

Case Review 1

By

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**Senator Evan Enwerem
and**

(1) Senator Chuba Okadigbo

(2) Senator Alhaji Haruna Abubakar

(for himself and on behalf of all other members of the Senate, other than the 1st defendant, who attended the meeting of members of the Senate which commenced holding at 1.35 p.m. on Thursday, the 18th of November, 1999)

(3) The Attorney-General of the Federation

**(4) The Senate of the National Assembly of the Federal Republic of Nigeria.
(Unreported Suit No. FHC/ABj/192/2000)**

Introduction

The 1999 Constitution of the Federal Republic of Nigeria established a presidential system of government with three organs of government — the Legislature, Executive, and Judiciary. To ensure accountability and to curb abuse of power, the Constitution entrenched the twin doctrines of separation of power and checks and balances. The Legislature among others is charged with the responsibility of law making. To ensure the effective discharge of its functions, Section 50 of the Constitution establishes the office of President, Deputy President, Speaker, and Deputy Speaker of the Senate and House of Representatives respectively. In addition to this provision, the Standing Rules of both Houses of the National Assembly provides for the Leader, Chief Whip, and other principal officers of the House.

To ensure probity and accountability of the principal officers of the House, Section 50(2)(c) provides for the power of the House to remove its principal officers by a resolution of the House supported by two-thirds majority of the members of the House concerned. Unfortunately unlike Section 143 (and 188 for the States) that provides that the Executive may be removed for "gross misconduct" and Section 292 that provides that

certain Judicial Officers may be removed for inability to discharge the function of his office or appointment or for misconduct or contravention of the Code of Conduct, the Constitution does not make provision for the offence(s) for which the principal officers of the House may be removed, all that is required is that two-thirds majority may by a resolution remove the principal officer of the Legislature; though this provision deals strictly with the officers mentioned in the Constitution, there is no reason why it should not be extended to other officers mentioned in the Standing Rules. The power provided for in Section 50(2)(c) has been exercised twice to remove the Senate President. This case arose out of the exercise of this power by the Senate to remove Senator Evan Enwerem as Senate President.

Facts of the Case

After a protracted controversy over allegation of forgery, perjury and incompetence against the Senator Evan Enwerem, the Senate on the 18th of November 1999 voted 90 to 2 to remove him as Senate President. Moving the motion for impeachment, Senator Idris Abubakar first moved that the Senate rules be suspended. He spoke about the exalted institution of the Senate and its power but lamented that the ability of the Senate to perform its functions and create a niche for itself has been affected by Enwerem. He insisted that the Senate had a right to review its leadership. Seconding the motion Senator Tokunbo Afikuyomi said that the mood of the Senate was irreversible and that it was just and fair to remove Enwerem. There being no counter motion, the Senate voted to remove its President and elected Senator Chuba Okadigbo Senate President.

Senator Enwerem was aggrieved by the procedure adopted by the Senate in removing him and he filed an Originating Summons against the defendants seeking among others the following reliefs:

- (1) A declaration that the meeting of some members of the Senate of the National Assembly of the Federal Republic of Nigeria which met on Thursday, the 18th of November, 1999 at 1.35 p.m. at the Senate Chambers assembled or were convened in contravention of the Standing Rules of the Senate and is accordingly incompetent to pass any resolution binding on the Senate.
- (2) A declaration that all proceedings which took place or resolutions passed at the aforesaid meeting of the Senate held at 1.35 p.m. on Thursday, the 18th November, 1999 are illegal unconstitutional and of no legal consequence whatsoever.

Before the matter was transferred to Hon. Justice Oloragun, the matter came to be heard before Justice M. B. Belgore (Chief Judge) on the 27th of July 2000 wherein the defence lawyers raised various objections and he ordered that these objections be consolidated into a brief with the choice of addressing the Court on the issues raised in the brief.

Two main issues arose from the objection filed by Counsel to both the defendant and the plaintiff. They are:

- (1) Whether the Federal High Court has jurisdiction to entertain an action in respect of the internal affairs of the Senate.
- (2) Whether the defendant falls within the contemplation of Section 2 of the Public Officers Protection Act Cap. 379 Laws of the Federation.

RULING per C. M. A. Olatoregun, J.

In respect of the first issue (which is the relevant issue in this review) the Court ruled:

"I disagree with Learned Counsel to the plaintiff that this is one case which the court has power to interfere and commend to him that the courts will only interfere when the civil rights or obligation of the plaintiff is in issue. Being the Senate President is neither a civil right nor obligation."

Review of the Case

This case follows the decision in *Ekpenkhio v. Egbadon* [1993] 7 NWLR Part 308 page 717 at 744-745. The case by implication extends the ouster provision in Section 143(10) of the Constitution to Section 50(2)(c). Section 143(10) provides that:

"No proceeding or determination of the panel or the National Assembly or any matter relating thereto shall be determined or questioned in any court."

The independence of the three organs of government under the Constitution is well protected; it is true that this is the only way they can perform their functions effectively. But the authorities on this issue should not be given a blanket interpretation to mean that the Legislature (or the other organs of government) is not to be guided by the general principles of law. There are constitutional limitations to the exercise of legislative power. Therefore where there is a breach of the right of fair hearing, the

court will not only interfere in the internal affairs of the Legislature, it should declare such proceedings void. This is the error in *Balarabe Musa v. Auta Hamza & Others* [1982] 3 NCLR 439.

Conclusion

Our recent experiences of the use of the power to remove principal officers of the Legislature across the States of the Federation reveal that the power is used as a political weapon and not to ensure good leadership. This situation is compounded by the fact that the Constitution is silent on the issue of the offence(s) for which a principal officer of the Legislature may be removed. It is necessary that something similar, if not better, than the provisions of Section 143(11) and 292(1) in respect of the offences for which the Executive and certain Judicial Officers respectively may be removed should be considered in the ongoing review of the Constitution. this will minimize the abuse of this power.