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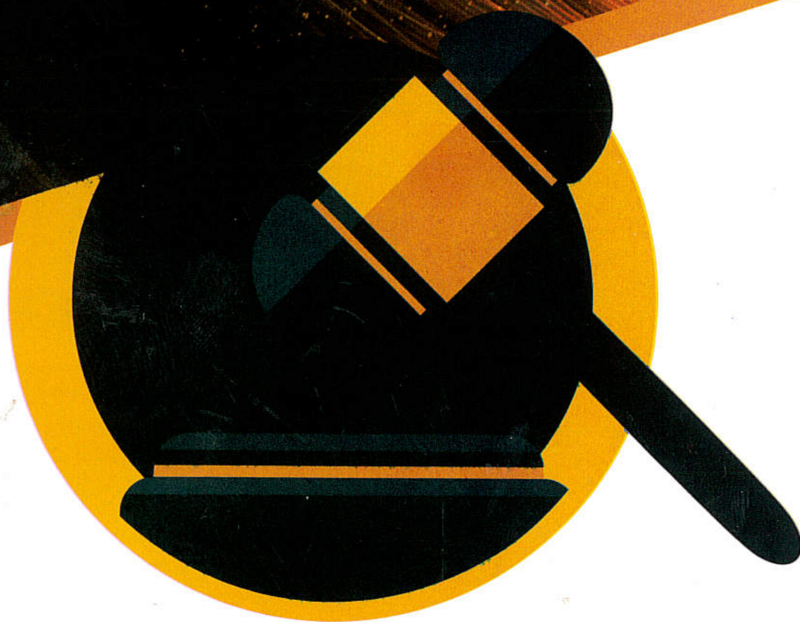

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A REVIEW OF THE POLITICAL QUESTION DOCTRINE IN JUDICIAL PROCEEDINGS IN NIGERIA

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Abstract

The courts are typically viewed as the apolitical arm of government. It is therefore axiomatic in any system of constitutional government built on the doctrine of separation of powers that political questions-issues are resolved by political branches of government and not by the courts. And indeed, the courts have used the political question doctrine to demarcate the political from the judicial domain and judicial responsibility from that of the legislature or the executive. This paper evaluates the scope of application of the political question doctrine in Nigeria and advocates for compliance with the provisions of the Constitution by the legislature to keep the courts away from assuming jurisdiction over performance of legislative functions and conduct of legislative affairs.

Keywords: *Constitution, courts, election, political parties, political question*

1. INTRODUCTION

With the return to democracy after years of military dictatorship, Nigerians have become increasingly conscious of their rights and the role of courts in dispute resolution. Democracy comes with the formation of political parties that form the platform for sponsorship of candidates for various elective offices because there is no provision for independent candidacy in Nigeria at present. Intraparty adjudication has been shrouded in controversies in the context of justiciability of such issues in view of the political question doctrine, which has been held to divest the courts of jurisdiction over such matters.[1]

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11 Onuoha v. Okafor (1983) 2 SCNLR 244; Ossom v. Ossom (1993) 8 NWLR (Pt. 314) 678; Abdulkadir V. Mamman (2003) 14 NWLR (Pt.836) 1; Dalhatu V. Turaki (2003) 15 NWLR (Pt. 843) 310; Senator Ehinlanwo V. Chief Oke (2008) 16 NWLR (Pt.

The political question doctrine is a demonstration of non-interventionist approach the courts have adopted in the resolution of political conflicts, especially as they relate to internal affairs of political parties. This underscores the significance of self-regulation of political parties and structures in democratic nations. The emergence of the Fourth Republic occasioned wide participation in politics, leading to a plethora of intraparty conflicts arising from issues such as leadership of political parties and candidacy for various elective offices in both legislative and executive arms of government. Under the current constitutional arrangement, there is expansion in the sizes of both arms of government at the federal and state levels, and this significantly increases the level of political activities with the attendant disagreements and conflict of interests. The primary role of the judiciary, which is dispute resolution, is ordinarily expected to expand in the face of political conflicts, but the reverse seems to be the case as the intervention of the courts has plummeted in the realm of such conflicts due to restraint of the courts. The idea is that political institutions should be left with prerogatives in the determination of political questions, since the courts are bereft of expertise on such matters.

In some instances, the courts have embarked on judicial activism to delve into political conflicts brought before them in the exercise of their judicial powers conferred by the Constitution of the Federal Republic of Nigeria, 1999 (as altered) (CFRN).[2] This activism is excused on the ground that democratic societies must be distinguished from the stone-age where the order of the day was survival of the fittest without due regards for rights of individuals and established procedure.

This paper examines the attitude of the courts towards political conflicts and the effects of judicial isolation and distancing from such conflicts, which leaves political institutions with the privilege of handling such conflicts. Using case law, the paper balances the operation of the doctrine and judicial activism of the courts in that regard, and concludes that expertise in political matters makes other branches of government better positioned to handle political

1113) 357; (2008) 7 SCNJ 316; Lado & Ors. V. CPC & Ors (2012) All FWLR (Pt. 607) 601; (2011) 18 NWLR (Pt. 1279) 689;

[2] Uzodinma V. Izunaso (No. 2) (2011) 17 NWLR (Pt. 1275) 30; Tukur V. Uba (2013) 4 NWLR (Pt. 1343) 90 at 134.

questions than the courts. There is therefore the need for finality of the decisions of those branches in cases involving political questions.

2. CONCEPTUALISING POLITICAL QUESTION

'Political question' is not a doctrine that is amenable to a generally acceptable definition. This is probably due to its evolution, differences in democratic practices, constitutional differences, and background of researchers. Consequently, the doctrine has been viewed from different perspectives by authors and commentators alike. From the perspective of the Black's Law Dictionary, political questions refer to questions that courts will refuse to take cognizance of, or to decide, on account of their purely political character or because their determination would involve an encroachment upon executive or legislative powers.[3] This definition provides a good foundation for discourse. However, the challenge with it is whether it is necessary for political questions to be wholly political in nature. This definition has been criticized for failing to convey the totality of the doctrine[4], as there has never been any zero sum position on the issue that it must be of purely political character. Consequently, the most important consideration is the presence of some political affiliation.[5]

Writing on the nature of a political question, Henkin, stated as follows: A meaningful political question doctrine, in my view, implies some- thing more and different: that some issues which prima facie and by usual criteria would seem to be for the courts, will not be decided by them but, extra-ordinarily, left for political decision. In particular, I suggest, in "pure theory" a political question is one in which the courts forego their unique and paramount function of judicial review of constitutionality.[6] From the foregoing, it is obvious that the doctrine constitutes a limitation to the judicial powers of the courts to scrutinise the actions of all branches of government to ensure conformity to constitutional order with regards to authorisations and limits. In essence, it vests jurisdiction on the political branches of

3 Black, H.C., *Black's Law Dictionary*, (West Publishing Co., USA, 1979) p.652
4 Egbewole W.O., "Determination of Election Petitions By the Court of Appeal: A Jurisprudential Perspective" (PhD Thesis, Faculty of Law, University of Ilorin, Ilorin 2009) 135.
5 Harold R. & David S., *Supreme Court Decision Making*, (Freeman, San Francisco, 1976), 156.
6 Henkin, L., *"Is There a "Political Question" Doctrine?"*, The Yale Law Journal , 1976, Vol. 85, No. 5 pp. 597-625 @ 599

government to determine some constitutional questions with finality to the exclusion of other branches, including the courts, thereby validating self-monitoring.

According to Nwosu, "political questions" could be legitimately and comprehensively defined as comprising, in the main, matters or issues which, in the considered opinion of a superior court of record, have, in clear and unequivocal terms, been constitutionally or statutorily allocated to the legislative and/or executive branches of government for final resolution, and also includes: matters which, in the considered opinion of a court, would, for a combination of reasons, be inappropriate for resolution through the judicial process; and matters which a court considers itself functionally incompetent to resolve and/or enforce."[7] The above definition underscores the fact that it is not every matter that is adjudged not justiciable that amounts to a political question. This is exemplified by the court's non-intervention in arbitral proceedings. Consequently, where a court declines jurisdiction because an enabling law does not grant same, the matter does not become a political question.[8] The effect is that the court may use its discretion to declare a matter as involving a political question despite its being justiciable by law.

3. JUDICIAL POWERS AND POLITICAL QUESTION DOCTRINE

The CFRN vests judicial powers of the Federation and a State in the courts established for the Federation and a State under the Constitution.[9] The Constitution extends judicial powers vested in the courts to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.[10] From the above provisions, the courts are vested with judicial powers over all persons, institutions and branches of government. In terms of judicial power over the legislative arm of government, the courts are empowered to determine validity of legislative enactments, and other acts of the legislature in

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7 Nwosu I., *Judicial Avoidance of 'Political Questions' in Nigeria* (Ikenna Nwosu, Lagos, 2005), p. 1

8 Egbewole, W.O. & Olatunji, O.A., "Justiciability Theory Versus Political Question Doctrine: Challenges of the Nigerian Judiciary in the Determination of Electoral Cases", <http://wahabegbewoleandco.com.ng/publications/JUSTICIABILITY_THEORY_VERSUS_POLITICAL_QUESTION_DOCTRINE.pdf> accessed 22 June 2020

9 Section 6(1) and (2) of the CFRN

10 Section 6(6)(b), ibid

the performance of its tripartite function of lawmaking, representation and oversight. Similarly, the Supreme Court is the arbiter in disputes between the National Assembly, and the President, any State House of Assembly or a State of the Federation in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.[11]

4. POWER OF JUDICIAL REVIEW

Judicial review refers to the power of the court or the process by which the court exercises a supervisory jurisdiction over the acts of the executive and legislative arms of government. [12] Political question doctrine constitutes an exception to the power of judicial review vested in the courts, as a specialized remedy in public law through which the courts scrutinise actions of the other arms of government, including administrative institutions, as a form of checks and balances. In Nwabueze's view, judicial review is "the power of the court in appropriate proceedings before it to declare a governmental measure either contrary or in accordance with the Constitution or other governing law, with the effect of rendering the measure invalid or void or vindicating its validity…"[13]

The application of judicial review has been subject of judicial pronouncements. The Supreme Court had an opportunity to pronounce on the scope of judicial review within the scope of Nigerian constitutional jurisprudence when it held in ***Abdulkarim v. Incar Nigeria Ltd***[14]that judicial review entails three different processes in the context of Nigeria's written presidential Constitution as follows: "In this country which has a written presidential Constitution, judicial review entails three different processes, namely, the Courts, particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principle of separation of powers as provided for in the Constitution; that every public functionary performs his functions according to law, including the Constitution, and - for the Supreme Court - that it reviews Court decisions including its own when the need arises in order to ensure that the country does not suffer under the regime of obsolete or wrong decisions… Although the

11 Section 1(1) of the Supreme Court (Additional Original Jurisdiction) Act, 2002
12 Ogbuabor, C.A., *'Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm'*, (2011-2012) 10 Nig. J. R., p.3
13 Nwabueze, B.O., *Judicialism in Commonwealth Africa* (London: C. Hurst & Co. Ltd., 1977) p. 229.
14 (1992) LPELR-26(SC); (1992) NWLR (Pt. 251) 1

Supreme Court will respect its previous decisions, as a Court of last resort, which is not bound by precedent, it will not hesitate to over-rule any previous decision of its own, which it is satisfied was reached on wrong principles. It had done so in many cases.''[15]

The power of judicial review of the courts constitutes a protective shield for the rule of law and constitutionalism, being an effective mechanism for ensuring due process and accountability on the part of government functionaries. The nature of the modern state, which assumes a welfare posture, underscores the imperative of the protective role of the judiciary against the excesses of public officials in favour of citizens. It should be emphasised that the supervisory role of the judiciary through judicial review is not restricted to the executive arm of government.

Judicial review is a judicial process through which the courts test the process of conducting government businesses to determine their compliance with relevant laws. Consequently, it is used to examine the legality of the acts of government officials with a view to safeguarding constitutionalism and rule of law. The underlying object being to ensure that the authority does not abuse it and that the individual receives just and fair treatment. Judicial review is thus an effective means of imposing and enforcing the demands of the rule of law on the administration and safeguarding the fundamental and other essential rights of citizens. It clearly underscores the relevance of the theory of Montesquieu that if the liberty of the individual is to become a reality, power should be made to check power, and an arm of government like the judiciary, and not an individual, should be set to oppose and check another arm of government.

The interpretative/review function of the judiciary is only activated upon institution of an action according to the relevant rules of court. To start with, the judiciary cannot "suo motu" institute a review proceeding on its own. The relevant matter must be properly brought before the court by an aggrieved person. It has been held that *"Judicial review is flexible but not entirely unfenced jurisdiction."* [16] The power of judicial review is rooted in the Constitution, which provides that "...the exercise of legislative powers by the national Assembly or by a

[15] Per Nnaemeka-Agu, J.S.C. at p.24, paras A-E
[16] May L J in the case of St Helens Borough Council v. Manchester Primary Care Trust [2008] EWCA Civ 931.

House of Assembly shall be subject to the jurisdiction of the courts of law..."[17], decisions and act of inferior courts and tribunals and acts of governmental bodies.' It can be said that the Constitution has provided safeguards for adherence to its provisions through the power of judicial review given to the courts.

In terms of the executive arm of government, the power of judicial review vested in the courts can be exercised over actions of the executive and administrative institutions. The courts have the responsibility of exercising the power of control over all other branches of government. For instance, the courts are empowered to question the validity or otherwise of any enactment of the legislature and other executive actions.

5. APPLICATION OF THE "POLITICAL QUESTION" DOCTRINE

The political question doctrine as applied by the courts, insulates them from resolving constitutional issues that are better left to other departments of government, mainly the national political branches. In ***Marbury v. Madison,***[18]the issue for determination was whether it was permissible for the judiciary to issue a writ of mandamus against an official of the executive branch. While addressing the issue, Chief Justice Marshall, distinguished between individual rights dependent on executive branch legal duties on the one hand, and political matters left to presidential discretion on the other. According to Justice Marshal, the Constitution entrusted a scope of discretion in some areas to the "executive departments alone".[19] However, "whether the legality of an act of the head of a department be examinable in a court of justice or not, must always depend on the nature of that act."[20]The implication is that while individual rights are justiciable, political questions might not be. The court further held as follows: "The conclusion from this reasoning is that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. However, where a

[17] Section 4(8)
[18] 5 U.S. (1 Cranch) 137 (1803)
[19] Marbury, 5 U.S. at 163-170.
[20] Ibid, at 165.

specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.''[21]

In line with the reasoning of the court, the province of the court is, solely to decide on the rights of individuals, not to inquire how the executive or executive officers perform duties in which they have discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive can never be made in the court.

From the above perspectives, it can be said that the following are the elements that establishes the political question doctrine in a matter:

i. the discretionary power of the court to designate a matter as involving political questions;
ii. the fact that such matter has been constitutionally or statutorily allocated to any of the other arms of government;
iii. the inappropriateness of judicial process; and
iv. the fact that if such matter is ruled upon by the court, the court may not be able to ensure the enforcement of its decision.

These elements constitute a guide in determining whether a matter involves political questions. Consequently, this does not automatically grant automatic impeccable status to a definition containing the above elements.[22]

6. THE NIGERIAN EXPERIENCE

The political question doctrine was recognised and applied by Nigerian courts prior to the emergence of the Second Republic when the doctrine became popularized, though not classified as such. In *Attorney General Eastern Nigeria v Attorney General of the Federation*[23], the determination of the margin of error in a census was held to be a political matter.[24] Since

21 Ibid, at 166
22 Egbewole and Olatunji, n6, p.5
23 (1964) All NLR 218
24 E Nwauche, 'Is the End Near for the Political Question Doctrine in Nigeria?' in C Fombad and C Murray (eds), *Fostering Constitutionalism in Africa* (Pretoria, University of Pretoria Press 2010) 33.

the emergence of the political question doctrine in the judicial firmament of Nigeria, it has been applied in three notable sets of cases in Nigeria: Internal Affairs of political parties, impeachment proceedings, and internal affairs of the legislature.

Internal Affairs of Political Parties

The courts have exercised restraint in assuming jurisdiction over matters that relate to internal affairs of political parties. In *Onuoha v. Okafor*[25], the Supreme Court enthroned two considerations in the determination of the existence of political question in a matter. The first relates to the lack of satisfactory criteria for judicial determination of the issues before a court. The second pertains to the appropriateness of ascribing finality to the action of the political department under the prevailing constitutional order.[26]

The principle enunciated in ***Onuoha v. Okafor*** is that no justiciable dispute or controversy is presented to a court when the parties seek adjudication of only a political question. The decision of questions of a political nature is exclusively for the political party. In the case of ***Maduemezia v. Uwaje & Ors***.[27], the Court of Appeal had this to say: "The matter in controversy in the appeal is whether a Court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference for another candidate of the self-same political party. If a Court could do this, it would in effect be managing the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one, to be determined by the rules and Constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a Court of law. So the settled legal position is that it is not within the province and jurisdiction of the Courts to interfere with matters that concern the running of the internal affairs of political parties.''[28]

Similarly, in ***Ukut & Ors v. APC & Ors***,[29] the appellants and the second respondent were members of APC (the first respondent). The first respondent issued Guidelines for the conduct

25 [1983] NSCC 494
26 Ibid, p.507
27 (2015) LPELR-24542(CA)
28 Per Ogakwu, J.C.A, at pp. 14-15, paras. F-C
29 (2019) LPELR-47203(CA)

of its wards, local government and state congresses. In line with the Constitution and Guidelines of the first respondent, the ward and local government congresses were duly conducted on 5th May 2018 and 15th May 2018 respectively. The congresses produced the first appellant as the Chairman of Etinan Local Government Area, the second appellant as the Chairman of Mkpat Enin Local Government Area and the third appellant as a ward Delegate from Urban II in Etinan Local Government Area. The appellants alleged that the first respondent disregarded the congresses, and some elders and stakeholders of the party handpicked the second respondent, who never indicated interest, nor purchased form, to contest as the Akwa Ibom State Chapter Chairman of the party. Consequent upon the above, the appellants instituted an action at the High Court of Akwa Ibom State, Uyo, via an originating summons against the respondents. The trial court upheld the preliminary objection of the respondents, which prayed the trial Court to strike out the suit for lack of jurisdiction on grounds of non-justiciability of the claims and failure to exhaust internal remedies of the party, and dismissed the suit. Upon appeal to the Court of Appeal, the decision of the trial court was upheld and the appeal dismissed. Dismissing the suit, the Court of Appeal held as follows: "Now, the appellants' chief grievance is located in the lower Court's declination of jurisdiction to adjudicate over the matter that they claimed, is anchored on the infraction of the first respondent's Constitution and Guidelines. To begin with, the suit is a classic exemplification of an intra-party affair which connotes: "*a dispute between members of the party inter se or between a member or members on the one hand or and the party on the other…*" Incidentally, the suit, as constituted, is amphibious in that it exhibits the two features/characteristics of an intra-party dispute x-rayed above. It is now settled beyond any peradventure of doubt that Courts are derobed of the jurisdiction to entertain actions that appertain to internal affairs of a political party. This hallowed principle of law traces its paternity to the case of Onuoha v. Okafor (1983) 2 SCNLR 244: the locus classicus on the cardinal principle.''[30]

[30] Per Ogbuinya, J.C.A., at pp. 12-13, paras C-A

In ***Okoli v. Mbadiwe***[31] the National party of Nigeria (NPN) substituted the name of the plaintiff a duly nominated candidate with that of the defendant. Upon a suit by the plaintiff for reinstatement, the court declined jurisdiction on the ground that the issue was a political one and that section 82(1) of the Electoral Act 1982 vested the political party with the rights to sponsor whomsoever it desired, and it was not for the court to choose a candidate for the party.

The recent attitude of the courts to the application of the political question doctrine is adoption of a narrow definition of issues raising political questions. The case of *Ugwu v Ararume,*[32] is a good example of the restrictive approach of the courts. In this case, the appellant emerged winner at the Governorship primaries conducted by the Peoples Democratic Party for Imo State on the 14th of December 2006. The appellant at the contest scored 2,061 votes as against the 36 votes scored by the 2nd respondent Engineer Charles Ugwu. On the 14th of December 2006, the name of the appellant was forwarded to INEC as the Governorship candidate sponsored by PDP in compliance with the provisions of Section 32(1) and (2) of the Electoral Act2006. However, the Peoples Democratic Party (PDP) substituted the 1st appellant's name with that of the 1st respondent without complying with the provision of section 34(2) of the Electoral Act, 2006. The Supreme Court set aside the wrongful substitution of the 1st respondent since the provision of section 34(2) of the Electoral Act of 2006 that required any political party wishing to substitute its candidates to give cogent and verifiable reasons was not complied with. The Court further held that even though from the clear provisions of the Electoral Act, 2006, a sponsoring political party had the reserved right to substitute or change its nominated candidate for any election, same can only be achieved under certain conditions laid down by the Electoral Act, 2006.

Judicial activism in the application of the doctrine of political question in matters of internal affairs of political parties was seen in the case of *Amaechi v INEC.*[33] In that case, the appellant emerged as the PDP candidate for Rivers State governorship election. The 2nd respondent, Celestine Omehia, who did not participate in the primaries, was later substituted for *Ameachi*

[31] (1985)6 NCLR 742
[32] (2007) 12 NWLR (Pt. 1048) 367
[33] (2008) 5 NWLR (Pt. 1080) 227

and thereupon contested the general election, won and was sworn in as the governor of Rivers State. The Supreme Court declared *Amaechi's* substitution unlawful and contrary to section 34(2) of the Electoral Act, 2006 despite the fact that *Amaechi* did not participate in the general election. Scholars have widely criticized this verdict of the Supreme Court, which declared Amaechi winner of the election, as being unfair to the electorates who did not have Amaechi in contemplation when they were voting at the election.[34] In line with disappointments expressed on the judgment, the Constitution and Electoral Act were amended to make participation in all stages of the electoral process a precondition for declaring a candidate winner of an election.[35]

Impeachment Matters

This is a core area where the political question doctrine has been applied in Nigeria, especially in the Houses of Assembly of States. The courts have not taken a firm position when it comes to the issue of whether suits challenging impeachment processes commenced in a legislative house are justiciable. The case of ***Balarabe Musa v. Auta Hamza & Ors,***[36]determined in the Second Republic is instructive in this regard. The appellant, who was the Governor of Kaduna State, instituted this action against his impeachment by the Kaduna State House of Assembly on the grounds that conditions precedent to the investigation of the allegation against him had not been complied with and on the same premise the respondents had no jurisdiction to embark on an investigation pursuant to Section 170 of the Constitution of the Federal Republic of Nigeria, 1979. According to him, the notice of allegations of misconduct sought to be investigated was not signed by any member of Kaduna State House of Assembly, and that detailed particulars of alleged gross misconduct was not given in the Notice of allegations of misconduct stipulated by Section 170 (2)(b) of the Constitution. He further stated that the allegations contained in the said notice were not investigated by the respondents within the time limit stipulated by Section 170(6) of the Constitution.

[34] Oguche S., "A Critique of the Supreme Court Judgment in Rt. Hon. Rotimi Chibuike Amaechi v. Independent National Electoral Commission (INEC) and 2 Others", The Appellate Review, Vol. 1, No. 3. (2010), pp. 45-61

[35] See section 285(13) of the 1999 Constitution of Nigeria as altered and section 141 of the Electoral Act, 2010. The above amendment partly overruled the decision of the Supreme Court in *Amaechi v Inec.*

[36] (1982) 3 NCLR 229

In declining jurisdiction over the matter, the Court of Appeal held as follows:

"... the obvious end that Section 170 of the Constitution was designed to serve is that the Governor or his Deputy could only be removed by the act and doings of the legislature and Subsection (10) of it is put in to stop any interference with any proceedings in the House or .... any determination by the House or Committee. It follows from the premise of this Court that no Court can entertain any proceedings or question the determination of the House Committee. It is a political matter for Court to enter into ..."[37]

One of the notable cases on impeachment where the political question doctrine has been applied is ***Abaribe v. Speaker, Abia State House of Assembly and Anor***[38], where the appellant was the Deputy Governor of Abia State. Sometime prior to 8th January 2000, sixteen members of the State's House of Assembly presented an impeachment notice to the Speaker of the House for the removal from office of the appellant. The Speaker forwarded a copy of the impeachment notice to the appellant under cover of a letter in which he requested the appellant to react to the issues raised in the notice before Friday, 11th February, 2000. The Speaker's letter together with the impeachment notice was served on the appellant on 31st January 2000. On 8th February 2000, i.e. three days before the date by which the Speaker requested the appellant to submit his reaction to the issues raised in the impeachment notice, the House took a vote resolving to refer the allegations in the notice for investigation. The appellant considered that by passing the resolution at the time they did, the members of the House had jumped the gun and, in the process, had infringed on his fundamental right to fair hearing enshrined in Section 36 of the 1999 Constitution and Article 7 of the African Charter on Human and People' Rights. He therefore applied ex-parte to the High Court, praying for an order granting leave to him to apply for the enforcement of his fundamental right to fair hearing in terms of the reliefs set out in the statement in support hereof. He also prayed for an order for such leave to operate as a stay of all further proceedings connected with or pertaining to the impeachment of the applicant by the respondents. Raising the issue *suo motu*, the court declined jurisdiction in view of the

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37 Per Ademola, J.C.A

38 (2000) LPELR-6801(CA)

provisions of Section 188(10)[39] of the Constitution. While affirming this decision, the Court of Appeal maintained that political question doctrine relates to those amorphous political issues which generally arise in political structure of parties or in the House of Assembly and which no Court should try to get involved for fear of being smeared or appear to take sides.

The Court further held as follows: "It has been universally recognized that impeachment procedure is preeminently a political matter and is an affair of the legislature. The people elect officers to elective offices. The people can withdraw their mandate. They can do this either by the recall procedure or by impeachment. The latter procedure has been assigned exclusively to the legislature by the Constitution. I do not, therefore, see Section 188(10) as an ouster clause. I see it as doing no more than underscoring the recognized fact that the impeachment process is a political matter that is best left where it best belongs, i.e., with the legislature.''[40]

As made obvious from the authorities cited above, the courts are unwilling to delve into matters with impeachment processes as they involve political questions. However, the courts have also embarked on judicial activism to hold that breach of constitutional provisions in impeachment proceedings has negative consequences on the proceedings. In ***Alamieyeseigha v. Igoniwari & Ors***[41], the Court of Appeal found in favour of compliance with pre-impeachment processes as provided in subsections (1)-(9) of section 188 of the Constitution. The appellant, a former Governor of Bayelsa State, commenced this action against his removal as the Governor of the State. He challenged the procedure of the Investigating Panel. It was the averment of the appellant that since the Chief Judge inaugurated the seven-man panel, the panel had not sat and was yet to issue any summons to him for appearance before it to defend the allegations against him. However, upon becoming aware of the inaugurated panel, the appellant raised an objection to the panel on the grounds that three of the members did not meet the strict criteria defined under the provisions of the Constitution. This objection was directed to the office of the 1st defendant (Hon. Chief Judge of Bayelsa State), to the effect that some of the members were

[39] "No proceedings or determinations of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any Court."

[40] Per Ikongbeh, J.C.A., at pp.42-43, paras. C-G

[41] (2007) LPELR-8220(CA)

the appellant's patent adversaries. The trial court declined jurisdiction in line with section 188(10) of the Constitution, but this was overturned on appeal, and the case remitted for re-trial before another judge. Allowing the appeal, the Court of Appeal held as follows: "Section 188(10) cannot be read in isolation from Subsections 1-9. These Subsections are not meant to guide the House of Assembly in impeachment proceedings only. They cannot be totally ignored in impeachment proceedings. No Court of law can close its eyes to the infringement of the Constitution. The Court is the primary custodian of Constitution. It must guard jealously, all the provisions of the Constitution. If any arm of the government or legislature and the Court itself acts unconstitutionally, the Court has inherent power under Section 6(6) of the 1999 Constitution to intervene.[42]"

The Court of Appeal expressed the view that the trial Court had some questions bordering the complaints of the appellant to consider, and that it was wrong in declining jurisdiction. It further held that the trial judge had jurisdiction to examine the appellant's claims in the light of Section 188 Subsections (1)-(9) of the 1999 Constitution and if he was not satisfied that impeachment proceedings were instituted in compliance thereof, he had the jurisdiction to intervene and to ensure due compliance. However, on the other hand, if there was compliance with pre-impeachment process then what happened thereafter become the internal affairs of the State House of Assembly. He would then have no jurisdiction to intervene.[43]

What is deducible from available judicial authorities is a balance between non-intervention and regard for the provisions of the Constitution. Impeachment of elected politicians is a very serious matter and should not be conducted as a matter of course. The purpose is to set aside the will of the electorate as expressed at the polls, and this has implication for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed. If the matter is left at the whims and caprices of politicians and their panels, a State or even the entire Country

[42] Per Galadima, J.C.A, at p.41, paras B-D
[43] Ibid, p.42 paras B-E

could be reduced to the status of banana republic. The court must guard the procedure for impeachment and removal jealously.[44]

Internal Affairs of the Legislature

In terms of internal operations of the legislature, the issue whether the political question doctrine applies to internal affairs of the legislature has been addressed in cases of suspension of members of the legislature, especially the Houses of Assembly of States. The courts have always assumed jurisdiction where a House of Assembly suspends a member in contravention of relevant constitutional provisions. In ***Usman v. Kaduna State House of Assembly and Ors***[45], the appellant was an Honourable member of the Kaduna State House of Assembly representing Sabon Gari Constituency in Birnin Gwari LGA, of Kaduna State. On the 9th of August, 2006, the Hon. Speaker of the House, believing that the appellant had been absent from the sitting of the House of Assembly for a period amounting in the aggregate to more than one-third (1/3) of the total number of sittings of the House in the relevant Legislative year, decided to enforce the provisions of Section 109(1)(f), (2) and (3) of the Constitution by merely announcing to the House at its plenary session of 9th August, 2006, that the appellant's seat in the House had become vacant. The appellant instituted this action and claimed several declaratory reliefs, wherein the learned trial judge held that the court lacked jurisdiction to hear and determine the matter, and consequently struck it out. Upon appeal to the Court of Appeal, it was held that the House of Assembly denied the appellant fair hearing, in that he was not called upon to show reasonable cause for the alleged non-attendance of the sittings of the Kaduna State House of Assembly. Above all, the Court of Appeal held that there was no evidence of the absence of the appellant for an aggregate of 1/3 in a known particular year presented to the Kaduna State House of Assembly before the announcement of the expulsion of the appellant as required by Section 109(1) (f) (2) of the Constitution. Based on the said violation, the Court of Appeal set aside the judgment of the Kaduna State High Court.

[44] Danladi v. Dagiri & Ors. (2014) LPELR-24020(SC), Per Ngwuta, J.S.C at p.46, paras A-D
[45] (2007) LPELR-8438(CA)

7. CONCLUSION

Despite the judiciary being the last hope of the common man, finality is accorded to decisions of other branches of government on matters that are adjudged non-justiciable. This is justified on the ground that political questions require standards that are better dealt with by the politically knowledgeable, not the courts. The legislature that is saddled with the responsibility of law making should not be seen to be in breach of those laws. When the legislature violates the Constitution or other statutes in the performance of its functions, including its internal affairs, the courts will definitely assume jurisdiction to check that breach because the political question doctrine would be inapplicable.

From the totality of the above, and the attitude of the courts to the doctrine of political questions, it is obvious that the fact that a matter is controversial or highly politicized per se does not divest the courts of jurisdiction to entertain them. In fact, that is the essence of the judicial powers under the Constitution. The political question doctrine applies to make the courts decline jurisdiction only where the legal requirements have been complied with, and there is no need to question the intent behind the act, as it goes to the realm of politics which the courts are insulated from. No doubt, the political question doctrine constitutes a limitation on the judicial powers conferred on the courts by the Constitution of the Federal Republic of Nigeria. There is no statutory definition of what constitutes a political question; hence, it is as determined by the courts, depending on the circumstances of each case. This makes the application of the doctrine problematic, especially in the light of the various cases in the Fourth Republic.