

CROSS-CARPETING AND THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED): IMPERATIVE FOR LEGISLATIVE REVIEW*

Abstract

Political Parties are very essential institutions of the democratic system. They are organs of Political discussion and of formation of ideas, policies and programs under the Constitution. The plurality of political issues promotes the formation of competing ideas and genuinely provides the citizens with a choice of forum for participation in governance, whether as a member of a political party in government or of a party in opposition, thereby ensuring the reality of government by discussion which democracy is all about in the final analyses. Section 40 of the Constitution provides that, every person shall be assemble freely and associate with other persons, and in particular, may form or belong to any Political party , trade union or any other association for the protection of his interest; provided that the provisions of the section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to Political Parties to which that Commission does not accord recognition.¹ Nevertheless, with the current trend of cross carpeting being enacted in Nigerian political landscape, principles, scruples ideology and the like have all been jettisoned for greed, self-interest and opportunisms.²

Keywords: Legislative Review, Nigerian Constitution, Cross Carpeting.

1. Introduction

Under the Constitution of the Federal Republic of Nigeria, a member of the Senate or of the House of Representatives shall vacate his seat in the house of which he is a member, if being a person whose election to the house was sponsored by a Political Party if he becomes a member of another Political Party before the expiration of the period for which that House was elected, provided that his membership of the latter Political Party is not as a result of a division in the Political Party of which he was previously a member or of a merger of two or more Political Parties or factions by one of which he was previously sponsored.³ From the foregoing section of the Constitution where a person whose election to the Legislative House was sponsored by a Political Parties become a member of another Political Party before the expiration of the period for which that house was elected, he would have to lose his seat In that House. But under the proviso to the said section, if his membership of the new Political Party occurred because there was division in the Political Party which sponsored him and as a result he joined a new Political Party, he does not need to lose his seat.

A split or division could arise without any fault of the member of a Political Party resulting in a member rightly or wrongly finding himself in a minority group which may not be big enough or strong enough to satisfy the recognition, as a separate Political Party of the electoral body. Not allowing such a member to join another Political Party with his faction will be placing him in a position where his right to contest for political office will be lost.⁴ This is different from the practice of cross-carpeting for financial consideration or otherwise. Crossing from one Political Party to another, without qualms and without conscience, such a practice had to be discouraged by the draftsmen who drafted the constitution if the Political public morality of our country is to be preserved. The argument of this paper is a law should be put in place in order to make it a punishable offence of the defection of an elected member from one Political Party before the expiration of the period for the House he was elected by declaring his seat vacant.⁵

2. Definition of Key Terms

Legislative Review: The phrase is deriving from two words ‘Legislative’ and ‘Review’. The combination effect is that, it means the review of a Legislative Proceeding within the agency itself. It is the consideration, inspection

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

² Olaolu S. Opadere, Julius O. Agbana: Cross Carpeting in Nigerian Politics, some Legal and Moral Issues Generated. *Frontiers of Legal Research* Volume 3, No 2 2015/ www.cacanada.org. Accessed 12/7/2016.

³ Section 68(1)g of the Constitution of the Federal Republic of Nigeria 1999.

⁴ B Momodu, *Encyclopedia of Nigerian Case Law Principles and Authorities*

⁵ See *The Attorney General of the Federation v Alhaji Abubakar Atiku*. (2007) 10 NWLR PT 104 Pg 1 per Muhammed CJN at Pg 354; *Agbegun v Osun S.H.A* (2015) 8 NWLR Pt 1461 at Pt14, 61 Pg 314.

or reexamination of a subject or thing pertaining to Legislature. It is an administrative review created by an agency that exercise delegated quasi-legislative authority.

Constitution: The fundamental and organic law of a Nation or State establishing the conception, character and organization of its government as well prescribing the extent of its sovereign power and the manner of its exercise.

Cross-Carpeting: This is an age long colloquial term meaning to move from one political party to another at any given time.

3. History and Law of Political Cross-Carpeting

Cross-carpeting by Nigerian politicians is not a new phenomenon, but one that has been with us as a nation since the first republic in the decades leading to independence of Nigeria as a sovereign nation.⁶ The first recorded incident of cross-carpeting was in 1951 in the defunct Western Region House of Assembly when several members of the now defunct NCNC, National Council of Nigeria and Cameroun led by the Great Zik of Africa, Dr Nnamdi Azikiwe overnight decamped to the old AG, Action Group led by Great Sage, Chief Obafemi Awolowo, SAN to deny the former, majority in the Western Region House of Assembly which led to the AG forming the Government in the defunct Region and Dr Nnamdi Azikiwe beating a tactical relevant to his native Eastern Region to form the ruling Government.⁷ It is instructive to note that this singular Political event was led to permanent mistrust not only between the two great and illustrious nationalists Awolowo and Azikiwe, but even to their kinsmen which mutual feelings still persist.⁸

4. Cross-Carpeting during The Second Republic

There were a number of high-profile Cross-Carpeting, prominent amongst which were; The crossing-carpeting by Chief Akin Omoboriowo from UPN, United Party of Nigeria led by Chief Obafemi Awolowo to NPN, National Party of Nigeria, the Cross-Carpeting by Chief Fagbamigbe also of former Ondo State from UPN to NPN. The same was for late Senator Lai Joseph from old Oyo State from UPN to NPN.⁹ Furthermore, in the same second republic, Senator N. N. Anah of the defunct NPP decamped to NPN. Many of these defections were to have violet and even tragic consequences such as the 1983 election crisis in former Ondo State when notable Publisher Chief Fagbamigbe was hacked to death and Chief Akin Omoboriowo, former Deputy Governor of the old Ondo State only escaped death with the strong backing of the Federal might even then he had to relocate to Lagos

5. Cross Carpating or Defection in the Present Political Dispensation

This dispensation which started in 1999 had been more than a hand full although with less dramatic results in comparison to the second republic, but the recent mass exodus from the main opposition party, People Democratic Party, PDP to the ruling party All Progressive Party, APC negates the assertion. Apart from the recent happenings, the only cross carpating that drawn much talk is that of the former Vice President, Alhaji Atiku Abubakar whose defection in the mist of his Political battles with his erstwhile boss, President Olusegun Obasanjo was the subject matter of several Supreme Court decisions, prominent amongst which was the case of *Attorney General of The Federation v Atiku Abubakar*.¹⁰ The list of prominent defectors includes Senator Wahab Dosummu from Alliance for Democracy AD to People's Democratic Party, PDP, Senator Musuliu Obanikoro from AD to PDP, late Funsho Willians from AD to PDP, former Governor Bola Tinubu, Lam Adesina, Bisi Akande from AD to AC, Action Congress etc. While some of these cross carpating were roundly condemned particularly the defection from smaller parties like AD or AC to PDP.

6. Possible Reasons for Cross Carpating

Nigerian Politicians cross-carpet for a number of reasons;

- a. To have better access to power and spoil of office,
- b. To escape Political oppression, intimidation and persecution
- c. As a result of breakdown in the aims and objectives amongst the founding fathers of a party,
- d. As a tactical and strategic political retreat to re-launch a political agenda on another platform.¹¹

7. Comparative Analyses of Cross-Carpating in Nigeria in Contrast to Practices in Some Democracies

In established democracies like United States of American, USA or Britain, the generations of family votes, it is seen as a political apostasy for a member of a party cross carpet to the other party; imagine a member of Kennedy

⁶ <http://squibguest.blogspot.com>. Accessed 12/7/2016.

⁷ Ben Momodu, Op.Cit

⁸ Ibid

⁹ Ibid

¹⁰ (2007) 4 SC PT 11 AT 62

¹¹ Ibid

family becoming a Republican or a member of the Bush family becoming a Democrat or even a Clinton becoming a Republican, that will cause Political earthquake. The same attitude prevails in Britain; imagine a Labour member of the Parliament MP, defecting to the Conservative (Tony) party or vice versa. This consistent attitude of leaders is replicated amongst voters wherein it is common place for a man and his family to vote a particular party for years, voting for the opposing parties only in extreme case, even a whole cities and states follow the same pattern. All these ideological consistencies have no relevance to Nigeria, where our political leaders' change parties at will according to their present needs and fancy. Some of our leaders under the present dispensation have changed parties more than three times in less than ten years.¹²

8. The Legal Framework on Cross-Carpeting in Nigeria

Under The 1999 Constitution of the Federal Republic of Nigeria as Amended 2011; a member of the Senate or House of Representatives is liable to vacate his seat, being a person whose election to the House was sponsored by a Political Party, he becomes a member of another Political Party before the expiration of the period for which the House was elected, provided that his membership of the later Political Party is not as a result of a division in the Political Party of which he was previously a member or a merger of two or more Political Parties or factions by one of which he was previously sponsored.¹³ This provision is also replicated in the case of members of the State Houses of Assembly.¹⁴ However, in respect of members of the Executive at both Federal and State levels, that is the President, Vice President, the Governor and Deputy Governors, the Constitution is remarkably silent. The legality of cross-carpeting at both arms of Government that is the Legislative and Executive arms of Government was determined by the Supreme Court in the celebrated case of *Attorney General of Federation v Atiku Abubakar*.¹⁵ Under Section 68(1)g¹⁶, a split or division could arise without the fault of the members of a Political Party resulting in a member rightly or wrongly finding himself in a minority group which may not be big enough or strong enough to satisfy the recognition as a separate Political Party with his faction, may be to place him in a position where his right to contest for Political office will be lost. Such a situation is entirely different from the fraudulent and malevolent practice of cross carpeting politicians of yesteryears, who for financial consideration or otherwise crossed from one Political Party to another without qualms and without conscience. Such a practice had to be discouraged by the framers of the Constitution if Political atmosphere of our country is to be preserved. Thus, the law makers intended and indeed made punishable the defection of an elected member from the Political Party that sponsored him, to another Political Party before the expiration of the period for which the House was elected by declaring his seat vacant¹⁷

9. Whether and When Division would Ground Defection

The principle enunciated by the Supreme Court in the case of *Attorney General of Federation v Atiku Abubakar*.¹⁸ is to the effect that only such fractionalization, fragmentation, splitting or division that makes it impossible or impracticable for a Political Party to function as such will, by virtue of the provision to the constitutional provision¹⁹ The provision justifies a person's defections to another party and with the retention of his seat for the unexpired term in the House in spite of the defection. The division must affect the entire structure of the Political Party at the center, that is to say, natural leadership. Otherwise, as rightly held by the trial court and Court of Appeal in the case, the defector automatically loses his seat. In the instance case, the two courts were right that the Labour Party that has continued to function as a Political Party, by meeting the conditions that associated by virtue of sections 221 and 222 of the Constitution must necessarily meet, could not be said to have been so factionalized, fragmented, split or divided to justify the defection of the appellant to another Party and retention of his seat in spite of the defection. That did not entitle the appellant to abandon the Labour Party for the ACN. Not being the kind of 'division' that affected the natural structure and therefore the cooperate existence of the Party, the appellant's defection did not come within the proviso to SECTION 68(1)g²⁰ to entitle him to retain his seat in the House of Representative in spite of his defection to ACN from the Labour Party on which platform he contested and won the seat. This remains the position of the Supreme Court on the issue; see *Agbegunde v Gombe State House of Assembly*.²¹

¹² Ibid

¹³ Section 68(1)g of the Constitution of the Federal Republic of Nigeria 1999

¹⁴ Section 109(1)g Supra

¹⁵ See *Attorney General of the Federation v Atiku Abubakar*

¹⁶ Section 68(1)g of the Constitution of the Federal Republic of Nigeria 1999

¹⁷ B Momodu, pp. 706-707

¹⁸ Ibid

¹⁹ Ibid

²⁰ Section 68(1)g of the Constitution of the Federal Republic of Nigeria 1999

²¹ (2015) 8 NWLR pt 1461 P 314

10. Effects and Implications of Cross-Carpeting in Nigerian Political Development

Arguably, cross carpeting hews to the right to choose, inherent in a democracy. It is a malaise with a capacity to spread its poison to all things Political and decent²³ Because of cross carpeting, we cannot have Political Parties formed and built around a well articulated ideology intended to promote economic and social development. Our Political Parties are thus bereft of progressive and developmental ideas, and so we take one step forward and take two steps backward.²² Because of cross-carpeting, we have no real commitments to our Political Parties and due to the phenomenon of cross carpeting our Political Parties are merely a convenient legal tool for oiling our political aspirations. I will like to argue and argue again, that cross carpeting is the bane of our Party Politics. The consequences are surely creeping up on us, at the moment, we are not playing true Party Politics, and we are merely playing the Politics of power game. It is deleterious to our natural Political health.²³ Cross-carpeting no doubt has telling effect on the process of consolidating democracy, especially when it affects State and Federal elected Political office holders.²⁶ This trend is fast making caricature of democracy in the current dispensation.

11. Conclusion

The study showed that cross carpeting obstructs the emergence of a viable opposition party to the ruling party in Nigeria's Fourth Republic, it is also revealed through its perceived findings that cross carpeting have a strong and negative relationship with democratic culture and political stability in Nigeria's fourth republic, and that cross carpeting negatively and significantly impacts on democratic culture and stability in Nigeria's fourth republic.²⁴ As also inundated at various aspects of this write up above, cross carpeting is a long aged phenomenon as democracy itself. Nevertheless, the current trend of cross carpeting in Nigeria has aroused cause for concern, due to the unquantifiable risk it portends to the morality and integrity of the present and future generation.²⁵ There is no doubt that cross carpeting or political party defections in recent times have made the electorates lost faith in their representatives especially at the lower house of the legislature. It has resorted into a situation where lawmakers at the lower house have been object of ridicule, laughter and shame because of the way and manner the defect without any sense of national interest.²⁶

²² Ibid

²³ *Journal of Public Administration and governance*, ISSN 2161-7104,2016 Vol6, No 3

²⁴Ugo Chuks Okolie: *Cross Carpeting and the Challenges to Democratic Culture and Political Stability in Nigeria's Fourth Republic*, Department of Political Science, Delta State Abraka, University Delta State Nigeria.

²⁵Olaolu S Opade, Julius O. Agbara. Op.Cit

²⁶ Ugo Chuks: Op.Cit.