

POWERS OF THE LEGISLATURE IN THE REMOVAL OF JUDICIAL OFFICERS IN NIGERIA UNDER THE 1999 CONSTITUTION *

Abstract

The controversy has always been there. The legislature¹ has been hiding under the Constitution to summarily remove some judicial officers from office without the participation of the National Judicial Council. The Constitution itself created the perceived ambiguity by seemingly clothing the legislature with such powers. Does the legislature possess such powers to the exclusion of the National Judicial Council?

Keywords: Powers of Legislature, Removal of Judicial Officers, Nigerian Constitution, the Executive

1. Introduction

The 1999 Constitution of the Federal Republic of Nigeria² like other erstwhile Nigerian Constitutions expressly preserves the tenure of office of judicial officers in Nigeria till their date of retirement. That protection is however general in nature and is not absolute. Circumstances may demand that a judicial officer may not serve out his tenure due to termination of his appointment by the executive arm of government.³ Termination of appointment of judicial officers in Nigeria has recently presented some legal problems. Such legal problems arose from the procedure for such termination. Most importantly, there is this recurrent issue of the extent of the constitutional powers of the legislature in the termination of appointment of judicial officers most especially the heads of courts.⁴ Can the legislature receive a petition against any judicial officer, investigate the petition and recommend his removal from office under the 1999 Constitution? A critical examination of this issue is the aim of this paper.

2. Who is a judicial officer under the 1999 Constitution of Nigeria?

Generally, any person in Nigeria that performs a judicial duty relating to the hearing and determination of cases in a court or other tribunal may be regarded as a judicial officer. Such elastic definition of the term 'judicial officer' may therefore include Magistrates, Customary Court Judges, Area Court Judges etc. The 1999 Constitution and other previous Constitutions of Nigeria have not intended such wide meaning for the term 'judicial officer'. The 1999 Constitution in particular refers to judicial officers in Nigeria as holders of the office of the Chief Justice of Nigeria, Justices of the Supreme Court, the President and Justices of Court of Appeal, the Chief Judges and Judges of the Federal High Court, National Industrial Court, the Chief Judges of the States⁵ and the Federal Capital Territory, Judges of the High Court of States⁶ and the Federal Capital Territory, Grand Kadi and Kadi of the Sharia Court of Appeal and the President and Judges of the Customary Court of Appeal of both the Federal Capital Territory and of the States in Nigeria.⁷ The limited meaning given to the term 'judicial officer' by the 1999 Constitution has removed holders of other judicial offices like the Magistrates, Customary Court Judges, Area Court Judges etc. from the meaning of the term. This latter category of judicial office holders may simply be regarded as public servants who do not enjoy some of the privileges of judicial

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¹ This stands for the Senate of the Federal Republic of Nigeria or the House of Assembly of States of the Federation as the case may be.

² Chapter C23, Laws of the Federation of Nigeria 2004.

³ This may be the President of Nigeria or the Governor of a State, as the case may be.

⁴ The Chief Justice of Nigeria, the President of Court of Appeal, Chief Judges of High Courts, and National industrial Court, Grand Kadi and Presidents of Customary Court of Appeal of the Federal Capital Territory and the States.

⁵ There are thirty six states in Nigeria. See s. the First Schedule to the 1999 Constitution of Nigeria, part 1.

⁶ See *Atake v. Afejuku* (1994) 9 NWLR(Pt 368) 379 at 381; *Gombe v. Madaki*(1982) 3FNLR 274 at 289

⁷ See Ss. 318 (1) and 318(1) of 1999 Constitution and S. 13 (a) of the Constitution of the FRN (Third Alteration) Act 2010

officers.⁸ Also, these judicial office holders do not suffer the permanent disability of ineligibility to practice as advocates at the Bar after ceasing to hold judicial office.⁹

3. Grounds for Removal of a Judicial Officer from Office under the 1999 Nigerian Constitution

A judicial officer may not be removed from office on any ground other than those provided in the Constitution. Under the 1999 Constitution, a judicial officer may only be removed from office on any of the following grounds (i) Misconduct (ii) Inability to discharge the functions of his office or appointment or (iii) Contravention of the Code of Conduct.¹⁰

Misconduct

The nature of misconduct which may justify the removal of a judicial officer in Nigeria from office must be one which may have an impact on his general perception by the public as a judicial officer. In other words, such misconduct includes one which relates to the discharge of his official duties and his standing as a judicial officer. Such misconducts may include corruption, abuse of office, conviction for a criminal offence, drunkenness etc.¹¹ Misconducts which may warrant such removal from office may therefore not be limited to one concerning his office. They include the acts or omissions of a judicial officer in his private life which are such as to erode public confidence in him as a judicial officer.¹² In *A.G. Cross River State of Nigeria v. Esin*,¹³ where the Respondent, a Judge of the Cross River State High Court was removed from office on allegations of misconduct which did not relate to his official duties as a judicial officer, Katsina-Alu JCA stated:

...Section 256 of the Constitution does not appear to restrict the misconduct to matters concerning the office. I think it envisages a much wider scope. Each case must however depend upon its peculiar facts, for there is no rule of law defining the degree of misconduct which will justify dismissal. The sufficiency of the justification for removal depends largely upon the degree of misconduct: See *Clouston & Co. Ltd. v. Corry* (1906) AC. 122 at 129. I also think that misconduct in his private life by a Judge of a nature which tends to erode his authority and confidence in his relations with the public amounts to misconduct which will justify dismissal. A Judge must be above suspicion in the eyes of the public. He should be able to do his work in complete independence and free from fear. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. He should give no cause for scandal.

After reviewing the facts of the case, the Nigerian Court of Appeal came to the conclusion that the actions of the respondent contained in the letters he wrote to the principal of a school and a superior officer at his wife's place of work, did not constitute misconduct capable of justifying his removal from office as a judicial officer.

Inability to discharge functions of his office

The ground of inability of the judicial officer to discharge the functions of his office is **very** wide. Such inability may arise from infirmity of his mind or body.¹⁴ Under this head, a judicial officer may be removed from office if he becomes insane or of unsound mind or if he suffers from some mental delusions which may affect to a large extent, his capacity to discharge the functions of his office.¹⁵ Also

⁸ Such as certainty of tenure of office and payment of salaries and emoluments which are sourced from the Consolidated Revenue Fund. See S. 84 (3) (4) and (7) of the 1999 Nigerian Constitution. See also Abayomi, T; *Federal Legislative Powers Under Constitution Promulgation Decree 24, 1999*n(2008, Lagos, Law Searchers (Nig) Ltd) 281

⁹ See S.292 (2) 1999 Constitution

¹⁰S. 292 (1) & (2) 1999 Constitution See also S. 256 (1) of the 1979 Nigerian Constitution. Note that the 1963 Nigerian Constitution did not contain the grounds of contravention of the Code of Conduct. See S. 113 (2) and 123 (2) of the 1963 Constitution

¹¹ Such acts of a judicial officer in his private life which may justify his removal from office must be grave in nature and entirely scandalous. The writer is yet to come across any case where such acts were relied on to remove a judicial officer in Nigeria.

¹²See Smith, I.O. *The Constitution of the Federal Republic of Nigeria Annotated 1999* Lagos, Eco Watch Publications (Nig) Ltd, p. 305.

¹³ (1991) 6 NWLR (PT197) 365

¹⁴ The 1963 Constitution added 'or any other cause' See S. 113 (2) *ibid*.

¹⁵ Such as one in which the judicial officer may constantly believe that a particular dead man's spirit has been trying to kill him or that his life is seriously threatened by another person. See *Ejinima v. State*(1991)NSCC 348

any form of bodily harm or physical infirmity suffered by a judicial officer which renders him incapable of discharging the functions of his office will suffice. Such disabilities may include paralysis, persistent sickness which results in constant and prolonged hospitalization of the judicial officer, loss of speech, inability to hear etc.¹⁶ It may not be that easy to remove a judicial officer on the ground of insanity. The reason is that there must be cogent medical evidence presented to the investigating panel which irresistibly point to the fact of insanity. Such evidence may not however be of such a standard as to establish proof beyond reasonable doubt as applicable in criminal trials. We are of the humble view that it may suffice if the panel is convinced that the judicial officer lacked the capacity to understand what he was doing or to control his actions.¹⁷ These two capacities should in our humble opinion be established before the panel, on the balance of probabilities.

Breach of Code of Conduct

This is the third ground for the removal of a judicial officer from office. There is the Code of Conduct for Public Officers in Nigeria generally¹⁸ and the Code of Conduct for Judicial Officers in Nigeria specifically.¹⁹ It is our humble view that contravention of the provisions of any of the two Codes of Conduct by a judicial officer could justify his removal from office. The Code of Conduct for Public Officers applies generally to all public officers in Nigeria including judicial officers. The Code among others things, prohibits a public officer who is still in service from putting his personal interest above his official duties.²⁰ Also a public officer should not receive two or more emoluments of public offices simultaneously. He should also not participate or be engaged in the running or management of any private business.²¹ The professional implication of the prohibition on engaging in the running of a business is that a judicial officer who is in active service cannot operate a law office in whatever form; neither is he permitted to be involved in the management of any form of business enterprise.²² A public officer should not solicit for or accept gifts from any person on account of his official duties.²³ The Code of Conduct for Public Officers also prohibits some public officers from doing certain things even after retirement. For instance, the Chief Justice of Nigeria should not after retirement, accept employment in a foreign company or enterprise.²⁴ Also a public officer after retiring from service should not receive more than one remunerative position as chairman, director or employee of a government owned or controlled company or any public authority while receiving pension from public funds.²⁵ The Code of Conduct for Judicial Officers regulates the conduct of judicial officers while in active service. The provisions of the Code are aimed at maintaining the integrity of judicial office and public confidence in it. Some of the provisions of the Code are similar to the provisions of the Code of Conduct for Public Officers. We shall now take a look at some of the salient provisions of the Code of Conduct for Judicial Officers. A judicial officer should always observe and respect the provisions of the Constitution of the country and other statutes in the course of the exercise of his judicial functions. He should also avoid any abuse of power and should also maintain the highest degree of decorum during proceedings in his court. He should avoid undue personal acquaintance with a party to a proceeding pending before him. Where he intends to communicate with any party in a case pending before him, he should do so in the presence of the other party or with proper notice to such other party.²⁶ A judicial

¹⁶ Some of these disabilities may earn the judicial officer the rather compassionate measure of compulsory retirement.

¹⁷ These are some of the tests applied in determining whether an accused person suffers from insanity at the time of committing an offence. See Okonkwo C. O., *et al*, *Criminal Law in Nigeria* (1980, Ibadan, Spectrum Books Ltd) 136 – 137.

¹⁸ See the 5th Schedule part I to 1999 Constitution.

¹⁹ This Code was issued by the National Judicial Council pursuant to S. 22 (J) of the Third Schedule (part I) 1999 Constitution

²⁰ See. S. 1 of the Fifth Schedule (part I) to the 1999 Constitution

²¹ See. S. 2 (a) & (b) *ibid*. The exception to engaging in the running of business is where the public officer is not employed on full time basis.

²² Does this prohibition cover cases where he is not involved in the management of the business personally? We humbly think so. It may however be possible for him to buy shares in a company without being involved in the management of the company. See *Nwankwo v. Nwankwo* (1995) 5 NWLR (Pt. 394) 153 at 164; *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162 at 198. Judicial office is a very sensitive one and it will be out of place for a judicial officer to be intimately connected with the management of a business one way or the other

²³ S. 6 (1) of the Fifth Schedule (part I) to the 1999 Constitution

²⁴ S. (5) *ibid*. Other public officers also prohibited are the President of Nigeria, Vice President of Nigeria, Governors and Deputy Governors of States in Nigeria.

²⁵ S. 4 (10) *ibid*. The prohibition may not however cover purchase of shares in such foreign company or enterprise.

²⁶ See Rule 2 (A) (1-5) of the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, which was made by the National Judicial Council. See item (1) of the Explanatory Note to the Code.

officer should also not belong to any secret cult. He should also compose himself in such a manner as to instill public confidence in the integrity and impartiality of the judiciary. A judicial officer should avoid any social acquaintance or relationship capable of casting doubt on his ability to decide cases impartially or which may bring the judiciary into disrepute.²⁷ Breach of any of the provisions of any of the two Codes of Conduct may justify the removal of the judicial officer from office.

4. Procedure for Removal of Judicial Officers in Nigeria from Office

There has never been any doubt as to who has the power to remove a judicial officer from office once he has been investigated and found liable for the allegations leveled against him. Judicial officers appointed by the President of Nigeria²⁸ may also be removed by the President while those appointed by the Governor of a State in Nigeria may also be removed by the Governor.²⁹ However, all controversies trailing the removal of judicial officers center on the constitutional prerequisites for the final removal of the judicial officer by the Governor or the President. The controversy affects mostly the heads of the different courts in Nigeria. These include the Chief Justice of Nigeria, the President of the Court of Appeal, the Chief Judges of States, Federal Capital Territory, and Federal High Court: The Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory and the States and the President of the Customary Court of Appeal of the Federal Capital Territory and the States.³⁰ The controversy has always been as to which body between the National Judicial Council and the Senate and House of Assembly as the case may be, possesses the power to receive petitions against those judicial officers,³¹ occupying the position of heads of the various courts stated above. The dichotomy created by different constitutions of Nigeria occasioned this controversy. As early as 1979, the provisions of the 1979 Constitution did not hide its intentions to provide different criteria for the removal of judicial officers depending on the designation of the judicial officer involved. Section 256 of the 1979 Constitution provides:

The Chief Justice of Nigeria or the Chief Judge of a State shall not be removed from office or from his appointment before the age of retirement except in the following circumstances:

- (a) (i) In the case of the Chief Justice of Nigeria, by the President acting on an address supported by two thirds majority of the Senate;
- (ii) in the case of the Chief Judge of a State by the Governor of the State acting on an address supported by two thirds majority of the House of Assembly of the State.³²
- (b) In any other case other than those to which paragraph (a) of this sub-section applies, by the President or as the case may be the Governor acting on the recommendation of the Federal Judicial Service Commission or the State Judicial Service Commission...

This provision created the impression that the Chief Justice of Nigeria and the Chief Judge of a State may be removed without the necessity of any recommendation from the Federal or State Judicial Service Commission as the case may be. Such recommendation was only understood to be applicable to other judicial officers. The still-born 1989 Nigerian Constitution also contained similar provisions and in fact empowered the Senate and the House of Assembly of a State in appropriate circumstances to receive and investigate petitions written against the Chief Justice of Nigeria and the Chief Judge of a State respectively.³³ There was no body like the National Judicial Council until 1999.³⁴ It is safe therefore for one to conclude that under the provisions of those two Constitutions, the Chief Justice of Nigeria and the Chief Judge of a State might be removed from office on the address of the Senate or the House of

²⁷ See Rule 2 of the Code. Such judicial officer should also not belong to any organization whose objectives are incompatible with the functions and dignity of his office or is involved in any form of discrimination on the basis of sex, race, religion or ethnic origin.

²⁸ These judicial officers are appointed as judges and justices of federal courts, which include the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, High Court of the Federal Capital Territory etc.

²⁹ See. S. 292 (1) (a) 1999 Constitution, and S. 256 (1) (a) 1979 Constitution. The judicial officers in this category include judges of the High Court of States in Nigeria.

³⁰ See. S. 292 (1) (a) 1999 Constitution.

³¹ The 1979 Constitution gave such power to the Federal Judicial Service Commission and the State Judicial Service Commission. See. S. 256(1) (b) of the 1979 Constitution. The National Judicial Council is a creation of the 1999 Constitution.

³² See subsection 1(a) & (b) of subsection 256 of the 1979 Constitution

³³ See s. 276(2) of the 1989 Constitution which never came into force.

³⁴ See s.153(1)(i) 1999 Constitution

Assembly of a State as the case may be, without the recommendation of the then Federal Judicial Service Commission or the State Judicial Service Commission. There was no need under those two constitutions to involve the Federal or State Judicial Service Commission in the process of removal of those judicial officers as the provisions of the Constitutions were plain enough. The process of removal of any of the categories of judicial officers in question was to be initiated by a petition or complaint addressed to the Senate³⁵ or the House of Assembly of a State³⁶ against the Chief Justice of Nigeria or the Chief Judge of State, as the case may be. Such complaint would be investigated by the appropriate legislative body and if proved, would ground an address by such body to either the President of Nigeria or the Governor of a State, calling for the removal of the judicial officer. Could it therefore be presumed that the position stated above which was applicable under the 1979 Constitution, still subsists under the 1999 Constitution?

Section 292 of the 1999 Constitution provides:

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances.

- (a) In the case of
 - (i) Chief Justice of Nigeria, President of Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory Abuja and President of the Customary Court of Appeal of the Federal Capital Territory Abuja, by the President acting on an address supported by two thirds majority of the Senate.
 - (ii) Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State -----.
- (b) In any case, other than those to which paragraph (a) of this subsection applies, by the President or as the case may be, the Governor acting on the recommendation of the National Judicial Council.....³⁷

A cursory look at the provisions of section 292 (1) may lead to the hasty conclusion that only Judicial officers stated in subsection (1)(b) of the section are entitled to the recommendation of the National Judicial Council before they may be removed from office while those under subsection (1) (a) do not enjoy such privilege. The provisions of section 292 (1) (a) (ii) has been employed by many State Governors in the removal of the Chief Judges of their States.³⁸ The interpretation often preferred by those Governors was that the power of investigation and recommendation for the removal of the Chief Judge of the State resides in the House of Assembly of the State and not the National Judicial Council. In those States therefore, complaints against the Chief Judge of the States were addressed to the House of Assembly of the respective States who investigated same and recommended the removal of the Chief Judge to the Governor. This erroneous interpretation of the provisions of section 292 (1) (a) of the 1999 Constitution by the Governors, arose from the fact that there was no judicial authority from the Supreme Court of Nigeria on that point as most of the cases hinging on the wrongful removal of a Chief Judge from office were still pending at the lower courts. Is there really any ambiguity created by section 292 (1) of the 1999 Constitution? We humbly answer that question in the affirmative. Section 292 (1) (a), if interpreted alone without taking cognizance of other relevant provisions of the Constitution, may appear to have excluded the National Judicial Council from the removal process of various heads of courts while leaving the fate of such judicial officers mentioned therein in the hands of legislators.³⁹

5. The Remedy

Paragraph 21 (b) and (d) of Third Schedule to the 1999 Constitution, Part 1 provides:

The National Judicial Council shall have power to-

³⁵ Where the Judicial officer affected is the Chief Justice of Nigeria.

³⁶ This concerns the Chief Judge of a State. See. S. 276 (2) of the 1989 Constitution. That Constitution was never operational in Nigeria.

³⁷ See. S. 292 (1) (a) & (b) of the 1999 Constitution as amended by S. 9 of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. The National Judicial Council was established by the 1999 Constitution in S. 153 (1) (i).

³⁸ Some of those States include Kwara, Plateau, Oyo etc.

³⁹ The judicial officers in question are the heads of various courts at the Federal and State level.

- (b) Recommend to the President the removal from office of the judicial officers specified in sub-paragraph (a) of this paragraph, and to exercise disciplinary control over such officers;
- (d) Recommend to the Governors the removal from office of the judicial officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers.⁴⁰

Sub-paragraphs (a) and (c) contain the particulars of judicial officers who should not be removed except on the recommendation of the National Judicial Council. While sub-paragraph (a) expressly lists out all categories of judicial officers serving in federal courts including the Federal Capital Territory, sub-paragraph (c) names all categories of judicial officers serving in State owned courts. The lists include the Chief Judge of a State and other heads of courts at the Federal and State level. Neither sub-paragraph (a) nor (c) excluded any particular judicial officer from the prior recommendation of the National Judicial Council before his removal from office or appointment. In interpretation of statutes including the constitution, schedules play a very important role of complimenting the body of the statutes to which it is attached. In other words, schedule is a part and parcel of a statute and is interpreted together with the main body of an enactment, except where it is manifestly inconsistent with the provisions of the main body of the statute.⁴¹ It is therefore our humble submission that if section 292 (1) and third schedule to the 1999 Constitution, Part 1, paragraph 21 (a)-(d) are construed together, the inescapable conclusion would be that the National Judicial Council has the exclusive power to receive complaints against all judicial officers in Nigeria, investigate the complaint and make recommendations to the President of Nigeria or Governor of a State as the case may be, on whether or not to remove any such judicial officer from office. The Senate or the House of Assembly as the case may be, may only confirm such removal after and in addition to the recommendation of the National Judicial Council. Any contrary interpretation of those provisions would produce an absurd result, which would subject the position of some judicial officers to the absolute discretion of political office holders especially the President or Governor and legislators. That may not represent the intentions of the framers of the Constitution. In our humble view, the preferable interpretation of the provisions of section 292 and Third Schedule to the 1999 Constitution should be that no judicial officer, including the Chief Judge of a State, may validly be removed from office except on the prior recommendation of the National Judicial Council.⁴² The Supreme Court has affirmed this position recently. In the case of *Erelu-Habeeb v. National Judicial Council*,⁴³ 1st Appellant was the Chief Judge of Kwara State at all times material to this case. The Kwara State House of Assembly in purported exercise of its powers under the 1999 Constitution, sought to exercise disciplinary control over the 1st Appellant by way of removal from office. A letter was served by the House of Assembly on the Chief Judge to appear before the House and answer to charges of misconduct. The 1st Appellant challenged the powers of the State House of Assembly to exercise disciplinary control over her. The Supreme Court ruled in her favour and held that the House of Assembly had no constitutional power to exercise any form of disciplinary control over the Chief Judge of the State without the prior recommendation of the National Judicial Council. Mohammed JSC who read leading judgment stated:

...On the interpretation and application of the provisions of sections 153(1)(1); 292(1)(a)(ii) and paragraph 21 of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999, the Governor of Kwara State and the House of Assembly of Kwara State cannot remove the Chief Judge of Kwara State from office without recourse to or input or participation of the National Judicial Council. That is to say for the purpose of emphasis, the Constitution of the Federal Republic of Nigeria 1999, does not give the Governor of Kwara State acting in conjunction with the House of

⁴⁰ See paragraph 21 (a) – (d) of 3rd Schedule to the 1999 Constitution, part 1

⁴¹In which case the provisions of the main body of the statute should prevail. See *Egolum v. Obasanjo* (1999) 7 NWLR (Pt. 611) 355 at 368. Paragraph 21 of the Third Schedule, Part 1 is not inconsistent with section 292(1) of the 1999 Constitution. It merely recognizes the power of the National Judicial Council to make recommendations before the legislature and Governor or President may act to remove a judicial officer from office. There is no express provision of the Constitution empowering the National Assembly or the House of Assembly to receive or investigate complaints made against a judicial officer.

⁴² This position was earlier taken by one of the writers in his book. See A. Obi Okoye; *Law in Practice in Nigeria*; (2nd Ed., 2015, Enugu, Snaap Press Ltd.) p. 366.

⁴³ 2012(13 NWLR(Pt. 1318) 423

Assembly of Kwara State absolute power to remove the Chief Judge of the State from his/her office or appointment before the age of retirement without the recommendation of the National Judicial Council⁴⁴

The National Judicial Council is a body established by the 1999 Constitution of Nigeria with powers to recommend the appointment and removal of judicial officers in Nigeria including the Chief Judges of States and Chief Justice of Nigeria. The body may also exercise other disciplinary control over erring judicial officers.⁴⁵ The controversy appears to be finally resolved. The extent of the constitutional powers of the National Assembly and the House of Assembly of States in the discipline of judicial officers seems to be settled. The National Judicial Council is solely responsible for receipt of complaints against all judicial officers in Nigeria, investigation of such complaints and the making of appropriate recommendations to either the President of Nigeria or the Governor of any state in Nigeria for the removal of any judicial officer. The often mistaken interpretation of the provisions of the fifth schedule to the 1999 Constitution relating to discipline of judicial officers, still reared its head recently in the events culminating in the forced exit of former Chief Justice of Nigeria, Justice Walter Onnoghen in 2019. Although he voluntarily resigned his appointment after he was accused of corruption and was in fact convicted by the Code of Conduct tribunal for some corrupt financial practices,⁴⁶ we hold the view however that it was unconstitutional for the President of Nigeria to suspend him from office without acting on the recommendation of the National Judicial Council. Even his subsequent conviction by the Tribunal did not empower the President to take any disciplinary action against him. The President could only suspend or remove him from office when a recommendation to that effect is made to him by the National Judicial Council.

6. Conclusion and Recommendations

Judicial office has always been a very sensitive office. Occupiers of such sensitive office should not be left at the mercy of politicians. This would totally erode public confidence in the judiciary and judicial process. It would be embarrassing for judicial officers to be striving to please politicians in order to escape mischievous removal from office. The resolution of the problem by the Supreme Court in *Erelu-Habeeb v. National Judicial Council* is a welcome relief. Section 292 of the 1999 Constitution should be amended to expressly confer on the National Judicial Council, the power of investigation of complaints against all judicial officers and recommendation to the appropriate person the removal from office or otherwise of such judicial officer. The President of Nigeria and Governors of States should be excluded from the removal process of judicial officers from office. The Chief Justice of Nigeria should be empowered by the Constitution to remove judicial officers from office on the recommendation of the National Judicial Council. In the case of the Chief Justice of Nigeria, he should still be removed by the President on the recommendation of the National Judicial Council.

⁴⁴ Ibid at p. 495

⁴⁵ See 153(1)(i) and 3rd Schedule to the 1999 Constitution, part 1.

⁴⁶<https://www.premiumtimesng.com/news/headlines/325953-breaking-cct-convicts-onnoghen-of-false-assets-declaration.html> accessed on October 29, 2020.