

ADHERENCE TO THE RULE OF LAW IN NIGERIA: LEGAL ISSUES ARISING*

Abstract

The rule of law is a constitutional concept which stipulates that everything in a State must be done in accordance with the due process of law. It amplifies such ideals that government should be run according to the due process of law, equality before the law, respect for human rights and the independence of the judicial arm of government. The rule of law is a sine qua non for constitutional democracy. Therefore, this paper examined the rule of law under military and civil dispensations. It found that the rule of law thrives better in the latter. The paper concludes by advocating that Government and all relevant stakeholders must ensure that the rule of law is applied, adhered to in all governmental actions and policies in order to prevent arbitrariness in government and also to promote the need to guarantee human rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria as amended.

Keywords: The Rule of Law, Adherence, Legal Issues, 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended)

1. Introduction

The rule of law is a doctrine which has been subjected to different definitions by scholars. Its definition depends on the standpoint from which a scholar considers it. According to Aristotle, 'the rule of law is superior to that of individual.'¹ Similarly, Henry de Bracton in the thirteenth (13th) century adopted the theory originally held in the Middle Ages that the world was governed by laws, human or divine and held that 'the king himself ought not to be subject to man, but subject to God and to the law, because the law makes him king.' Akanbi and Shehu² analyzed the concept of rule of law in Nigeria in relation to how it had been applied both under the military and civilian administrations in the country. This paper explores the concept of the rule of law, its application by past and present government and buttresses the need for the efficient application of the rule of law in a constitutional democracy like Nigeria.

2. Dicey's Postulation on the Concept of the Rule of Law

Dicey in his book, 'Law of the Constitution in 1885' maintained that the doctrine of rule of law has three vital aspects.³ According to him, the first aspect includes the following means the absolute superiority or predominance of normal rule as opposed to the control of arbitrary powers which excludes the presence on the part of the government of arbitrariness of prerogative or even of broad discretion. English people are governed by the rule of law and by this alone; a man may be punished with us for violation of the law, but he can be punished for nothing else.⁴ What this means in effect is that powers whatever their extent must be exercised according to the ordinary laws of the land. In other words, the regular laws of the land take precedence over the arbitrary exercise of government and discretionary powers. Power whatever its extent must be exercised according to the constitution and the ordinary laws of the country. In Dicey's words, the second aspect of the rule of law implies equality before the law or equal subjection of all classes to the ordinary laws of the land as administered by the ordinary law, or the equal subjection of all classes to the ordinary laws of the land administered by the ordinary courts.⁵ Equality before the law means the subjection of everyone in the country to the obedience of the ordinary laws of the country. According to Dicey, the rule of law precludes the notion of any exemption from the obligation of adherence to the law governing other citizens or from the authority of the officials or others or from the jurisdiction of the courts. There must be no special privileges for officers. Briefly put, this means that the law is no respecter of persons. Any person irrespective of his work and status in life is subject to the ordinary courts or the laws of the land. Hinged on this assertion, Malemi expresses the opinion that the rule of law implies the obedience of everyone to the jurisdiction of the ordinary courts of the land.⁶ Dicey, however, admitted that there should be some qualifications or modifications because of the wide exemption from liability based on public policy given for instance to the: presidents,⁷

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¹Aristotle, *The Politics* III, Jowett Benjamin (Trans.) and Davis, H.W.C ed., (Oxford: Oxford University Press, 1926) at 16.

²Akanbi, M. M. & Shehu, A. T., 'Rule of Law in Nigeria' (2012) Vol. 3, 1 – 9. *Journal of Law, Policy and Globalization*.56.

³See Yakubu, J. A., 'Trends in Constitution-Making in Nigeria' (2000) *Transnational Law and Contemporary Problems*, Vol. 10 423 at 476.

⁴Dicey, A. V. *An Introduction to the Study of The Law of the Constitution*, 10th ed. (London: Palgrave Macmillan, 1985) at 202.

⁵*Ibid.*

⁶Malemi, E. *The Nigerian Constitutional Law* (Lagos: Princeton Publishing Co., 2006) at 95.

⁷See *Tinubu v. IMB Securities Plc* [2001] 16 NWLR (Pt 740) 670 SC.

governors,⁸ judges,⁹ diplomatic representatives and members of parliament during their term of office. The third aspect of the rule of law has been expressed to be formula for stating the constitutional law, rules which are necessarily part of a constitutional code in foreign countries naturally form part of a constitutional code are not the sources but the consequences of the rights of individuals, as defined and enforced by the courts.¹⁰ This simply means that the constitution is the result of the ordinary laws of the country. The constitution is a comprehensive synthesis of the ordinary laws of the land.¹¹ The fundamental rights enjoyed by a citizen arise from the ordinary laws of the land or decisions of the courts and not any special guarantee by an authority. Wade, in comparison, considers the components that ought to constitute the rule of law to include the following:

- (a) For any act to be valid, it must conform to the law;
- (b) that government activities must be concluded within the bounds of defined rules and regulations;
- (c) disputes involving the lawfulness of State actions must be decided by courts of law without executive interference;
- (d) that there should be no undue privileged and discrimination in society; and
- (e) that no one should suffer any punishment out of the framework of the law.¹²

It is noted that while the indices provided by both Dicey and Wade are very sound in the context they are considered, these indices are by no means exhaustive. However, of particular relevance are two of the indices mentioned by both of them. These are as follows:

- (i) that every person is equal before the law; and
- (ii) that there should be no undue privileges and discrimination in the society.

The two indices listed above are of particular relevance about the constitutional provisions in the 1999 Constitution (as amended) which guarantee human rights and equality under Nigerian constitutional law.

3. Rule of Law in Military Dispensation

The word 'military' or 'armed forces' covers not only the Army but also the Navy and Air Force of a country, Nigeria inclusive. Whenever the military comes into power they suspend parts of the Constitution and modify it and whatever is left of the Constitution operates subject to the decrees of the Federal Military Government. Therefore, the suitability of Chief Obafemi Awolowo's assertion that 'under military rule, the rule of law is not fully abolished but largely in abeyance.'¹³

Military rule in the strict sense of it implies lack of democracy and rule of law. Above all, there is supremacy of decrees over the constitution. It also connotes prevalence of martial law, emergency rule and autocracy as opposed to civil law. There is great practice of unitary system of government and less observance of the doctrine of separation of powers. The head of State rules by decrees and without a regular parliament, and manages the affairs of the people according to his desires. The people are denied civil liberties which conflict with the dictator's will. The decree becomes the highest law of the land. The Constitution generally loses its binding force and substance, and almost becomes a mere paper. The Ruling Military Council exercises the powers of the government; especially the legislative and executive.

Although still left with courts, the judicial powers are subject to military command and control. The military thus makes the laws, executes them, and regulates the application thereof. Such laws are made to match the military's purpose, while at the same time ousting the court's jurisdiction to challenge its operations. In *Lakanmi & Anor. v. Attorney General, Western State & Ors*¹⁴, the Tribunal of Inquiry into the Assets of Public Officers set up under Edicts No. 5 of 1967/58 made an order vesting the properties and accounts of the plaintiffs/appellants in the State Government until the Governor shall otherwise direct. The plaintiffs challenged the validity of the Edict in the High Court and sought an order of certiorari to quash the order of the Tribunal. The High Court held that the order is not *ultra vires* and that the Edict was validly made. By Decree No. 45 of 1968, the Federal Government validated the subject matter of the action and ousted the jurisdiction of the courts. On further appeal, the Supreme Court held that this *ad-hominem* decree was unconstitutional, that is contrary to 1963 Constitution and as such null and

⁸*Ibid.*

⁹Judicial immunity and protection under public officer's protection laws.

¹⁰Dicey, *loc. cit.*

¹¹Malemi, *loc. cit.*

¹²Wade's perspective is discussed in Abiola O, *Constitutional Law and Military Rule in Nigeria* (Ibadan: Evans Brothers, 1987) 241.

¹³Awolowo, O 'The Press in the Service of the State', *Voice of Wisdom* 93 – 101.

¹⁴(1971) 1 ULR, 201.

void. That *ad-hominem* rule against specific individuals amounted to a judicial rather than legislative function or act and that only courts are entitled to render judgements on individual cases. In a very swift reaction the military administration passed another decree called Decree No. 28 of 1970 by which they made it clear beyond doubt that Decree No. 1 of 1966 (their First Decree) had established a new legal order, under which their decrees were superior to whatever part of the 1963 Constitution they permitted to continue to exist and that the validity of Edicts cannot also be challenged in court except to the extent it is inconsistent with a decree. They went further to state that any decision made either before or after the commencement of the decree by any power under the constitution which declares any decree or edict invalid, is null and void. But the military government continued to nullify the good job done by the judiciary to the polity. A similar issue was raised in *Guardian v. Federal Republic of Nigeria*¹⁵, but the matter was not handled with the same courage and boldness as the Supreme Court did in *Lakanmi's* case.

In *Wang Ching Yao & 4 Ors. v. Chief of Staff Supreme Headquarters, Dodan Barracks & 2 Ors.*¹⁶ the detainees were citizens of Taiwan on business trip to Nigeria. They were detained for alleged acts prejudicial to the security of the State and the economic advancement of Nigeria. The appellants dissatisfied with the decision of the Federal High Court lodged an appeal. The Court of Appeal held that its jurisdiction is ousted because there is no right of appeal in such matter, therefore, cannot say anything in the matter due to the fact that its jurisdiction has been ousted by ouster clause. In *Attorney General of Lagos State v. Dosunmu*,¹⁷ the Government of Lagos State had revoked the plaintiff's interest on a piece of land in Victoria Island pursuant to the policy of one man, one plot, as a result of which the State Government enacted the Determination of Interest Edict No. 3 of 1976 and Determination of Interest in State Lands Order 1976, whereby the plaintiff's interest in the second plot was determined. Both the Edict and the Tribunal of Inquiries Act 1977, ousts the jurisdiction of the Court from inquiring into the validity of the Edict and any act done under it. The plaintiff instituted an action challenging the Constitutionality of the Edict and the Order of 1976, the trial court held the Edict and the Order unconstitutional and invalid. On appeal, the Court of Appeal said the trial court lacks jurisdiction and as such should not pronounce on the matter, but went further to state that the policy of the State Government of one man, one plot infringes on the Constitution. On further appeal to the Supreme Court, the question was whether the Court of Appeal was right to have gone into the merit of the case in the face of ouster clause. The Supreme Court unanimously held that the courts below lacked jurisdiction in declaring the Edict and Order unconstitutional for alleged contravention of section 31 of 1963 Constitution, when their jurisdiction so to declare had been ousted.

However, in *Governor of Lagos State v. Ojukwu*,¹⁸ where the Court of Appeal had previously granted an *ex parte* application for an immediate injunction to stop Chief Ojukwu's ejection pending the determination of the motion on notice. While the case was still pending in court, the Lagos State Government without an order of court forcibly ejected Chief Ojukwu from the property in dispute. On application to the Court of Appeal, the court gave an order of mandatory injunction restoring Chief Ojukwu to his residence at No. 29 Queens Drive, Ikoyi, Lagos. The Lagos State Government and the Commissioner of Police, Lagos Command without carrying out the order of the Court of Appeal to restore Chief Ojukwu into his house, sought an order staying the execution of the decision of the Court of Appeal pending the determination of the appeal in the Supreme Court. The Supreme Court held per Oputa J.S.C. (dismissing the application) stated thus:

- (i) It is a very serious matter for anyone to dismiss a Court's positive order and proceed to insult the Court further by seeking a remedy in a higher court while still disregarding the lower court.
- (ii) It is more serious contempt when the act of flouting the order of the Court is by the executive
- (iii) Once the Court is seized of a case, no party has the right to take the matter into his own hand.
- (iv) To use force to affect an act and while under the Marshall of that force, seek the Courts equity is an attempt to infuse timidity into Court and operate a sabotage of the cherished rule of law.
- (v) Government should be conducted within recognized rules and principles that restrict discretionary authority.
- (vi) Judges which are wholly independent of the executive shall decide on such disputes to the legality of government acts.
- (vii) The judiciary can not shirk its sacred responsibility of maintaining the rule of law towards the nation. It is in the interest of the government as well as of everyone. This decision by the Supreme Court is a *locus classicus*.

¹⁵ (1994) 5 NWLR (Pt. 364) 50 at 60.

¹⁶ CA/L/25/85 Unreported, delivered April 1, 1985.

¹⁷ (1989) 6 SCNJ 134.

¹⁸ (1986) 1 NWLR (Pt. 18) 622.

As Lord Simonds once puts it, ‘... anyone bred in the tradition of the law is likely to consider with little remorse statutory arrangements for ousting the jurisdiction of the Court...’¹⁹. The Court often guards its jurisdiction and insists wherever possible on a rigid adherence to the Constitution of the land, because the beginning of dictatorship in many parts of the world had often commenced with usurpation of the legitimacy of the courts and many governments has often been considered to be immune to the procedural and institutional protections adopted by the courts with a view to upholding the rule of law and protecting individual’s personal and proprietary rights.

The rule of law is the most important feature of good governance in the polity. It preserves the jurisdiction of the Courts and promotes checks and balances of governmental powers. Adherence to the rule of law is seen more in democratic system of government than in the military dispensation. Although in practice, there is no ideal promotion of the rule of law.

4. Rule of Law in Civil Dispensation

The doctrine of the rule of law is the basic foundation of the Nigerian legal system. The Nigerian Constitution is the embodiment and symbol of the rule of law.²⁰ It is noted that the constitution is the first document of the rule of law. It documents and sets out the basic principles of the rule of law in a country. Thus, section 1 of the 1999 Constitution as amended provides as follows:

- (1) This constitution is supreme and binding on all authorities and individuals throughout the Federal Republic of Nigeria
- (2) The Federal Republic of Nigeria shall not be governed or regulated by any person or group of persons, except as provided for in this Constitution, by the Government of Nigeria or by any part thereof.
- (3) Where any other statute is inconsistent with the provisions of this Constitution, this Constitution shall prevail and, to the degree of the inconsistency, that other law shall be invalid.

Against this background, it can be said that section 1 of the 1999 Constitution (as amended) which declares the establishment of constitutional democracy in Nigeria, together with the fundamental rights provisions of the Nigerian Constitution, the prohibition of retrospective legislation and the prohibition of the ousting of the jurisdiction of courts and other related provisions in the Nigerian Constitution are indeed a simple assimilation, restatement and establishment of the rule of law.²¹ It is also pertinent to state that one of the fundamental objectives and directive principles of state policy²² provided under section 17(1)(a) of the 1999 Constitution (as amended) is to the effect that ‘the State social order is founded on ideals of freedom, equality and justice and every citizen shall have equality of rights, obligations and opportunities before the law.’ Worthy of note is Chapter IV of the 1999 Constitution (as amended). This chapter which provides for the fundamental human rights of Nigerians is basically about the rule of law. There are cases where the courts have called upon public officers and high ranking, citizens in the higher rungs in the society, *etcetera*. to uphold the rule of law in view of protecting the fundamental rights of poor Nigerians. Highlighting the necessary features of a constitutional democracy, the Supreme Court in *Safekun v. Akinyemi & Ors*²³ stated:

It is essential in constitutional democracy such as we have in this country, that for the protection of rights of citizens, for the guarantee of the rule of law, which include according to fair trial to the citizen under procedural irregularity, and for checking arbitrary use of power by the executive or its agencies, the power and jurisdiction of courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at ... Indeed So important is the preservation and non-interference with, the jurisdiction of the Courts specifically provided for in section 4(8) that neither the National Assembly nor of the House of Assembly shall enact any law which removes or pretends to remove the jurisdiction of a court of law or of a court of justice established.²⁴

In 1961, the rule of law was interpreted as a constitutional concept in the case of *Aoko v. Fagbemi*.²⁵ The applicant in that case was convicted and sentenced to either pay a fine or go to prison for one month by a grade ‘D’ customary court for an alleged offence of committing adultery by living with another man without judicial separation from

¹⁹*Smith v. Elloc RDC* (1956) AC 736 at 750.

²⁰*Malemi, op. cit.* at 100.

²¹*Ibid.*

²²See Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

²³(1980) 5 – 7 SC at 25

²⁴*Ibid.* per Aniagolu JSC (as he then was).

²⁵[1961] All N.L.R. 400.

her husband. This was an unwritten offence in the jurisdiction where the act of adultery was committed. Dissatisfied with the judgment of the court of first instance, the applicant successfully applied to the High Court for an order to quash her conviction and set aside all consequential order based upon it and to refund all the sums of money paid. She argued that she had not violated any written law which made adultery an offence and therefore the judgment of the court was in violation of section 21(10) of the 1960 Constitution which expressly provided that that no one shall be convicted for an unwritten offence.²⁶ In its judgment the High Court held that the applicant's offence of adultery was unknown to law and was in violation of her constitutional right as enshrined in section 21(10) of the Constitution of the Federation of Nigeria, 1960.²⁷ In *Kalu v EFCC*²⁸, in the view of the fact that the EFCC refused to comply with a court order even after been directed by the Attorney General of the Federation, the rule of law was made manifest when the Attorney General of the Federation took over proceedings at the court in exercise of its constitutional powers. The court had earlier ordered the EFCC on the 31st day of May, 2007, by restraining them not to arrest, detain or prosecute the former Governor of Abia State, Uzor Kalu. The EFCC however flouted the court's order by proceeding to prosecute him. Consequent upon this, Kalu's counsel petitioned the President of the Federal Republic of Nigeria alongside the Attorney General of the Federation protesting that the charge against Kalu was in flagrant breach of the rule of law. The Attorney General of the Federation adjourned date and took over the case by discontinuing same in compliance with the rule of law.

In a constitutional democracy like Nigeria, the judiciary is charged with the responsibility of acting as a check on the other arms of government by checking their excesses and preventing arbitrariness in governance. Thus, in the application of the rule of law, the judiciary is empowered to decide on disputes touching on the legality or otherwise of executive and legislative actions. In *All Nigerian Peoples Party & Ors. v. Benue State Independent Electoral Commission & Ors.*²⁹ the Court of Appeal held that the Constitution of the Federal Republic of Nigeria 1999 is founded on the rule of law, which implies primarily that everything should be done according to the law. Disputes as to the legality or otherwise of the actions of the government are to be decided by independent and impartial judges. According to the penultimate court, the judiciary '... cannot shirk its sacred responsibility to the nation to maintain the rule of law, for this is both in the interest of the government and all persons in Nigeria.'³⁰ The rule of law is perhaps a vital characteristic of democratic governance. In a constitutional democracy, it encourages not only the need to uphold and respect human rights as enshrined in the constitution, but also it leads to the promotion of checks and balances amongst the organs of government for the primary reason of preventing arbitrariness in governance. Although, adherence to the rule of law is perceived more in a democratic government, issues surrounding its effectiveness and application are still being queried in Nigeria where there is constant disregard of the principles of equality and abuse of human rights. In *Arthur Yates & Co. Pty. Ltd. v. Vegetable Seeds Committee*³¹, Herring C.J has this to say: 'the English view of the law is not that anything that is officially done is law ... On the contrary, the principle of English law is that what is officially done must be done in accordance with the law.' In *Shugaba v Minister of Internal Affairs*,³² the court held that the rule of law ensures, without distinction, the dignity of all people, and that it also guarantees openness and incorruptibility, and must be favoured.

Further extending to the position of the law on equality and the supremacy of the law, Madaki³³ argues that the rule of law means supremacy of the law, equality of government and the governed by the law, lack of arbitrariness in government. It also means governance as per recognized due process defined by law that are certain and protected for the individual's right.

Then, this follows that the rule of law can not be observed by a despotic government, particularly one not elected or one fraudulently elected.

It should be noted, however, that in order for the rule of law to be supreme, people whose conduct and affairs are regulated by such law must have participated in making the law either directly or through their freely and democratically elected representative, where people have contributed to the making of the laws with which they are governed; like in the constitutional democracy of Nigeria, where the preamble of the 1999 Constitution

²⁶See section. 21(10) of the Constitution of the Federation of Nigeria, 1960.

²⁷*Aoko v. Fagbemi* [1961] All N.L.R. 400.

²⁸As reported by Adesina Debo, 'The Attorney General takes over Kalu's case.' *Guardian Newspaper*, Lagos, 6th September, 2007 at 2.

²⁹[2006] 11 NWLR (Pt. 992) 587.

³⁰*Ibid.* See Nwogu, M. O., 'The Rule of Law in Governance in Nigeria' (2010) *Vol. 1, Nnamdi Azikiwe University Journal of International Law & Jurisprudence*. 187 – 201.

³¹(1945) 7 CLR 168.

³²(1981) 1 NCLR 125.

³³See Amucheazi E, Olatawura, O 'The Nigerian Legal System/Tribunals: An Analysis', The Judiciary and Democracy in Nigeria, National Orientation Agency (NOA), Abuja, 1998, at 100.

reads thus: 'We, the people of the Federal Republic of Nigeria ... do hereby make, enact and give to ourselves the following Constitution.' Otherwise such law will not be regarded and respected as supreme. Advocating the need for respect of civil liberties and rule of law, Justice Louis D. Brandeis of the United States Supreme Court in *Whitney v. California*³⁴ opines thus:

In government, the deliberative forces should prevail over the arbitrary; the freedom to think as you will and to speak as you think that these are essential means for discovering and transmitting political truth, that without freedom of speech and assembly, debate would be futile ... that the biggest threat to freedom is an inert human... that it is dangerous to discourage thought, hope and indignation ... that thesecurity part lies in the opportunity to discuss freely supposed and proposed remedies.

In *Director of State Security Service v. Agbakoba*,³⁵ the plaintiff/appellant brought an action seeking for a declaration that the unlawful seizure of his passport by State Security Services (SSS) agents constitutes a violation of his personal rights, freedom of thought, freedom of expression and freedom of movement as guaranteed by the Constitution, as amended, and a mandatory injunction order for the release of the accused / respondent passport forthwith. On appeal to the Supreme Court, it held, *inter alia* that the respondents were liable and were ordered to release the applicant's passport forthwith. Also, the 1999 Constitution preserves the jurisdiction of the Courts; this is very commendable of a constitutional democracy. Hence, there are checks and balances and arbitrariness is reduced. Therefore, controversies surrounding the validity of official actions must be determined by courts and judges wholly independent of the executive.

In *Peter Obi v. INEC*,³⁶ the appellant aggrieved with Dr. Chris Ngige's declaration by INEC's as Governor of Anambra State, filed a petition at the Election Tribunal for Governorship and Legislative Houses challenging Dr. Chris Ngige's declaration by INEC as Governor of Anambra State. Appellant's petition was upheld by the tribunal stating that he was the candidate who had been validly and duly elected. Dr. Ngige dissatisfied appealed to the Court of Appeal.

The Appeal Court dismissed the appeal and upheld the tribunal's decision consequently, on the 17th day of March 2006, Peter Obi took the oath of office as Governor of the State of Anambra. In 2007, INEC announced that the election to the Office of the Governor of Anambra State would be conducted on the 14th day of April, 2007. The appellant, that is, Peter Obi aggrieved, commenced an action at the Federal High Court against INEC asking the Court to declare that his tenure of office as Governor of Anambra State began to run from the date he took the oath of allegiance and office on the 17th day of March, 2006. That he, the incumbent Governor has not served his four-year tenure of office. The trial court held that it lacked jurisdiction, since the suit is related to election matters. On appeal, the Court of Appeal upheld the decision of the trial court that it indeed lacked jurisdiction and dismissed the appeal. The appellant then appealed to the Supreme Court which unanimously allowed the appeal, stating that:

jurisdiction should be examined not when it is invoked, but when the cause of action arose. It is the claim of the plaintiff that determines the jurisdiction of a court entertaining same. That is the four-year term of Peter Obi's office as Governor of Anambra State, starting on the day on which he took his oath of loyalty and office, from the 17th day of March 2006 to the 16th day of March 2010, as provided for in section 180(2)(a) of the Constitution. The Federal High Court has full ability to entertain and decide the suit. The most striking issue was that this decision was welcomed by the President, who even ordered the immediate reinstatement of Peter Obi as Governor of Anambra State, as directed by the Court. The Supreme Court's decision is simply a rule of law in action.

In *Ladoja v. INEC*, the appellant was elected as the Governor of Oyo State³⁷ and took his oath of allegiance and office, and was later impeached. The Supreme Court declared the impeachment unconstitutional, null and void, resulting in his reinstatement to office. The appellant having been unlawfully removed from office for eleven months asked the court to declare that he is entitled to a period of four uninterrupted years. That his tenure should be extended by eleven months. The Supreme Court held that:

neither itself nor any other Court has power to extend the period of four years prescribed for the Governor of a State beyond the terminal date calculated from the date he took the oath of

³⁴ (1957) 274 US 357 at 367.

³⁵ (1999) 3 NWLR (Pt. 595) 314 SC; *Director of SSS v Ubani* (1999) 11 NWLR (Pt. 625) 129; *Ikem v. Nwogwugwu* (1999) 13 NWLR (Pt. 633) 140.

³⁶ (2007) 11 NWLR (Pt. 1046) 436 at 616.

³⁷ (2007) 12 NWLR (Pt. 1047) 136.

office. To accede to this request will occasion much violence to the Constitution. The Constitution entrusts enormous powers to the Attorney General of the Federation, which are to initiate criminal proceedings against any individual before any court in Nigeria, to take over and continue any such criminal proceedings which may have been initiated by any other authority or person; to discontinue at any point before any judgment is given. These powers conferred on the Attorney General under the Constitution are important powers that ought to be exercised with utmost passion and the greatest sense of responsibility, and always in the interest of the public, justice and the need to prevent the abuse of legal process. Such powers should not be exercised whimsically, so as not to detract from the rule of law.

5. Observations

The rule of law is operative in a legal system where some individuals are prevented from enforcing their rights which have been violated by persons who seem to be enjoying some privileges either at will or constitutionally. Rights will therefore have no meaning if they can be violated by others who enjoy a form of privilege at will. However, the above is without prejudice to the fact that some public office holder still enjoy some privileges which are duly accorded to them by the constitution virtue of the offices they occupy. Hence, the immunity clause has been queried. It is submitted that if the Nigerian Constitution has been described as an embodiment and symbol of the rule of law,³⁸ then it invariably implies that the insertion of section 308 in the 1999 Constitution (as amended) which confers executive immunity on persons mentioned therein cannot be properly regarded as negating the doctrine of the rule of law. It is noted that Nigeria has been grappling with governance crisis since it attained independence from British colonial rule in 1960. This has negatively affected economic and social transformation of the country and there have been series of human rights abuses in the country as a result of the absence of a true democracy and continuous military intervention in politics. The arbitrary rule in governance, lawlessness and gross violation of human rights in the country can easily be attributable to Nigeria's history of despotic leadership.³⁹ The rule of law has been described as the pillar of constitutional democracy in any country.⁴⁰ Hence, to provide a proper environment for the recognition, supremacy and observance of the rule of law, the government must be: constitutional, that is based on a constitution which ideally should be written and contain a fundamental rights chapter or bill of rights, and the constitution or government must be democratic.⁴¹ Consequently, the absence⁴² of a democratic and constitutional government in a country, the application of the rule of law will not be attainable. This is so because the concept of the rule of law can only thrive in a constitutional democratic setting that gives recognition to civil rights and liberties. It is hinged on this fact that Nwogu⁴³ described the rule of law as 'the most important feature of democratic governance which serves as a theoretical blueprint for designing an ideal legal system.' In the words of the author, the rule of law represents a synthesis of normative values and processes based on the precepts of natural justice which promote and legitimize the mechanisms of formal justice.⁴⁴ Nwogu⁴⁵ notes that the rule of law is a very fundamental concept in a democratic government as it remains the basis of all constitutional democracies. The author posited that under military rule which is characterized by force and autocracy, the concept of the rule of law is almost not in existence. With respect to civilian administration, the author discussed the ideal situations and conditions for the application of the rule of law in a democratic setting. Most importantly is the onus placed on the courts for a proper interpretation and application of the law in the administration of justice. The principle on which the rule of law firmly stands is that law must stand supreme as source and fabric of all social organization; its main thrust being the establishment of the freedom of the citizens and the protection against any manifestation of arbitrary use of power by public authorities. The rule of law allows any person aggrieved by a particular act from individuals or the authorities that may be, to seek legal redress in the appropriate quarters for equity cannot suffer any wrong that is without remedy. The practical and most important consideration in any democratic society is whether the society is democratic or not. Hence, democracy has often been attributed to good governance, respect for human rights and the application of the rule of law.⁴⁶

³⁸Malemi. *op. cit* at 100.

³⁹Igbokwe, J.O., 'Democracy and Good Governance in Nigeria: Challenges and Strategies' (2012) *International Bi-Lingual Journal of Anti-Corruption, Law, Humanities and Development Studies*, 1 at 2 – 3.

⁴⁰Nwabueze, B. O., *Constitutional Democracy in Africa* (London: C. Hurst & Co.) Vol. 3 at 20.

⁴¹Nwogu *op.cit*.

⁴²*Ibid*.

⁴³*Ibid*.

⁴⁴*Ibid*.

⁴⁵Nwogu, *op.cit*.

⁴⁶Iheanacho, E. N., 'Democracy and Good Governance in Nigeria: Challenges and Prospects' (2013). Vol. 4, No. 3., *International Journal of Advanced Legal Studies and Governance*. 64 at 64.

6. Conclusion

Government and all relevant stakeholders must ensure that the rule of law is applied, adhered to in all governmental actions and policies as this is an important feature of democratic governance. The rule of law does not only prevent arbitrariness in governance but also promotes the need to guarantee human rights as enshrined in the 1999 Constitution as amended. This will to a large extent check the excesses of government and its constant disregard of the principles of equality.