharge his duties "... in accordance with the Constitution of the Federal Republic of Nigeria and law ...." "The law," in the present context, it is submitted, contemplates Acts of the National Assembly. As per section 5(1) of the 1999 Constitution:

> *Subject to the provisions of this Constitution, the executive powers of the federation shall extend to the execution, and maintenance of this constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.*

In this situation, the holder of the office is individually accountable for his deeds under any given Federal enactment of the National Assembly. This is aptly illustrated by the matter of the events involving the Presidency in relation to the Petroleum Technology Development Act[26]. This is a matter in which both the incumbent holders of the office are reported by a review committee of the Senate of the Federal Republic of Nigeria as having engaged in unlawful acts[27]. It is not impracticable that a notice of allegation in respect thereof may issue in respect of both holders of the office at the end of the consideration of the report in question by a full House of the said Senate.

THE OCCASION

The rule is that the holder of the office must have engaged in the gross misconduct in the course of the performance of the functions of his office. This is as per section 143 (2) (b) of the 1999 Constitution.

The functions of the holder of the office is clearly spelt out by section 5(1) (b) of the 1999 Constitution. These, represented as powers in the said subsection, are stated to be the execution and maintenance of the said Constitution, as well as the provision of laws made by the National Assembly. Also included is the execution of all matters with respect to which the National Assembly has, for the time being power to make laws. In effect, every item of allegation in the notice is mandatorily required to state the very occasion in which the gross misconduct was committed. In other words, it has to be unequivocally stated that the unconstitutional and/or unlawful act was committed when the holder of the office was performing a particular function of his. This particular requirement, it is opined, may necessitate the naming of the place and time of the performance of the function from which the wrongful act emanated or which constitute same.

It is noteworthy that holder of the office performs the function of &the maintenance of the constitution. This item is part of section 5(1) (b) of the 1999 Constitution. Part of the oath of office of holder of the office is an undertaking to preserve, protect and defend the Constitution of the Federal Republic of Nigeria. Such activities, it is opined, appear to be capable of being read into the word, 'maintenance' as used in the provision under consideration. It is submitted that the Oath of Offices of the holders of the office provides the yard stick for determining whether the said activities are being carried out in a manner that amounts to gross misconduct. The question is: are those activities being carried out in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria?

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[26] Cap. P15 Laws of the F

[27] Aziken, E., and Shuaibu, E., "Senate Panel sends Obsanjo, Atiku to Conduct Bureau", Vanguard Newspaper (Apapa), 23rd March 2007, Front page and P.15. Section 143(3)(4)of the 1999 Constitution.

PRESENTATION

A duly drawn up notice of allegation is required by section 143(2) (a) of the 1999 Constitution to be presented to the President of Senate. The presentation, it is submitted, marks the second step in the procedure for the removal of the holder of the office from the office. It also marks the commencement of the involvement of the National Assembly as a body, in the said procedure. It equally offers the leadership of the National Assembly an opportunity to peruse the notice for the purposes of the consideration of the sustainability thereof and the eventual success of the removal efforts, depending on whether or not the said leadership desire a successful outcome.

Upon the presentation of the notice of allegation to him, the President of Senate comes under a duty to serve same on the holder of the office and on each member of the National Assembly. This duty is imposed by section 143(2)(b) of the 1999 Constitution, which imposes a consequential duty on the same functionary to cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly. The structural arrangement of this provision in relation to service of the notice suggests that the holder of the office is to be served prior to the service of the said notice on each member of the National Assembly.

Essentially, there are two parties stipulated by the provision under consideration for service thereon with a notice of allegation, namely, the holder of the office and each member of the National Assembly. In the provision, service on the holder of the office precedes service on each member of the National Assembly. The issue therein is whether the President of Senate is required to see this arrangement as a directive in relation to the sequence of service of the said notice.

In the said arrangement, the holder of the office has primacy in terms of the sequence. The implication thereof is that if the arrangement was intended to be rigidly followed, the holder of the office is required to be served with the notice of allegation before the service of same on each member of the National Assembly. *Prima facie,* it seems that this sequence is intended to prevail.

Notice is taken of the fact that the same subsection in view creates a limitation of seven days *within* which the President of Senate is required to effect the service of the notice of allegation upon the receipt of same. Notice is also taken of the fact that a limitation of the period of *fourteen days of* the presentation of the notice to the President of Senate is specified for each House of the National Assembly to resolve on the question as to whether or not the allegation is to be investigated. Section 143(3) of the 1999 Constitution imposes this limitation. This implies, that there is no duty on the National Assembly to resolve on whether or not the allegation be investigated before the seventh day of the receipt of the notice by the

President of Senate. Otherwise, service on the holder of the office prior to service on the other party would have been to the detriment of the latter.

The latter is no other than each member of the National Assembly. Invariably, they have a collective or near collective (or institutional) interest to succeed in such a venture, once they engage in it. This, to a large extent, dictates that it is in their interest to serve the notice of allegation on the holder of the office only after they have resolved to investigate the allegation. For this purpose, it is undesirable to serve the notice on the holder of the office prior to service of same on the members of the National Assembly. The panacea lies, therefore, it is opined, on the service thereof on each member of the National Assembly prior to service of same on the holder of the office. This entails effecting the service on each member of the National Assembly soon after the receipt of the notice by the President of Senate - soon enough to enable a resolution on whether or not to investigate the allegation take place before the seventh day of the receipt thereof by the President of Senate. Of course, the service on the holder of the office takes place where the resolution to investigate the allegation is in the affirmative. This perspective is quite practical in nature. It seems that service, for this purpose has to be personal. To this effect, a service on the personal secretary to the holder of the office would suffice.

RESOLUTION

Each House of the National Assembly is required to resolve by motion whether or not the allegation is to be investigated. It is a fundamental requirement that the motion proposing the resolution be not debated. Not less than two-third majority of all the members of each House of the National Assembly is prescribed as the minimum votes for the passage of the resolution[28]. It follows that voting on the resolution has to be by show of hands. Voice vote, it is opined, is inapplicable, as same cannot be enumerated. A time limit of *not more than* fourteen days *of the presentation of the notice to the President of Senate* is set for the passage of the resolution. It appears that a resolution of both Houses of the National Assembly to investigate the allegation is a necessary condition for the investigation to be instituted. In other words, it seems, where one of the said Houses resolves not to investigate, the whole matter is at an end.

The motion to resolve on whether or not the allegation shall be investigated is required to be taken without any *debate*. Ordinarily, on a motion of this nature, where debate is not prohibited, once formal issues are disposed of, arguments will focus on the substance (content) of the matter. Contributors would want to establish whether or not the allegation *merits* investigation. Once the matter gets to this level, it becomes difficult to avoid pronouncing on the *guilt* of the holder of the office by politicians. This, it seems, is the trend or end result which the makers of the 1999 Constitution intended to circumvent when they

injected words in the provision in prohibition of debate on the motion for the procurement of a resolution on the question.

REQUEST TO APPOINT A PANEL

Section 143(5) of the 1999 Constitution creates what may be termed a watershed in the process of removal from office. It empowers the President of Senate to *request* the Chief Justice of Nigeria to appoint a panel of seven persons to investigate the allegation against the holder of the office. The subsection delimits a period of seven days of *the passing of the motion to investigate* within which to make the said request.

The same subsection makes provisions guiding the Chief Justice of Nigeria in terms of the quality and attributes or characteristic of persons to be appointed to serve in the panel. Yet, it is left to his discretion as to the persons who exhibit these qualities and attributes or characteristics. He appoints a person as a member of the panel if, in his opinion, that person is of unquestionable integrity, not a member of any public service, legislative House or political party.

It is noteworthy that the subsection in view contemplates a positive resolution of the National Assembly to investigate. Consequently, it makes provision only for that occasion when the National Assembly resolves to investigate. Yet it is not impracticable, or unimaginable that an instance might exist when a 'no' vote is in the majority.

The power to appoint a panel to investigate the allegation is conferred on the Chief Justice of Nigeria. It is exercised upon a request made thereunto by the President of the Senate. The subsection under consideration makes it obligatory for the Chief Justice of Nigeria to exercise the power when the need therefore arises. Yet, the need for it is communicated to him, as constitutionally prescribed, by way of a request. Request is "to express a desire for, especially politely, ask for; solicit.[29]" It is submitted that any of the three definitions could stand as what the President of the Senate does when he requests, as prescribed. It is, however, certain that the 'expression of desire' is most suitable in the context. The performance of a function as important as the one in view is thus initiated by a non-imperative means.

The Chief Justice of Nigeria is the head of an arm of government, namely, the Judiciary. The President of the Senate is the head of another arm of government, namely, the Legislature. The need arises, from time to time as in the present case, for one arm of government to become involved in a function constitutionally or statutorily reserved for another. Such involvement may be prescribed or the necessity therefore may arise in the course of the day to day functioning of the various arms of government. In any event, it is desirable that politeness characterize the interplay. This is necessary in order not for the impression that one arm of government is being subordinated to another. This goal, it is submitted, appears to have

[29] Webster's Dictionary of the English Language, Deluxe Edition p. 822

been intended by the makers of the 1999 Constitution when they used the word under-consideration in the subsection in view.

It is submitted that the role ascribed to the Chief Justice of Nigeria by the 1999 Constitution in the removal of the holder of the office does not amount, strictly speaking, to bringing the judiciary into the matter. It seems reasonably clear that the power conferred on the said Chief Justice to set up the panel is conferred on him in his administrative capacity.

The appointment of certain persons into the panel is prohibited by the subsection in view. The Chief Justice of Nigeria is required to take cognisance of this as he carries out the appointment. Those affected by the prohibition are - persons who are members of any Public Service, or any legislative House, or any political party, or any person, who in the opinion of the said Chief Justice, is of questionable integrity. The exclusion of persons of questionable integrity from those appointable into the panel would serve to insulate the work and outcome thereof from the question of integrity. The attainment of this objective secures the credibility of the entire process of removal from office. The elimination of the question of integrity is invaluable at the panel stage since the allegation which the panel investigates borders essentially on the integrity of the holder of the office; just as it will go a long way in addressing the question of external pressure. Invariably, a Panel whose function is to investigate alleged acts bordering on integrity will be better off, if its membership does not include person(s) of questionable integrity.

The prohibition of the appointment of persons falling within the other categories as stated in the immediate foregoing paragraph seems to have been intended to address the question of bias. A person who is a member of the Public Service of the Federation owes obedience to the holder of the office. Such a person is not likely to risk his job by making or being a party to findings that are adverse to the holder of the office[30]. In the same vein, it is difficult for a member of a legislative House in Nigeria, who definitely is a member of a political party, to be transparently objective as a member of a panel of the type in view. Such a person is a member of the same political party as the holder of the office, in which case party loyalty would probably colour his views. On the other hand, where he is a member of an opposition party, the holder of the office will probably be guilty as alleged.

Section 143(5) of the 1999 Constitution is unambivalent on the function of the panel. It states same to be the *investigation* of allegation. Investigation is not an all-comers job. Investigators are duly groomed for the job. To investigate is "to inquire into (a matter) systematically .... [31]" Thus the task of an investigator is poring over every available clue in respect of a complaint or allegation with the intention of proof. Skills and

[30] It is not being suggested that courageous persons do not exist in the public service. The prohibition as it is, serves as protection for such persons. More often than not, engagement in a courageous act is a different thing from facing the consequence of such acts.

[31] Garner, B. A. (ed) op cit, p. 844.

expertise are involved.

Yet, the 1999 Constitution did not reserve the responsibility to investigate in this occasion to experts in the field. Neither does it exclude non-experts in the field of investigation from membership of the panel. It is, therefore, a matter within the discretion of the Chief Justice of Nigeria in terms of whom to appoint to the panel as between the experts and non-experts in the field of investigation. Seemingly, a rational mix of these categories would do no harm. The safeguard is that a panel so appointed has such powers and exercises its functions in accordance with such procedure as may be prescribed by the National Assembly. The non-expert component thereof, all things being equal, stand to be guided.

THE INVESTIGATION

The function of the panel is the investigation of the allegation against the holder of the office as contained in the notice. The purpose thereof is the search for proof or otherwise of the allegation. Definite provision is made by section 143(2)(b) of the 1999 Constitution to facilitate the investigation. This is in the form of a requirement that detailed particulars of the allegation be specified in the notice.

The particulars of an allegation is probably intended as a veritable guide for the Panel as to the focus of the investigative efforts. The name of the holder of the office, the particular office, he holds, the place where the wrongful act was committed, the description of the wrongful act, the section of the Constitution or statute violated or breached, the date and time of violation or breach; these and other relevant information would pass for detailed particulars of the allegation.

The holder of the office whose conduct is being investigated is entitled to defend himself in person and be represented before the Panel by legal practitioners of his own choice. This right is created by section 143(b) of the 1999 Constitution. It is very much a case of the said Constitution exemplifying in a particular situation what it requires in its section 36(6)(b)(c) on the matter of fair hearing.

The focus of the investigation is the allegation against the holder of the office. Every detail thereof provided in the notice of allegation has to be meticulously examined and every lead scrupulously followed, for the purpose of proof.

REPORT

At the end of its investigation, the panel is required by section 143(7)(b) to report its findings to each House of the National Assembly. Upon a report thereby that the allegation has not been proved, no further proceedings is taken in respect of the matter.[32]

The other situation is where the panel reports that the allegation has been proved. In this case each House of the National Assembly is required to consider the report. In other words, the panel's report is open

[32] Section 143(8) of the 1999 Constitution.

to debate at the floor of each house of the National Assembly. The 1999 Constitution creates no bounds in terms of the scope of the debates that can be taken on the report.

As a matter of course, opponents of the moves to remove the holder of the office will raise questions over the report on the issue of Proof. They might insist that what is taken as proof is either no proof at all or is unsatisfactory. It seems that any such question cannot be left unanswered. This in turn raises an issue as to whether the creation and the setting up of the panel in particular circumstances, is necessary.

It is inferred from the constitutional provisions on report and the manner of dealing therewith that the power of the panel does not include finding the holder of the office *guilty.* The finding of *guilt* is not expressly connected by the 1999 Constitution with the panel's report. What is expressly prescribed therein is that "... if by a resolution of each House of the National Assembly supported by not less than two-third majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report." It is submitted that the clause, ***the report of the panel is adopted,*** contemplates the finding of guilt. The finding of guilt at this stage of the proceedings seems imperative. This is because the proceedings is commenced by way of an allegation, as shown by section 143(2)(b) of the 1999 Constitution, that the holder of the office is guilty of gross misconduct. It is only logical that where that allegation is proved, the finding of guilt follows.

The adoption of the Panel's report marks the end of the holder of the office in that office. It seems that the removal from office which follows does so, automatically, by virtue of the wording of the constitutional provision in respect thereof. As the provision goes "... the holder of the office shall stand removed from office as from the date of the adoption of the report." This, it is submitted, has the character of a provision that is self-enforcing. In other words, no motion is required for the purpose of the removal from office.

Perhaps, a letter from the President of Senate to the holder of the office informing him of the adoption of the report of the panel and drawing his attention to the fact that he stands removed from office by reason thereof, would suffice. It is noteworthy that in common parlance, removal from office through the foregoing procedure is referred to as *impeachment.* The 1999 Constitution did not use it.

LIMITATION OF TIME

Almost at every stage in the procedure for removal of the holder of the office therefrom a given period of time is constitutionally delimited for completion of action. This appears to reflect a constitutional intention that the procedure for removal from office be not unnecessarily encumbered by delay.

Removal of the holder of the office will in majority of cases, when it occurs, be for political considerations. As the framework creating the procedure for the removal shows, the President of Senate functions largely as the fulcrum on which the procedure turns. He is the functionary to whom the notice of allegation is presented.

In the absence of a binding time limit within which to start off the processing and/or consideration thereof, it is possible for him, with due respect, to frustrate same by refusing to set the mechanism in motion for the determination of the matter.

The constitutionally prescribed time frame for the removal of the holder of the office is as follows:

(a) Service of the notice of allegation on the holder of the office *within* seven days of receipt thereof.

(b) Resolution on whether or not the allegation shall be investigated - *within* fourteen days of the presentation of the notice of allegation to the President of Senate.

(c) Request from the President of Senate to the Chief Justice of Nigeria to appoint a Panel of seven persons to investigate the allegation - seven days *of* the passing of a motion to investigate the allegation.

(d) Submission of its reports of findings by the Panel of seven persons - *within* three months of its appointment.

(e) Consideration of the report of the Panel of seven persons -*within* fourteen days of the receipt of the report. Removal of the holder of the office from office - same day as the adoption of the report of the panel of seven persons.

By this time frame, the holder of the office may be removed therefrom within a period of 132 days or thereabout. There is no provision in section 143 of the 1999 Constitution or in any other section thereof showing that any of the limitations of time shown above is not mandatory.

OUSTER OF JURISDICTION OF COURT

Section 143(10) of the 1999 Constitution provides that "No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any Court." Provisions of this nature are regarded as *ousting court's jurisdiction.* Such provision characterizes legislation in military governance. Its presence in the constitution under democratic governance would, from time to time, be sought to be exploited by some characters in government.

The subsection as it stands at present, prohibits the court from the entertainment of any matter in respect of proceedings relating to removal of the holder of the office. It also prohibits the court from the entertainment of any determination i.e. resolution, decision, etc., of the panel of seven persons or of the National Assembly in respect of the said removal. The subsection equally prohibits litigants from questioning such determination or proceedings before the Courts. In other words, no action

or matter relating thereto is maintainable in the adjudicatory process.

In the opinion of this author, it is difficult to understand the intention of the makers of the 1999 Constitution, in making the provision under consideration. That is because section 143(1)-(9) impose numerous specific duties on various functionaries in the course of removal from office. Can it be said that those duties are discretionary? The implication of a positive answer to this is quite obvious, namely, that no holder of the office can ever be removed therefrom, no matter how bad a particular holder may be, if he enjoys the unalloyed support of the presiding officers at the National Assembly.

CONCLUSION

Removal of the holder of the office is predicated on grave violation or breach of the provision of the Constitution or a gross Misconduct. It does not take place where none of the wrongful acts has not been committed. The wrongful acts are not criminal *per se* in nature. They can at best be said to amount to inefficiency. It can therefore, be said that the 1999 Constitution abhors and punishes inefficiency, particularly on the part of the holders of the key offices which it has put in place.

There must have been a presumption by the makers of the 1999 Constitution that the procedure fashioned out by the said constitution for getting rid of an inefficient holder of the office is sufficient or even adequate for the accomplishment of the said goal. It is the finding of this work that although the procedure may not be adequate, it is nonetheless sufficient and is capable of achieving the desired goal.

Some of the problems affecting the adequacy of the said procedure are drafting-related. In section 143(2) of the 1999 Constitution, there is a requirement that a notice of allegation be signed by not less than one-third of the members of both Houses of the National Assembly. The word, members, in the provision is ambiguous, on the account of not being subjected to the quantifier, all. In an age of Information and Communication Technology, there is the absence of any item on electronic document in the provision on the procedure for the removal of the holder of the office.

Section 143(2) (b) of the 1999 Constitution provides for the service of the notice of allegation on the holder of the office, but sets no time limit within which the said holder is required to serve his reply on the National Assembly. The same subsection provides for the said service without prescribing the mode of service on the holder of the office. It is submitted that these failures create gaps in the procedure for removal from office. It is, therefore recommended that an amendment of section 143 of the 1999 Constitution is needed to enable provisions covering the gaps identified above to be made.