

**MAKING A CASE FOR THE INTRODUCTION OF TIME LIMITATION FOR COURTS' DETERMINATION OF CASES ARISING FROM IMPEACHMENT IN NIGERIA<sup>1\*</sup>**

**Abstract**

*Impeachment is tool in the hands of the legislature to remove Presidents, Vice Presidents, Governors or Deputy Governors from office for gross misconducts or violation of the Constitution. The power of impeachment became imperative in order to checkmate the excesses of the executives and ensure they uphold the rule of law at all times. Nigeria has witnessed several impeachments of governors and deputy governors, in some of these cases of impeachment the judiciary intervened to nullify the impeachment for being procedurally flawed. This article made a case for the introduction of time limit for courts' determination of cases arising from impeachment. The research methodology employed in the article is doctrinal research methodology while the sources of data are primary sources from the Constitution of the Federal Republic of Nigeria 1999(as amended), case laws, and secondary sources from text books, journal articles and internet materials. The article found that there are some impeachment cases where the court upturned the impeachments on the ground that they were procedurally flawed, however, in some of these cases the embattled officer cannot reclaim the office because his term in office has elapsed before the court's verdict, therefore, he can only get monetary compensation in form of payment of his entitlements while the people that elected him bears the agony of having their mandate wrongfully terminated prematurely. The article recommended that a maximum time limit of 60 days from the date of filing cases questioning impeachments in court to when judgment should be delivered by the trial court while the Court of Appeal should have maximum of 30 days to hear and determine appeal arising from impeachment cases.*

**Keywords:** Impeachment, Judiciary, Nigeria.

**1. Introduction**

Democracy is the most commonly practiced system of government in the present day world. It is a system of government that entails the supremacy of the will of the people who are saddled with the duty of choosing a government for themselves at all levels through the process known as election. There are basically three arms of government in every democratic society; they are the Legislature, the Executive and the Judiciary. Each of these arms of government is conferred with its peculiar responsibilities. It also the duty of each arm of government to act as a watchdog to the other arms of government to ensure that they do not exceed or abuse the powers conferred on them, this is anchored on the principles of checks and balances. One of the ways through which the legislative arm of government checks the excesses of the executives is through the use of impeachment. The power of impeachment in Nigeria is only available for use against the executives; however, in some jurisdictions like the United States of America, the power of impeachment extends to every civil officer including the judges in the judicial arm of government.

Impeachment can be defined as an accusation of a public official before an appropriate tribunal for misconduct in office; to challenge the credibility of; to bring an accusation against; to call into question; to cast an imputation upon; to call into account.<sup>2</sup> Therefore impeachment in the right sense of the word is not the removal from office of an office holder, but an indictment which is the first step to his or her removal from office as is exemplified by the process of impeachment and removal from office in the United States of America. However, in common parlance in Nigeria, the entire process of removal of a Chief Executive or a Deputy Chief Executive from office by the legislature is referred to as impeachment, and this article will rely on the common usage and refer to impeachment as the total process culminating in the removal of a Chief Executive or a Deputy Chief Executive from office by the legislature.

When the people of a given democratic society elect a leader for a certain term of years in office they create a pact, a contract with the leader to be governed for those years in office. In the course of this contract, the elected leader is expected to be accountable to the people and to uphold the tenets of rule of law and lead according to the dictates of the Constitution, where the leader fails in this regard, the people, through their elected representatives in the legislature, can terminate that contract through the instrumentality of impeachment. On the other hand, where the legislature abuses the power of impeachment by using it to settle

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<sup>2</sup> E Madunagu, Impeachment in Nigeria, < [http://www.nigerdeltacongress.com/articles/impeachment\\_in\\_nigeria.htm](http://www.nigerdeltacongress.com/articles/impeachment_in_nigeria.htm)> Accessed 14 July 2021.

political vendetta or applying it in undeserving cases or without following the laid down due process for the exercise, the people will be at the risk of watching their freely given mandate terminated prematurely by the legislature. More worrisome is the fact that even in the instances where the courts intervene to state that the impeachment is not in accordance with the dictates of the Constitution, the people's mandate cannot be restored because of expiration of the term in office of the embattled office holder as at the time of the court's judgment. In cases where the term in office of a wrongly impeached office holder has elapsed as at the time of the court's verdict, the court usually order the payment of the office holder's salaries and entitlements however, the people who elected him or her cannot enjoy the benefit of their mandate which was cut short as a result of wrongful impeachment.

This article therefore makes a case for the introduction of time limit within which adjudications involving impeachment will be resolved one way or the other, so that in the event that the court finds that the impeachment was null and void for not following the constitutionally laid down process, it can order reinstatement of the office holder and protect the people's mandate from being terminated prematurely.

## **2. History of Impeachment**

The history of impeachment can be traced to Britain. In the 13<sup>th</sup> century, the Parliament gained the powers to remove from office and to punish the Monarch's royal ministers whose policies are not agreeable to the Parliament. However, monarchy being hereditary, the Parliament cannot remove the Monarch; the Monarch can only be removed by a revolution or conquest which mostly involves bloodshed. The term 'Impeachment' as a description of one mode of conducting a state trial in Parliament made its appearance in the 1300s.<sup>3</sup> Scholars during that period, referred as impeachment, proceedings against notables accused of public misconduct being initiated using various procedural vehicles: indictment; appeal of felony; original writ; or even public clamour expressed in the House of Commons.<sup>4</sup> It seems the agreed first true impeachments occurred in 1376, during the reign of Edward III in what was known as 'the Good Parliament'.<sup>5</sup> At the end of Edward III's reign, when both the old king and his eldest son, Edward, known as the Black Prince, were ailing, critics of some of the king's favourites moved against them. The king's favourites moved against included; the royal chamberlain, Lord Latimer; the Steward of the Household, Lord Neville; Richard Lyons; William Ellis and John Peake.<sup>6</sup> The proceedings against them were respectively initiated by a formal accusation before the House of Commons followed by a trial in the House of Lords.<sup>7</sup> During the reign of Richard II, successor of Edward III, there were disagreements between favourites and ministers of the king on the one hand, and an opposition party well represented in the Parliament on the other hand, this led to the impeachments of some of the king's advisors. In 1386, the House of Commons brought charges in the form of impeachment against King Richard's chancellor, Michael de la Pole, Earl of Suffolk.<sup>8</sup> There were several other cases of impeachments in England until about 1848. In 2004, a Welsh Member of Parliament announced his intention of impeaching Prime Minister Tony Blair but was told by Peter Hain, then leader of the House of Commons, that impeachment had 'died', perhaps as long ago as 1867, when suffrage was expanded by the second Great Reform Bill. Till date, there has not been any other impeachment in England.<sup>9</sup> During the 400 years history of impeachment in Britain, it can be gathered that impeachment is a veritable tool in the hands of the Parliament to remove the Crown's ministers and other officials from office, also during that period, ordinary citizens can be impeached. Impeachment process during that period extends to conviction and punishment such as imprisonment, capital punishment or imposition of fines; it does not stop at just removing the erring officer from office or disqualifying him from holding future offices. The Crown cannot be impeached and in some cases he may intervene in the impeachment process by bringing the Parliament to an end. The charges of impeachment varies from treason, high crimes, misdemeanour, however, there was no codification of acts that will amount to impeachment and in many instances, it is the prerogative of the Parliament to determine whether an act is impeachable or not and most times they used

<sup>3</sup> F O Bowman, 'British Impeachments (1376-1787) and the Preservation of the American Constitutional Order' *Hastings Constitutional Law Quarterly* Vol. 46; PP: 745-792.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> J F Stephen, *A History of the Criminal Law of England* (1883) Vol. 1. P. 149. Cited in Bowman, n. 2.

<sup>7</sup> T F T Plucknett, *The Impeachments of 1376* 1. Transaction of the Royal Historical Soc'Y 153, 154 (1951). Cited in Bowman, n. 2.

<sup>8</sup> T B Howell, *Complete Collection of State Trials and Proceedings for High Treason and other Crimes and Misdemeanours from the Earliest Period to the Year 1783 with Notes and other Illustrations*. Vol. 1 (1816) PP. 91-112. Cited in Bowman, n. 2.

<sup>9</sup> *Ibid.*

impeachment to settle political scores either with the officer involved or with the Crown who they cannot impeach.

### **3. Impeachment in Nigeria**

The legal framework of impeachment in Nigeria is the Constitution of the Federal Republic of Nigeria 1999 (as amended). The 1979 Constitution which was operative during the Second Republic also made provisions for impeachment. Section 143<sup>10</sup> provides for the removal of the President and Vice President while section 188 makes similar provision for the Governor and Deputy Governor. Both sections of the Constitution did not use the term 'impeachment' rather they used the term 'removal'. In the technical sense, the Nigerian Constitution provides for removal of these officials and not impeachment, however, in the common parlance and usage the process of removal of these officials from office is called impeachment. The word 'impeachment' was used in sections 146(1) & (3) and 191(1) & (3). Section 146(1) provides that the Vice President shall hold the office of the President in the event of death, impeachment, resignation or permanent incapacitation or the removal of the President from office for any other reason in accordance with section 143 or 144 of the Constitution.<sup>11</sup> Section 84 (5)<sup>12</sup> provides for the pension of the President or Vice President which shall be for life, however, a President or Vice President who left office through impeachment is not entitled to the same pension.<sup>13</sup> From these provisions of the Constitution, it can be deduced that the draftsmen of the Constitution envisaged a situation where the President, Vice President, Governor or Deputy Governor can be impeached from office, hence the use of the word 'impeachment' as one of the grounds wherein a Vice President or Deputy Governor can takeover power as President and Governor respectively. Therefore it can be argued that the draftsmen meant both impeachment and removal from office when they made the provisions of sections 143 and 188 of the Constitution. Although the phrase '...for any other reason in accordance with section 143 or 144 of the Constitution.' seems to create ambiguity, as it is drafted in a way to look like impeachment and permanent incapacitation are distinct from reasons in accordance with sections 143 and 144 of the Constitution. However, there is no other provision of the Constitution that talks about impeachment of the President and Vice President so as to justify its distinction from section 143; in the same vein, section 144 talks about removal of the President or Vice President by the Executive Council on grounds of permanent incapacitation. It is therefore submitted that the inclusion of the phrase for 'any other reason in accordance with section 143 or 144 of the Constitution' is unnecessary surplusage on the part of the Constitutional draftsmen.

Sections 143 & 188 provide for procedures and steps to be taken in the removal of a President, Vice President, Governor or Deputy Governor from office. The procedure will be discussed step by step.

#### ***Step 1***

A notice of allegation in writing signed by one-third of the members of the National Assembly (in the case of President or Vice President) or one-third of the members of a State House of Assembly (in the case of a Governor or a Deputy Governor), stating in details particulars of gross misconduct in the performance of the functions of the office of the office holder. The notice in writing shall be presented to the President of the Senate (in the case of the President or Vice President) or the Speaker of the State House of Assembly (in the case of a Governor or Deputy Governor). Upon receipt of the notice of allegation, the presiding officer mentioned above shall within seven days of receipt of the notice; serve the notice on the holder of office and on each member of the National Assembly or State House of Assembly.<sup>14</sup>

#### ***Step 2***

Within 14 days of the presentation of the notice of allegation to the President of the Senate or the Speaker of a State House of Assembly, whether or not there is a reply by the office holder; each of the two Houses of the National Assembly or in the case of a state, members of the State House of Assembly, shall by a motion without debate, resolve whether or not the allegation should be investigated. The required vote

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<sup>10</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>11</sup> *Ibid*; section 191(1) gives same right to the Deputy Governor of a state. Subsection (3) of sections 146 and 191 provide that when a Vice President or Deputy Governor leaves office by death, impeachment, resignation or permanent incapacitation, or removal in accordance with section 143 or 144 of the Constitution, the President or Governor shall appoint another Vice President or Deputy Governor, subject to approval by the National Assembly or House of Assembly of the state.

<sup>12</sup> *Ibid*.

<sup>13</sup> Section 124 (5) makes a similar provision for the Governor or Deputy Governor. The State House of Assembly is empowered to make laws pertaining to the pensions of Governors and Deputy Governors but anyone that left office through impeachment will not be beneficiary of such pension.

<sup>14</sup> *Ibid*, section 143 (2); 188 (2).

needed for the allegation to be investigated is two-third majority of members of each of the Houses of the National Assembly or the State House of Assembly.<sup>15</sup>

### **Step 3**

Within seven days of the passage of a motion that the allegation should be investigated, the President of the Senate or the Speaker of the State House of Assembly shall request the Chief Justice of Nigeria or the Chief Judge of the State to appoint a seven-man panel, consisting of persons who in his opinion are persons of unquestionable integrity, who are not members of the public service, legislative houses or political party, to investigate the allegation. During the investigation, the office holder shall be granted fair hearing, and has the right to either defend himself personally or through a legal practitioner of his or her choice.<sup>16</sup>

### **Step 4**

The Panel shall have powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly or State House of Assembly. The Panel shall within three months of being constituted, submit its findings to each House of the National Assembly or to the State House of Assembly. The process of impeachment will terminate where the Panel finds the office holder not guilty of the allegation against him.<sup>17</sup>

### **Step 5**

Within 14 days of the receipt of the report of the Panel, the National Assembly shall by a resolution of two-third majority of members of each House, adopt the report of the Panel; same is applicable in the State House of Assembly in case of a state office holder, once the resolution is adopted, the office holder stands removed from office.<sup>18</sup>

The jurisdiction of the court is ousted from determination of the Panel or the National Assembly or State House of Assembly.<sup>19</sup> The Constitution did not clearly state what conduct amounts to gross misconduct for the purposes of impeachment, it merely stated that gross misconduct is a grave violation or breach of provisions of the Constitution or anything which in the opinion of the National Assembly or the State House of Assembly amounts to gross misconduct.<sup>20</sup>

The first impeachment casualty in Nigeria is the Speaker of the then Ondo State House of Assembly, Chief Richard Jolowo, he was impeached after being found guilty on charges of dishonesty, highhandedness and gross misconduct.<sup>21</sup> This was followed by the impeachment of Bibi Farouk as Deputy Governor of Kano State in May 1981 by the Kano State House of Assembly. On 23 June 1981, Abdulkadir Balarabe Musa then Governor of Kaduna State became the first Governor to be impeached in Nigeria. About seven Governors; several Deputy Governors; two Presidents of the Senate; one Speaker of House of Representatives and several Speakers of States Houses of Assembly and several Deputy Speakers of States Houses of Assembly have faced impeachments in Nigeria. Some of these impeachments were bore out of settlement of political scores and in the case of deputy governors, because they fell out of favour with their principals, the governors, and they have to be shown the way out by the legislature that is loyal to the governor.

## **4. Judicial Interventions on Cases of Impeachment in Nigeria**

As already stated in this article, sections 143(10) and 188(10) of the Constitution bars the court from intervening or interfering with the decision of the Panel set up to investigate allegations of impeachment or the decision of the National Assembly or a State House of Assembly in relation to impeachment, however, in deserving cases, the courts have risen up to the occasion to strike down and nullify impeachments where the strict procedure stipulated in subsections (1)-(9) of section 188 of the Constitution were not followed. The precedence for judicial intervention in impeachment cases despite the ouster clause in subsection (10) of the relevant sections was laid in the case of *Inakoju & 17ors v Adeleke & 3ors*<sup>22</sup> Niki Tobi JSC in his lead judgment quoted Ogebe JCA who delivered the lead judgment at the Court of Appeal, he stated thus:

<sup>15</sup> *Ibid*, section 143 (3) & (4); 188 (3) & (4).

<sup>16</sup> *Ibid*, section 143 (5) & (6); 188 (5) & (6).

<sup>17</sup> *Ibid*, section 143 (7) & (8); 188 (7) & (8).

<sup>18</sup> *Ibid*, section 143 (9); 188 (9).

<sup>19</sup> *Ibid*, section 143 (10); 188 (10).

<sup>20</sup> *Ibid*, section 143 (11); 188 (11).

<sup>21</sup> M A Oni, 'Judicial Review of Governors Ladoja & Obi Impeachment in Nigeria's Fourth Republic' *Singaporean Journal of Business Economics and Management Studies* Vol. 1 No. 6 2013 P. 118.

<sup>22</sup> (2007) LPELR-1510(SC).

It is my view that the trial court had serious questions to consider before hastily throwing out the suit. For example it was alleged that 18 defendants/respondents met outside the chambers of the House of Assembly in a hotel to commence impeachment proceedings, the court had a duty to determine whether proceedings before such a group amounted to proceedings of Oyo State House of Assembly, it was also alleged that the House of Assembly in Oyo State had 32 members and for the removal of a Governor which requires the resolution of two-third majority of all members. The Court also had to consider whether impeachment proceedings in which the Speaker of the House of Assembly is excluded from his leading role as provided in section 188 of the Constitution can amount to proper proceedings of impeachment. For all I have said in this judgment I have no hesitation in holding that the learned trial judge was wrong in declining jurisdiction to examine the claim in the light of section 188 subsections 1-9 of the 1999 Constitution and if he was not satisfied that the impeachment proceedings were instituted in compliance thereof, he has jurisdiction to intervene to ensure compliance. If on the other hand there was compliance with the pre-impeachment process then what happened thereafter was the internal affairs of the House of Assembly and he would have no jurisdiction to intervene.<sup>23</sup>

In some of these cases, the adjudication took so long that by the time the court gave verdict nullifying the impeachment, the term in office of the embattled office holder has elapsed. This article will discuss some of such cases.

#### **Impeachment of Chief Diepriye Alamiyeseigha<sup>24</sup>**

Chief DSP Alamiyeseigha was elected Governor of Bayelsa State and sworn in as Governor of the state in 29 May 1999, he was reelected in 2003. Trouble started for him when he was arrested in the United Kingdom for alleged money laundering, on return to Nigeria, the Bayelsa State House of Assembly initiated an impeachment procedure against him. The Governor was served with a notice of impeachment dated 18 November 2005; he sent his reply of the notice of allegation to the House on 2 December 2005. Consequently, upon receipt of his reaction to the notice of impeachment, the House resolved to investigate the allegations of impeachment and the Speaker of the House of Assembly then requested the State's Chief Judge to set up a seven man panel to investigate the allegations of impeachment. On 9 December 2005 the House of Assembly, acting on the report of the Panel impeached and removed him as Governor of Bayelsa State. The impeached Governor approached the Bayelsa State High Court praying 14 reliefs some of which will be stated here:

A declaration that the 1<sup>st</sup> defendant is constitutionally obliged to appoint only such persons as are not disqualified under section 188(5) of the Constitution of the Federal Republic of Nigeria 1999 as members of the panel to investigate allegations of impeachable offences leveled against the plaintiff as contained in the impeachment notice dated 18 November 2005.

A declaration that the 1<sup>st</sup> defendant has failed in the performance of his constitutional duty under section 188(5) of the 1999 Constitution by his appointment of the 4<sup>th</sup>, 5<sup>th</sup> and/or 8<sup>th</sup> defendants as members of the investigation Panel inaugurated by the 1<sup>st</sup> defendant to investigate the allegations contained in the impeachment notice dated 18 November 2005.

A declaration that the failure and/or refusal of the impeachment investigation panel constituted by the 1<sup>st</sup> defendant, and comprising 4<sup>th</sup>-10<sup>th</sup> defendants to commence sittings and invite the plaintiff to defend himself either personally or through his counsel amounts to abandonment of their mandatory constitutional duties under section 188(7) of the Constitutional of the Federal Republic of Nigeria 1999.<sup>25</sup>

In paragraph 13 of his statement of claim, the plaintiff stated:

The plaintiff avers that since inauguration of the said 7 man panel, the panel has not sat and is yet to issue any summons on the plaintiff for the appearance before it to defend the allegations against him, upon becoming aware of the inaugurated panel, the plaintiff raised

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<sup>23</sup> *Ibid*, PP: 57-58.

<sup>24</sup> *Alamiyeseigha v Hon. Justice Igoniwari & Ors* (2007) LPELR-8220(CA).

<sup>25</sup> *Ibid*.

an objection to the panel on the grounds that three members did not meet the strict criteria defined under the provisions of the Constitution.

The objection was directed to the office of the 1<sup>st</sup> defendant.

The said members of the panel is consisting of persons who the 1<sup>st</sup> defendant admitted that he was under severe pressure and influence to appoint and to whom plaintiff objected to for being his patent adversaries and reasons for objecting to their nomination are: a) Mrs. Alaoga, the 5<sup>th</sup> defendant was a card carrying member of the People's Democratic Party (PDP) whom the plaintiff had earlier appointed Pro-Chancellor of Niger Delta University, but who he later replaced with Professor Kinse Okoko.

b) Mr. Ayadagha, the 8<sup>th</sup> defendant, also a card carrying member of the PDP, whom the plaintiff had appointed Commissioner for Information, but who was removed from the state cabinet in 2004 and replaced with Mr. Oronto Douglas, as a result of irreconcilable differences with the plaintiff.

c) Mr. David Sezena-Dokubu Spiff, the 4<sup>th</sup> defendant who was designated the chairman of the panel, was the lead counsel prosecuting some communal cases instituted against the plaintiff government between 2003 and 2004, and had led several emissaries to the Federal Government to plead for the removal of the plaintiff as Governor.

The plaintiff pleads and shall rely on the written objection of the plaintiff to the above panel members, to which objections the 1<sup>st</sup> defendant is yet to respond or countenance, as is his duty under section 188(6) of the 1999 Constitution, in furtherance of which he had announced the appointment.

In the meantime, while awaiting the reaction of the 1<sup>st</sup> defendant to his objections to the improper constitution of the panel, the plaintiff assembled his team of lawyers to defend him when the panel was to be convened.

The plaintiff avers that till date his counsel has been kept in the dark as to the activities of the panel.

The defendants at the trial court raised preliminary objections on the grounds that, among other things, the Court lacks jurisdiction in view of section 188(10) of the Constitution and that the Chief Judge of Bayelsa enjoys immunity from civil proceedings in respect of the performance of the duty in appointing members of the panel. The trial court, in a ruling delivered on 23 March 2006, declined jurisdiction based on all the grounds of preliminary objections raised.

The plaintiff, the impeached Governor dissatisfied with the ruling of the trial court approached the Court of Appeal. The Court held that the trial court was wrong in holding that he does not have jurisdiction to entertain that suit, that he has jurisdiction to examine the appellant's claim in the light of section 188(1)-(9) of the constitution and that if he was not satisfied that impeachment proceedings were instituted in compliance to the section, then he can intervene, if on the other hand he discovers that there was compliance with the subsections (1)-(9) of section 188 then he can rightly decline jurisdiction to intervene.<sup>26</sup>

The Court also held that the Chief Judge was not performing a judicial function in exercise of his powers to constitute the Panel under section 188(5) and therefore his action can be challenged if the persons appointed by him ought not to have been appointed.<sup>27</sup> The appellant in his amended notice of appeal which he filed after briefs of argument have been adopted by all parties, prayed the Court to invoke its powers under section 16 of the Court of Appeal Act and determine the substantive suit instead of remitting it to the High Court for a retrial. He relied on the cases involving Governors Rashidi Ladoja and Peter Obi respectively where the Court of Appeal exercised such powers. The Court by a majority decision of four against one held that it cannot exercise such powers because the suit being commenced by a writ of summons, raises contentious issues that needed to be resolved by oral evidence and that exhibit A which is the document the appellant wants the court to rely on in determining the issues on the merit did not adduce evidence. The Court therefore held that the High Court has jurisdiction to entertain the matter and ordered that the case be sent back to the Bayelsa State judiciary for a retrial before another judge.

In the dissenting opinion of Hon. Justice Ibrahim Saulawa JCA, he stated that the issue raised by the appellant is the issue of fair hearing before the investigating panel which can be determined based on the said exhibit

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<sup>26</sup> *Ibid*, Per Galadima JCA at P. 19.

<sup>27</sup> *Ibid*.

A, he also stated that it is rather late to remit the case to the High Court for retrial just 11 weeks to the tenure of office of the Governor which is the subject matter of the suit. The learned jurist opined as follows:

I uphold the contention of the learned senior counsel to the appellant that the issue is that of fair hearing. It is common knowledge that the respondent's right from the inception of the case in the lower court employed all sorts of tactics at their disposal to deliberately frustrate the trial and the hearing of the appeal, lawyers were surreptitiously changed in the eleventh hour even to the visible embarrassment of the various learned counsel to the respondents. I think this court has a duty not to allow the respondents to overreach themselves. They certainly cannot, as the popular adage goes, eat their cakes and have it. Considering the nature and circumstances surrounding this case, time is obviously of the essence. The *res* i.e the term of office of Governor, the appellant has been struggling from to regain after his impeachment and removal from that office, is bound to be extinguished by the 29<sup>th</sup> day of May, 2007, that is just a period of only eleven weeks from today. Thus, remitting the case back to the Bayelsa State High Court for trial by another judge would have rendered the *res* of the subject matter of the suit nugatory. See *Inakoju v Ladoja* (supra) at 670 paras A-D. Thus, I hold that this court has a duty to instantly determine the case of the parties on the basis of the appellant's statement of claim and Exhibit A.<sup>28</sup>

This case underlines the need for expeditious trial of impeachment cases as time is of the essence. The case was brought before the High Court in December 2005 and the issue of jurisdiction was determined in March 2006 and the appeal was determined 12 months later with the court sending the case back to the High Court for retrial less than three months to the end of the term of office which is subject matter of the case. Sadly, due to time constraint, there was no retrial and the impeached Governor went home without his grievances being resolved one way or the other.

### **Impeachment of Sir Jude Agbaso**

Sir Jude Agbaso was the Deputy Governor of Imo State until he was impeached and removed from office by the Imo State House of Assembly on 28 March 2013. A notice containing allegations of impeachment against the Deputy Governor was published in Daily Sun Newspaper of 14 March 2013, the Deputy Governor alleged that the Panel only had one sitting which he was not notified of and hastily submitted its report to the State House of Assembly and based on that report he was impeached and removed from office on 28 March 2013. The Panel was inaugurated by Hon. Justice Goddy Anunihu of the Oguta Judicial Division of Imo State High Court. Aggrieved by his impeachment and removal from office, Sir Jude Agbaso approached the High Court of Imo State by an originating summons and prayed for 16 reliefs some of which are:<sup>29</sup>

A declaration that by virtue of section 188(2) Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as CFRN 1999), the Claimant is entitled to personal service of Notice of any Allegation of gross misconduct against him within seven days of receipt of such Notice by the 1st Defendant.

A declaration that the failure of the 1<sup>st</sup> Defendant to cause the document entitled Petition pursuant to s.188 (1) 1999 Constitution (As Amended) 'Re: Gross Misconduct by the person of Sir Jude Agbaso, Deputy Governor of Imo State' dated 7<sup>th</sup> March, 2013 to be personally served on the Claimant within seven days from 7<sup>th</sup> March, 2013 when it was received by the 1st Defendant, vitiates the said document and all subsequent steps and proceedings arising therefrom.

A declaration that the petition entitled 'Petition pursuant to s.188 (1) 1999 Constitution (As Amended) 'Re: Gross Misconduct by the person of Sir Jude Agbaso, Deputy Governor of Imo State' dated 7<sup>th</sup> March, 2013 published at page 42 of the Daily Sun Newspaper of Thursday March 14, 2013 is not the same as the Notice of Allegation of any gross misconduct provided for under section 188(2) CFRN 1999.

A declaration that the inauguration/setting up of the panel of seven persons under the chairmanship of the 3rd Defendant to investigate the allegations against the Claimant, by a Judge of the Imo State High Court, Hon. Justice Goddy Anunihu, instead of the appointer of the Panel the Hon. Chief Judge of Imo State, is invalid a Judge of the High Court having no role whatsoever under section 188 CFRN 1999 in the appointment and inauguration/setting up of the said Panel.

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<sup>28</sup> *Ibid*, P. 49.

<sup>29</sup> Reproduced in *Agbaso v Imo State House of Assembly* (2014) LPELR-24298(CA)

A declaration that by virtue of sections 36 and 188(6) CFRN 1999, the purported 'Report' hastily issued on 28th March, 2013 by the panel of seven persons appointed to investigate the allegations under the chairmanship of the 3rd Defendant, after a single sitting, without notice to the claimant and without hearing the claimant in his defence offends the rules of natural justice and accordingly unconstitutional null and void.

A declaration that all the alleged steps taken by the Defendants leading to the purported removal of the claimant as Deputy Governor of Imo State are not in compliance with the provisions of section 188 CFRN 1999.

The impeached Deputy Governor claimed that his impeachment was orchestrated by the then Governor of Imo State Owelle Rochas Okorochoa based on the build up for the 2015 General Elections. He further claimed in his affidavit at the High Court that the Speaker of the House of Assembly set up a committee called 'Special Ad Hoc Committee to Investigate the Remote Cause(s) of Stoppage/Abandonment of Work on some Roads in Owerri, Orlu and Okigwe Municipalities'. One Mr. Joseph Dina, a Lebanese, Managing Director of one JPROS International Limited and a friend of the State Governor, Owelle Rochas Okorochoa, was invited by the Committee. Mr. Dina alleged that he, the Deputy Governor requested for a bribe of 458 Million Naira, an allegation which he denied.<sup>30</sup> The committee did not accede to his defence which led to a vote of no confidence to be passed on him, the Deputy Governor claimed. This led to him instituting Suit No.HOW/174/2013 *Sir Jude Agbaso v Hon. Simeon Iwunze & Others* which is still pending before the impeachment procedure was initiated by the House of Assembly.

The defendants, that is, the Speaker of the House of Assembly; the House of Assembly; Chairman of the seven man panel and the Attorney General of Imo State raised preliminary objections which among other grounds include that the suit borders on impeachment and the Court is robbed of jurisdiction to entertain same and that the suit being contentious in nature ought not to have been commenced by an originating summons but by a writ of summons.

The 1<sup>st</sup> – 3<sup>rd</sup> defendants also filed a counter affidavit where they denied some of the allegations contained in the plaintiff's affidavit and went ahead to state that they made several attempts to effect personal service on the plaintiff both at his residence and in his office and they could not find him and they made the publications not just in Daily Sun Newspaper but in some other national dailies and also posted the Notice of Allegations on the front door of the plaintiff's residential home.

The trial judge held that there are conflicts in the affidavit evidence which can only be resolved by oral evidence and furthermore the allegations contained in the affidavit of the plaintiff are contentious. He ordered the plaintiff to file a statement of claim and serve same on the defendants. He declined going into the merits of the case.<sup>31</sup>

The impeached Deputy Governor appealed to the Court of Appeal challenging the decision of the trial court not to determine the suit based on the originating summons and prayed the Court to invoke its powers under section 15 of the Court of Appeal Act and determine the suit on the merit based on the originating summons. Respondents raised the issue of jurisdiction based on section 188(10) of the Constitution. The Court of Appeal, on the issue of jurisdiction to entertain impeachment matters stated thus:

I must say that in matters or questions pertaining to or bordering on Ouster Clauses, a Court of Law and Justice will not play the Ostrich or become Lily-livered upon invocation or the enlistment of the Ouster Clause by a defending party as a way of shielding himself or to browbeat the Courts to hand off from determining whether the impeachment or removal proceedings were in order. Ouster Clauses cannot be treated as a very red hot iron just pulled out of burning Charcoal by a Blacksmith's tong with trepidation to avoid being hurt or injured by it before using the glanville on it to mode the desired implements. The Lower Court and this Court are endowed with jurisdiction to adjudicate upon any Suit or action complaining that a Panel set up pursuant to section 188 of the 1999 Constitution and a House of Assembly violated the demands or constitutional procedures contained in the said section. In other words, a complaint that the Panel did not follow the nitty-gritty of the conditions precedent in the said

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<sup>30</sup> *Supra* PP. 23-24

<sup>31</sup> *Ibid*, P. 38.



section 188(1) - (9) of the Constitution can be determined or entertained by the Court. The provisions of Section 188(1) - (9) are not designed to cover up or protect illegalities or irregularities committed by such Panel or a House of Assembly.<sup>32</sup>

The Court agreed with the trial court that the facts contained in the affidavit in support of the originating summons and the counter affidavits were contentious and conflicting and cannot be resolved based on affidavit evidence. The appeal was dismissed and the appellant was ordered to go back to the High Court and file a statement of claim.

It should be noted that this judgment was delivered on 20 November 2014, six months to the expiration of the term of office in contention and more than a year when the impeachment complained of took place. After the case was sent back for retrial, the embattled impeached Deputy Governor did not go back to the High Court as ordered by the Court of Appeal, it was not until 15 February 2021 that a consent judgment was delivered by Justice S.I. Opara of Imo State High Court nullifying the impeachment and ordering the payment of his emoluments from 28 March 2013 to 28 May 2015.<sup>33</sup> This judgment came 8 years after the impeachment.

### **Impeachment of Sunday Onyebuchi**

Sunday Onyebuchi was the Deputy Governor of Enugu State during the reign of Sullivan Chime as Governor. An impeachment proceeding was commenced against him on the allegations that he was rearing chicken, that is to say, that he was running a poultry at his official residence and because of his refusal to represent the Governor at two official functions. The Enugu State House of Assembly upon receipt of the report of the Panel set up by the Chief Judge of Enugu State, proceeded and adopted the said report and impeached the Deputy Governor on 26 August 2014. Aggrieved by the impeachment and removal from office, he approached the Enugu State High Court seeking the nullification of the impeachment proceedings for running contrary to section 188 of the Constitution. Justice R.O. Odugu of the High Court of Enugu State in his judgment held that the purported impeachment of the Deputy Governor was unconstitutional and he nullified same. He faulted the secret trial of the Deputy Governor before the Panel and further held that running a poultry and not representing the Governor at an official function does not amount to gross misconduct within the meaning of section 188(11) of the Constitution. He ordered that the Deputy Governor be given all his rights and benefits attached to his office from 27 August 2014 to 29 May 2015. That judgment was given on 19 December 2015 after the expiration of the term of the Deputy Governor.<sup>34</sup>

### **Impeachment of Governor Murtala Nyako**

On 15 July 2014, Governor Murtala Nyako of Adamawa State was impeached and removed from office of Governor. 17 out of the 25 members of Adamawa State House of Assembly adopted the report of the seven man panel that investigated the allegations of gross misconduct leveled against the Governor. The Governor and his deputy were alleged to have committed some financial impropriety.<sup>35</sup> Unsatisfied about the impeachment and removal from office, Nyako went to court to seek redress. At the Court of Appeal, on 11 February 2016, it was held that Nyako was not granted fair hearing during the impeachment proceedings before the seven man panel therefore the entire process was null and void. The Court ordered that Nyako be accorded all the benefits accruing to the office of the Governor throughout his tenure and be paid all his entitlements. The Court, however, couldn't grant the reliefs seeking reinstatement as Governor, his tenure having elapsed.<sup>36</sup>

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<sup>32</sup> *Ibid*, per Peter Olabisi Ige, J.C.A PP. 54-58.

<sup>33</sup> Court nullifies the Impeachment of Ex-Imo Deputy Governor Jude Agbaso after Eight Years' *Channels TV*. <[www.channelstv.com/2021/02/15/court-nullifies-impeachment-of-ex-imo-deputy-governor-after-eight-years/amp/](http://www.channelstv.com/2021/02/15/court-nullifies-impeachment-of-ex-imo-deputy-governor-after-eight-years/amp/)> Accessed 15 July 2021.

<sup>34</sup> Enugu High Court quashes Impeachment of Former Deputy Governor, Sunday Onyebuchi' *TNV Nigerian Voice* 19 December 2015. <[www.thenigerianvoice.com/movie/200337/enugu-high-court-quashes-impeachment-of-deputy-govern.html](http://www.thenigerianvoice.com/movie/200337/enugu-high-court-quashes-impeachment-of-deputy-govern.html)> Accessed 15 July 2021.

<sup>35</sup> Sani Tukur, 'Adamawa Assembly Sacks Governor Murtala Nyako' *Premium Times News* 15 July 2014. <[www.premiumtimesng.com/news/164959-update-adamawa-assembly-sacks-governor-murtala-nyako.html](http://www.premiumtimesng.com/news/164959-update-adamawa-assembly-sacks-governor-murtala-nyako.html)> Accessed 15 July 2021.

<sup>36</sup> 'Why Appeal Court Nullified Adamawa Governor's Impeachment' *Pulse News* 11 February 2016. <[www.pulse.ng/news/politics/murtala-nyako-why-appeal-court-nullified-adamawa-governors-impeachment/2tq10fl](http://www.pulse.ng/news/politics/murtala-nyako-why-appeal-court-nullified-adamawa-governors-impeachment/2tq10fl)> Accessed 15 July 2021.

### **Impeachment of Simon Achuba**

Mr. Simon Achuba was on 18 October 2019 impeached as deputy governor of Kogi State by the Kogi State House of Assembly. Aggrieved by the said impeachment and removal from office, he approached the High Court of Kogi State seeking redress. The High Court presided over by Hon. Justice John Olorunfemi on 27 February 2020 held that the impeachment was illegal and voided same.<sup>37</sup> The Court described the action of the House of Assembly as a constitutional coup hatched and executed in a democracy and ran contrary to section 188(8) of the Constitution.<sup>38</sup> The section which states that once the Panel did not find the office holder guilty, the impeachment proceedings terminates. However, the House of Assembly in this case, went ahead to impeach the deputy governor despite the fact that the Panel did not find him guilty. The Court went further to state that the onus is on the 29 defendants to produce the remaining volumes of the Panel's report which they alleged indicted the Deputy Governor.<sup>39</sup> Unfortunately, as at the time the judgment was delivered, the term in office of the embattled deputy governor has elapsed and hence he could not be reinstated in office but was entitled to his rights and benefits from the date of the purported impeachment till the date his term in office elapsed.

### **5. Conclusion**

Impeachment is a vital tool in the hands of the legislators to checkmate the excesses of government. It is very imperative in order to ensure that the executives act in accordance with the Constitution and uphold the rule of law at all times. However, in Nigeria, the procedure for impeachment has been grossly abused by the legislators and used as a tool to settle political scores and therefore in some cases, it has been used to prematurely terminate the people's mandates for no justifiable reason. The judiciary has risen up to the occasion by intervening in several cases where the laid down procedures guiding impeachment were not adhered to, and also where impeachment was used to witch-hunt elected executives. Sadly because of delay in adjudication of these impeachment-related cases, the wrongfully impeached officers, in most cases, cannot reclaim the mandate given by the people but can only get compensation in form of court-ordered payment of entitlements they could have earned if the wrongful impeachment did not take place. This is detrimental to the people that willingly gave them the mandate. This is equally detrimental and unfair to the office holder who cannot fully carry out agenda he or she plans to achieve during his or her tenure because the tenure has been terminated prematurely and unlawfully by an impeachment exercise which ought to have taken place. If this ugly trend continues unabated it will get to a point where political godfathers and some elements in the legislature will use unwarranted impeachment to ensure that an elected chief executive or deputy chief executive does not stay till the end of his or her term in office because they know that even where such impeachment is challenged in court, they, the legislators will find a way to delay the case and ensure that it drags for years and that verdict is delivered after the expiration of the office holder's term in office. There is therefore need to nip the issue on the bud by introducing a time limit for adjudication of impeachment cases so that where the court finds that the procedure for impeachment was not strictly followed, the office holder can quickly regain his office and continue carrying on with the task for which the people gave him or her their mandate. This article recommends that the trial court should have a maximum of 60 days to hear and determine cases arising from impeachment. The computation of time should start from when the case is file in court. The Court of Appeal should have maximum of 30 days to here and determine appeal arising from impeachment and should be the final court in impeachment related cases. By doing so, an impeached officer holder, who should vacate office while pursuing the case in court, will have a maximum of 90 days to either regain his office or remain impeached. To achieve this, the rules of court should make provisions for abridgment of time in filing of processes in impeachment related cases and should not give room for extension of time to file any process that the time for filing same has elapsed. A trial court trying impeachment cases can sit on day-to-day basis on the case in order to meet up with the time limit just like it is done in pre-election and election petition cases. The courts should also award punitive cost on any legislator that participates in a procedurally defective impeachment, which will serve as a deterrent to others.

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<sup>37</sup> 'Court nullifies impeachment of ex-Kogi deputy governor, Simon Achuba' *Premium Times Newspaper* 27 February 2020. <[www.premiumtimesng.com/regional/north-central/379418-court-nullifies-impeachment-of-ex-kogi-deputy-governor-simon-achuba.html](http://www.premiumtimesng.com/regional/north-central/379418-court-nullifies-impeachment-of-ex-kogi-deputy-governor-simon-achuba.html)>. Accessed 15 July 2021.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*