

A Critical Appraisal of the Powers of Edo State House of Assembly on Proclamation and Inauguration in July 2019

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Abstract

This work discusses generally, the constitutional issues surrounding the executive Proclamation and Inauguration of 9 out of the 24 Members-elects of the Edo State House of Assembly on 17th July, 2019. The National Assembly, in quick response to this, albeit unconstitutionally, gave the Edo State Governor, His Excellency, Godwin Obaseki, a 7day ultimatum, to issue a fresh Proclamation in order for the Clerk of the House to inaugurate afresh, all the House Members-elects including the 12 other staying-away House Members-elects. It is noteworthy that 3 other House Members-elects had presented themselves and were inaugurated subsequent to the initial Members earlier inaugurated. The Governor rebuffed the National Assembly's directive with its ultimatum to issue a fresh Proclamation and rather insisted on the validity of the earlier Proclamation and that the staying away Members-elects should rather present themselves for Inauguration and swearing in but they refused. This stalemate persisted with its consequences, one of which is loss of their Seats in the House due to unjustifiable absenteeism. This work, using the doctrinal methodology, examines the constitutional issues surrounding the Proclamation, Inauguration, absenteeism and declaration of loss of legislative Seats among others. The work concludes that the Inauguration of 17th July, 2019 conducted by the Clerk of the Edo State House of Assembly was valid and same cannot be impeached. Also, that the directive to the Edo State Governor to re-issue a Proclamation for a fresh Inauguration was totally ultra vires the National Assembly, null and void, been legislative meddlesomeness and rascality. Based on this, the conclusion is drawn and some recommendations are offered for improvement in the practice of this area of law.

1.1 Introduction

Though the crisis generated by the Proclamation and Inauguration of the current tenure of the Edo State House of Assembly Members on 17th July, 2019 have simmered down, the constitutional issues arising there from are somewhat legion such as to necessitate this work for scholarly Appraisal. In the election to the Edo State House of Assembly held in March 2019, the All Progressive Congress (APC) won all the available 24 Seats¹. It was

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paradoxical that the Inauguration of a House of Assembly that was 100% won by the same APC as the controlling political party of the State was enmeshed in avoidable crisis fueled by internal and external influences which posed serious challenges to the politico-legal community².

The genesis of this problem arose when the Edo State Governor, His Excellency, Godwin Obaseki pursuant to his Obligation under the 1999 Constitution³ issued a Proclamation for the Inauguration of the State House of Assembly⁴. The Clerk of the State House of Assembly, being the Head of Administration, inaugurated only 9 Members of the 24 House Members-elects that were present on 17th July, 2019 upon receipt of the Governor's letter of Proclamation. Although additional 3 other House Members-elect subsequently presented themselves for Inauguration and swearing in by the Clerk of the House, all the other 12 House Members-elects failed, refused and/or neglected till date to present themselves for Inauguration and swearing in.

In reaction to the action and/or inactions of the Governor and the Clerk of the House, the National Assembly, in purported exercise of its supervisory jurisdiction over the House Assembly, by a resolution of the Senate, which adopted an earlier same position of the House of Representatives, gave Governor Obaseki, a 7-day ultimatum to issue a fresh Proclamation to re-inaugurate the House failing which it will take over the functions of the House⁵. While the Governor refused to bow to the National Assembly, the 7 day ultimatum lapsed without the National Assembly taking over the functions of the House of Assembly. Also while the 12 House Members-elects were still refusing to submit themselves for Inauguration, by operation of law, they became victims of unconstitutional absenteeism and had their Seats in the House declared vacant⁶. This is the position till date, notwithstanding any legal action they threatened and/or pursued.

¹ See James, A.K Akigbe; ESQ, *Edo State House of Assembly Crisis. The futility of National Assembly's intervention*, published Available at <https://www.pressreader.com/nigeria/thisday/20190806/281771335813142> . Accessed on 18/10/21.

² Ibid.

³ See S.105(3) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) hereinafter referred to as ("The 1999 Constitution") pursuant to which an elected state Governor has an obligation, immediately upon being sworn in to issue a Proclamation for the holding of the first session of the State House of Assembly hereinafter abbreviated as ("The SHOA") or for its dissolution as provided in this section. See S.64(3) of the same 1999 Constitution for the issuance of Proclamation by the President of the Federal Republic of Nigeria in respect of the National Assembly hereinafter abbreviated as ("The NASS").

⁴ Ibid.

⁵ Ibid at S.11(4)(5) for the powers of the NASS to take over the functions of a State House of Assembly (SHOA).

⁶ Ibid at S.109(1)(f)(3) for Legislative sanction of absenteeism on SHOA Members and S.68(1)(f)(3) for loss of Seat due to absenteeism by NASS Members.

Consequently, some of the constitutional issues generated from this matter includes in the first place whether the 12 staying away House Members-elects properly lost their Seats? Whether the Speaker of the State House of Assembly rightly declared their Seats as vacant? Whether the Inauguration and swearing in of 9 out of 24 Members-elects was proper and valid in law? Whether the Executive Governor of Edo State could be mandated by the National Assembly to repeat the issuance of Proclamation for a fresh Inauguration of the House? Whether the above reasons could justify the National Assembly taking over the functions of the Edo State House of Assembly, among other Issues?

Using the doctrinal methodology to unravel the mysteries behind the above identified issues, the lay out examines and discusses the doctrines of separation of powers, establishment, composition, operation and tenure of Members of a Legislative House as spelt out under the Nigerian 1999 Constitution. Therefore, the work concludes that the Inauguration of 17th July, 2019 conducted by the Clerk of the Edo State House of Assembly was valid and same cannot be impeached. Also, that the directive to the Edo State Governor to re-issue a Proclamation for a fresh Inauguration was totally *ultra vires* the National Assembly, null and void, been legislative meddle someness and rascality. Based on this, the conclusion is drawn and some recommendations are offered for improvement in the practice of this area of law.

1.2 Separation of Powers under the Constitution of Federal Republic of Nigeria, 1999 as amended

The National Assembly and the State Houses of Assembly are the creation of the 1999 Constitution⁷. While the Legislative powers of the Federal Republic of Nigeria are vested by the same Constitution in the National Assembly consisting of a Senate and a House of Representatives⁸, the Legislative powers of a State are vested in the State House of Assembly⁹. The sphere of influence in the respective exercise of their Legislative powers is clearly delineated in the Constitution where for instance, it is only the National Assembly that can Legislate on items listed and contained in Part I of the 2nd schedule designated as the Exclusive Legislative list in the 1999 Constitution of the Federal Republic of Nigeria (CFRN). On the other hand, both the National Assembly and State Houses of Assembly may legislate on the 30 items contained in Part II of the same 2nd schedule to the extent of Federal and State Legislative powers¹⁰. While the Executive powers at the Federal level are

⁷Ibid at S. 47 and S. 90 for NASS and SHOA respectively.

⁸ Ibid at S.4(1)

⁹ Ibid at S.4(6)

¹⁰ See generally, the 2nd schedule. Part I to the 1999 Constitution which contained 68 Exclusive List items in respect of which only the NASS can legislate. On part II of the same 2nd schedule have 30 items in respect of which both the NASS and SHOA may legislate to the extent of Federal and state Legislative powers.

vested on the President, on the other hand, the Executive powers at the State level is vested on the Governor¹¹. The Constitution then vests judicial powers on the Courts¹².

Not only does the 1999 Constitution make Nigeria a federation, it also guarantees the doctrine of Separation of powers, both horizontally and vertically where the Federal and the federating States are co-ordinate with and independent of one another in the power allotted to them by the same Constitution. This Constitution is the ground norm to which all other laws in the federation must be consistent with otherwise they will be declared null and void¹³.

Thus the power or authority of the National Assembly to take over the functions of a State House of Assembly is explicitly provided in the Constitution as follows:

At any time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make such laws for the peace, order and good governance of that State with respect to matters on which a House of Assembly may make laws as may appear to the National Assembly to be necessary or expedient until such time as the House of Assembly is able to resume the functions, and any such laws enacted by the National Assembly pursuant to this section shall have effect as if they were laws enacted by the House of Assembly of the State. Provided that nothing in this Section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State from office¹⁴.

The Constitution for the purposes of clarity and intendment of the above quoted provisions on the takeover powers by the National Assembly of the functions of any State House of Assembly, further provides as Follows:

For the purposes of subsection 4 of this section, a House of Assembly shall not be deemed to be unable to perform its functions so long as the House of Assembly can hold a meeting and transact business¹⁵.

The questions to ask then are: was the Edo State House of Assembly, in 100% control by the APC, being the political party that won all the 24 Seats in the State House of Assembly, unable to Seat to transact its Legislative business? Secondly, was the Edo State House of Assembly unable to perform its functions because 9 out of the 24 Members-elects were those that were initially inaugurated and sworn in even though 3 other Members-elects were subsequently sworn in while the other 12 remaining staying-away Members-elects

¹¹ See Ibid at S. 5(1) and (2) for vesting of federal and state Executive powers in the President and Governor respectively.

¹² See Ibid at S.6

¹³ See Ibid at S.1(3)

¹⁴ See Ibid at S.11(4)

¹⁵ See Ibid at S.11(5)

deliberately refused and failed to present themselves for swearing-in. Flowing from the above is the question of whether the swearing-in of the Members was sequel or not to due process before being inaugurated and sworn-in and/or whether they formed necessary quorum to transact their Legislative functions anytime they sat? Subsequent segment of this work will try to answer these and other questions.

1.3 Establishment, Composition and Operation of Legislative Houses

1.3.1 Establishment of Legislative Houses

Nigeria as a federating state under its 1999 Constitution operates a Bi-Cameral legislature at the federal level called the National Assembly composed of the Senate and the House of Representatives. At the state level, it operates a Uni-Cameral Legislature called the House of Assembly¹⁶.

1.3.2 Composition and Operation of Legislative Houses

The Senate is composed of 109 Senators made up of 3 Senators from each of the 36 states and 1 Senator from the Federal Capital Territory, Abuja, the House of Representatives on the other hand is composed of 360 Members representing the various constituencies of nearly equal population as far as possible in the States of the Federation and in the Federal Capital Territory, Abuja. On its parts each State House of Assembly shall consist of not less than 24 and not more than 40 Members¹⁷.

1.3.3 Staff of the Legislative Houses.

The legislative houses were established and their composition provided for by the 1999 Constitution. The appointment of members of staff that will perform the day to day administrative and management activities of the Legislative Houses in the nomenclature of a Clerk of the House and other staff are equally to be provided by the respective Legislative House as mandated by the 1999 Constitution¹⁸.

1.3.4 Issue of Proclamation and Dissolution of Legislative Houses by the President /Governor

For the first session of a Legislative House to commence, the head of the executive elected either as the President at the federal level or Governor of a State must issue a Proclamation

¹⁶ See S.47 and S.90 of the 1999 Constitution for the NASS and SHOA respectively. See also generally, Akande, J.O, *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*. (Lagos: MIJ Professional publishers limited, 2000) at 130-227. See also generally, Dalhatu, M.B, *What is Constitutional law? The Study Guide*. (Zaria: Ahmadu Bello University Press Limited, 2011) at 183-212. See also generally, Malemi, Ese, *The Nigerian Constitutional Law* (3rd Ed. Lagos: Princeton Publishing Company, 2012) at 190-216.

¹⁷ Ibid at .48, 49 and S.91 of the 1999 Constitution for the composition of the Senate, House of Representatives hereinafter abbreviated as ("THE HOR") and the SHOA respectively.

¹⁸ Ibid at S.51 and S.93 for a mandatory appointment of a Clerk and other staff of the NASS and those of the SHOA respectively

for the holding of this session¹⁹. The significance of the issuance of this executive Proclamation is that it signifies the commencement of a Legislative Session that lasts for the period of four years commencing from the date of the first sitting of the concerned House when such House stands dissolved by operation of law²⁰. Then a Legislative Session commences and one of its significance is that the date of absenteeism begins to count against any absentee Legislator²¹.

1.3.5 Quorum and Sitting of Legislative Houses

Therefore, each chamber of the National Assembly as well as a State House of Assembly is to sit for a period of not less than 181 days in a year²². The quorum of a House sitting, duly convened and held, is one third of all the Members of the House²³. The quorum of a joint sitting of both the Senate of the House of Representatives shall however be one third of all the Members or both Houses²⁴. At any sitting of the Senate of the National Assembly, the President of the Senate presides²⁵. The Speaker of the House of Representatives presides at the sitting of the House and in his absence; the Deputy Speaker shall preside²⁶. At any joint sitting of the Senate and the House of Representatives however, the President of the Senate presides and, in his absence, the Speaker of the House of Representatives shall preside²⁷.

1.3.6 Election and Vacation of Office by Officers of Legislative Houses

Both the President of the Senate, Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives shall be elected by the Members of each chamber from among themselves²⁸. The officers of each Legislative House as the President or Deputy President of the Senate, Speaker or Deputy Speaker of the House of Representatives as well as the Speaker or Deputy Speaker of a State House of Assembly shall however vacate their office in the Following three circumstances:

- a) *If he ceases to be a Member of the Legislative House to which he was elected otherwise than by reason of dissolution of such House for instance if recalled²⁹; or*

¹⁹ Ibid at S.64(3) and S.105(3) for issuance on Proclamation by the President in respect of the NASS and in respect of issuance of Proclamation by a state Governor respectively. See Oloyo V Alegbe (supra).

²⁰ Ibid at S.64 (1) and S.105(1) for the dissolution of the NASS and SHOA respectively

²¹ See Ibid at S.68(1)(f), (3) and S.109 (1)(f), (3) for NASS and SHOA Members respectively. See also. Oloyo V Alegbe (supra)

²² See S.63 and S.104 of the 1999 Constitution for the expected number of days of sitting of each Chamber of NASS and SHOA respectively.

²³ Ibid at S.54 (1) and S.96 (1) for each chamber of NASS and SHOA respectively.

²⁴ Ibid at S.54 (2)

²⁵ Ibid at S.53 (1) (a)

²⁶ Ibid at S.53 (1) (b)

²⁷ Ibid at S.53 (2) (a) (b)

²⁸ Ibid at S.50 (1) (a) (b). See also S.92 (1) for likewise provisions in respect of Speaker and D\Speaker of a SHOA.

²⁹ See this at SS.68 (1)(h), 69 and SS. 109 (1) (h), 110 for recall of NASS and SHOA Members respectively.

- b) *When the House of which he was a Member first sits after any dissolution of that House; or*
- c) *If he is removed from office by a resolution of the House, by the votes of not less than two – thirds majority of the Members of that House³⁰.*

Since vacation of membership of Legislative Seat is our main focus here which is different from vacation of office by officers of Legislative Houses, it is needless making vacation of membership of Legislative Seat part of this sub-theme in view of its prime discussion in this paper as the immediate sub-theme.

1.4 Tenure of Members of Legislative House

Corollary to the point made earlier that a Legislative House stands dissolved at the end of a four year is the presumption that an elected Legislator has a four year tenure of office. This presumption of a four year tenure is however rebuttable in view of the various circumstances that could truncate the four year tenure that have been provided in the 1999 Constitution, the occurrence of any of which shall cause a Legislator to vacate his Seat in the House of which he is a member³¹.

1.4.1 Grounds of Vacation of Seat by Members of Legislative House

The 1999 Constitution has categorically provided for eight grounds upon which a Member of a Legislative House shall vacate his Seat in the House of which he is a member. Section 109 of the 1999 Constitution provides as follows:

- (1) A Member of a House of Assembly shall vacate his Seat in the House if:
 - i) He becomes a member of another legislative house;
 - ii) Any other circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such a member;
 - iii) He ceases to be a citizen of Nigeria;
 - iv) He becomes President, Vice President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser;
 - v) Save as otherwise prescribed by this Constitution, he becomes a member of a commission or other body established by this Constitution or by any other Law;
 - vi) Without just cause, he is absent from meetings of the House of Assembly for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year;

³⁰ See generally, Ibid at S. 50 (2) (a)(b)(c) and S. 92 (2)(a)(b)(c) for vacation of office by officers of the NASS and SHOA respectively.

³¹ See generally Ibid at S. 68 (1) (2)(3) AND 109 (1)(2)(3) for the NASS and SHOA Members respectively. See Akande, Loc. Cit. See also Dalhatu, loc. cit. See also Malemi, loc. cit.

- vii) Being a person whose election to the House of Assembly was sponsored by a political party, 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 a merger of two or more political parties or factions by one of which he was previously sponsored; or

- viii) The Speaker of the House of Assembly receives a certificate under the hand of the Chairman of the Independent National Electoral Commission stating that the provisions of Section 110 of this Constitution have been complied with in respect of the recall of the member.

(2) The Speaker of the House of Assembly, shall give effect to the provisions of subsection (1) of this section, so however that the Speaker or a member shall first present evidence satisfactory to the House that any of the provisions of that subsection has become applicable in respect of that member.³²

(3) A Member of the House of Assembly shall be deemed to be absent without just cause from a meeting of the House of Assembly, unless the person presiding certifies in writing that he is satisfied that the absence of the member from the meeting was for a just cause.

From the foregoing provisions of section 109 (1) (a)-(e), (h), a Member of a Legislative House shall vacate his Seat in the House where he becomes a member of another legislative house; any other circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such a member; he ceases to be a citizen of Nigeria; He becomes President, Vice President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser; Save as otherwise prescribed by the Constitution, he becomes a member of a commission or other body established by this Constitution or by any other Law; there has been a recall.

Since the commencement of the 1999 Constitution and its application in the Nigerian democratic process, Section 109 (1) (f) & (g) on absenteeism and political party defection respectively have become more controversial than other grounds of vacation of Seat³³. In view of the controversies surrounding the two identified grounds, this paper will examine each of them in order to see how issues on these grounds of vacation have either been judicially or politically handled in practice.

1.4.2 Absenteeism as a Ground of Vacation of Seat

The provisions relating to absenteeism as a ground of vacation of Legislative Seat either in the National Assembly or at State House of Assembly are similarly worded in section 68

³² Ibid at S.68 (1)(2) and (3) for similar provisions in respect of NASS Legislature.

³³ See Ibid at S. 68 (1)(f) and (g) for similar provisions in respect of vacation of Seat by Members of NASS on grounds of absenteeism and defection.

(1)(f)(3) and 109 (1)(f)(3) of the 1999 Constitution respectively. The summary of this ground is that such an absentee Member must have been absent without just cause for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year³⁴. It has been stated that a Legislative House sits for a period of not less than 181 days in a year³⁵.

Since the issue surrounding this ground of vacation as was decided by the Supreme Court was not as to the computation of the number of days of absenteeism or otherwise, but rather more as to who can initiate the sanction of vacation against an absentee member³⁶, further discussion on this will be taken up in another sub-division of this work.

1.4.3 Political Party Defection as a Ground of Vacation of Seat.

The provision on party defection as a ground of vacation of Legislative Seat either at the National Assembly or at the State House of Assembly level are also similarly worded in sections 68 (1) (g) and 109 (1)(g) of the 1999 Constitution respectively. The summary of this unconstitutional defection is that: a defector *must be a person whose election into a House was sponsored by a political party* and he becomes a Member of another political party while the period for which that House was elected is yet to expire *when there is no division in his previous party or merger of his party with other two or more political parties*³⁷.

From the available resources/research and the findings of this paper, there appears to be no Legislator that has been sanctioned on this ground despite the wave of their defections. The reason for this apathy may not be unconnected to either the fact that there is no judicial precedent on this ground of vacation that has been decided by the Supreme Court.

1.5. Who can Effectuate the Sanction of Vacation of Legislative Seat?

While to the best of our knowledge, there is no known respected case of Legislative Seat loss at the National Assembly Level either because of absenteeism or defection, the situation at the State Houses of Assembly level is not the same. Under the 1979 Constitution, the Supreme Court resolved with finality, the issue of who has the power to declare the Seat of an absentee Legislator vacant in the celebrated case of *Oloyo V Alegbe*³⁸.

In this case, the Appellant, Hon. Oloyo, a Member of the defunct Bendel State House of Assembly was absent for a good number of days that the House had its sittings. Following

³⁴ See Ibid at S. 68 (1)(f)(3) and 109 (1)(f)(3) for the NASS and SHOA respectively.

³⁵ See Ibid at S.63 and S. 104 for the NASS and SHOA respectively.

³⁶ see *Oloyo V Alegbe* (Supra).

³⁷ see S. 68 (1)(g) and S. 109 (1)(g) of the 1999 Constitution for NASS and SHOA respectively.

³⁸ (Supra)

this absenteeism, his Seat was declared vacant by the Respondent, Rt. Hon. Benson Alegbe, the Speaker of the House. While the trial court granted an injunction in favour of the Appellant, the Court of Appeal upturned this on appeal and the Supreme Court upheld the Appeal Court's decision justifying the Respondent/Speaker's action in declaring vacant, the Seat of the Appellant/absentee Legislator based on section 103(1)(f), (2) and (3) of the 1979 Constitution³⁹.

On whether the Speaker requires judicial intervention before activating the provisions of the Constitution on vacancy of the Seat of an absentee Legislator, the Court inter-alia held:

i.) There were also Legislators who chose to be absentee Legislators. Section 103 is provided to meet this, and a person presiding should be able to take action, following the effect of the provision.

ii.) A legal dispute arises, after the Seat of the Member is declared vacant by the Speaker.

iii.) Apart from the Speaker, any Member of the House or any Member of his constituency or even of his political party could inform the Member that his Seat in the House has become vacant.

iv.) The Speaker who is under section 86 a creature of the Constitution, has a duty to preside at the sittings of the House of Assembly and under the common law, any person presiding at a meeting is in charge and full control of the conduct of the meeting⁴⁰.

If the above was the position of the law under the 1979 Constitution, then the position under the 1999 Constitution cannot be anything different. This is said because the provisions of the latter Constitution on the issue in focus here are same with those of the former Constitution which were interpreted by their lordships. The wording of the 1999 Constitution is so clear on this point when it says:

*The Speaker of the House of Assembly shall give effect to subsection (1) of this section, so however that the Speaker or a Member shall first present evidence satisfactory to the House that any of the provisions of that subsection has become applicable in respect of that member*⁴¹.

What happened in 1983 under the 1979 Constitution in Bendel state was repeated on 4th December, 2019 under the 1999 Constitution when 12 Legislators of Edo state repeatedly absented themselves from the House sittings and the Speaker of the State House of Assembly declared their Seats vacant. This matter was however not tested before the Supreme Court so we couldn't have the benefit of doubt whether the Supreme Court would

³⁹ The provisions of the 1979 Constitution on this ground of vacation are on all fours with S. 109(1) (f) (2) and (3) of the 1999 Constitution (Supra).

⁴⁰ per Kayode Eso. JSC at pg. 325 of *Oloyo V Alegbe* (Supra)

⁴¹ See S. 109(2) of the 1999 Constitution, ditto as in S. 68 (2) of the same Constitution in respect of NASS Legislators.

have overruled itself if the matter had come before it. The law on this issue therefore remains as it was decided in *Oloyo V Alegbe*⁴².

Since there is therefore no known case to us that have been decided with finality by the Supreme Court on declaration of Legislative Seat vacant because of unjustifiable defection, we are nonetheless of the humble opinion that the doctrine of judicial precedent set with finality by the Supreme Court on vacation of Seat due to absenteeism, equally applies to the ground of vacation of Seat due to defection. To this extent, the Speaker of a concerned House of Assembly or the House of Representatives or the President of the Senate as the case may be, can declare the Seat of an unjustifiable defector Legislator vacant. The Supreme Court has settled this matter with finality except perhaps if the proviso to section 68 (1) (g) or 109(1)(g) are not satisfied.

1.6 An Appraisal of the Constitutional Issues Raised in this Discourse

The above discourse have formed the basis from which have arisen certain germane constitutional issues upon which we are to appraise the whole scenario that plaid out. These issues will be discussed one after the other as follows:

1.6.1 The legality or otherwise of the Proclamation order of the Edo State Governor

The Governor of Edo state undisputedly issued a Proclamation pursuant to S. 105 (3) of the 1999 Constitution upon been sworn in, for the Inauguration of the State House of Assembly. The Clerk of the House then inaugurated the House upon the receipt of the letter of Proclamation even though there were only 9 Members-elects present on the day of the Inauguration. The grouse of the anti-Inauguration group was hinged on alleged invalidity of the Inauguration because of the fact that only 9 out of the 24 Members- elects were sworn in upon Inauguration. How valid in law is this objection?

The Constitution itself provides the answer to this objection when it provides that the quorum of the House shall be one third of all the Members of the House⁴³. One third of the 24 Members of Edo State House of Assembly is 8 Members which was even less than the number inaugurated by the Clerk. Any other argument that the requirement of one third as a quorum is only applicable to a House that has been duly inaugurated will not be in tandem with the Supreme Court decision in *Saraki VFRN*⁴⁴ where recourse was had to conventions or tradition as a result of a lacuna in law on the constitution or tradition.

In this case, one third was regarded as the quorum for all Assembly's meetings, corporate board meetings and other social gatherings. One of the issues for determination by the Supreme Court in this case in the interlocutory Appeal by the Appellant, was whether the

⁴² (Supra)

⁴³ Ibid at ss.54(1) and 96(1)

⁴⁴ (2016) LPELR 40013 sc/

Code of Conduct Tribunal was properly constituted when it sat with 2 Members, contrary to the provisions of paragraph 15 (1) of the 5th schedule to the 1999 Constitution. The Apex Court held that, although the paragraph provided for 3 members, the proceedings conducted by 2 of the 3 members were valid and constitutional.

Therefore, it is submitted that based on the statutory and judicial authorities that once a Proclamation is issued by the Governor pursuant to section 105 (3) of the 1999 Constitution, the Governor becomes *functus officio*. It was not denied that the Governor issued the Proclamation addressed to and received by the Clerk of the House. We equally submit that the directive by the National Assembly that the Governor re-issue a Proclamation for a fresh Inauguration was totally *ultra vires* the National Assembly, null and void, being bordered on Legislative meddlesomeness and rascality.

1.6.2 Whether the Inauguration and swearing in of 9 out of the 24 Members-elects was improper and invalid?

We adopt fully all and everything we have stated in the above immediate sub-paragraph herein as relevant and applicable in this sub-paragraph. Specifically and in particular, section 96 (1) of the 1999 Constitution which states that the quorum of a House of Assembly shall be one third of all the Members of the House. So therefore, the 9 out of the 24 Members-elects present for Inauguration and swearing in by the Clerk of the Edo State House of Assembly were more than the required number of 8 that was to form the quorum for Inauguration. We equally place reliance on the case of *Saraki V FRN*⁴⁵.

Therefore, the paper submits that the Inauguration by the Clerk of the Edo State House of Assembly of 9 Members-elects present out of a total 24 Members-elects was more than the one-third number of Members required to form the quorum for Inauguration by at least one Member. The Inauguration cannot therefore be impeached on the ground of lack of quorum at Inauguration.

1.6.3 Whether the Edo state Governor can be mandated by the National Assembly to re-issue a Proclamation?

The insistence of the National Assembly that the Edo State Governor should re-issue the Proclamation, in effect was tantamount to performing a judicial function vested only in the Courts as the law provides:

*The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all authority and to any person 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*⁴⁶.

⁴⁵ (supra)

⁴⁶ See S.6(6)(b) of the 1999 Constitution.

It is crystal clear from the above provisions that it is only the Courts that have the power to declare any executive action as a nullity and order a repeat of such action in order to bring it in line with the provisions and the general intendment of the Constitution. So, assuming without conceding that the issuance of the Proclamation by the Governor was constitutionally invalid, can the National Assembly order it be declared invalid and order a repeat of the exercise? The answer is an emphatic NO because the power of judicial review has been re-affirmed by the Apex Court in plethora of cases as being reserved for the Courts. In *A.G Bended State V A.G. Federation*⁴⁷, the Apex Court set aside the Allocation of Revenue (Federation Account etc) Act, 1981 as being unconstitutional. Also the same Apex Court in *A.G Federation V. Atiku Abubakar*⁴⁸, set aside the decision by President Olusegun Obasanjo to declare vacant, the office of the Vice President.

It is therefore reckless and totally unacceptable for the National Assembly to arrogate to itself the power to declare invalid an executive Governor's action in the due exercise of his constitutional duties. It is only a court of competent jurisdiction that can declare invalid the Proclamation issued by the Edo state Governor and order that same be re-issued. The National Assembly does not have that power.

1.6.4 Whether the 12 Staying-away Edo State House of Assembly Members-elects properly lost their Seats and on what ground?

Right away, the answer to this poser without much ado is that the 12 Edo State House of Assembly Members-elects deserved to and properly lost their Legislative Seats. This is because they had been absent from the sittings of the House without just cause for a period over one-third of the total days during which the House met/sat in one year i.e. 181 days in a year and for more than even one year absence⁴⁹. They also unfortunately lost their Seats as Members-elects because they were never sworn in due to their recalcitrance.

1.6.5 Whether the Speaker of the Edo state House of Assembly was the Right Person to declare as vacant, the Seats of the 12 Staying-away House Members-elects?

Under the 1979 Constitution, the Supreme Court resolved with finality, the issue of who has the power to declare the Seat of an absentee Legislator vacant in the celebrated case of *Oloyo V Alegbe*⁵⁰.

In this case, the Appellant, Hon. Oloyo, a Member of the defunct Bendel State House of Assembly was absent for a good number of days that the House had its sittings. Following this absenteeism, his Seat was declared vacant by the Respondent, Rt. Hon. Benson Alegbe, the Speaker of the House.

⁴⁷ (1981) 4 SC

⁴⁸ (2007) ALL FWLR (Pt. 375) 405

⁴⁹ See S. 109(1)(f)(2), (3) of the 1999 Constitution.

⁵⁰ (Supra)

While the trial court granted an injunction in favour of the Appellant, the Court of Appeal overturned this on appeal and the Supreme Court upheld the Appeal Court's decision justifying the Speaker's action in declaring vacant, the Seat of the absentee Legislator based on section 103(1)(f), (2) and (3) of the 1979 Constitution⁵¹.

On whether the Speaker requires judicial intervention before activating the provisions of the Constitution on vacancy of the Seat of an absentee Legislator, the Court inter-alia held:

- There were also Legislators who chose to be absentee Legislators. Section 103 is provided to meet this, and a person presiding should be able to take action, following the effect of the provision.
- A legal dispute arises, after the Seat of the Member is declared vacant by the Speaker.
- Apart from the Speaker, any Member of the House or any Member of his constituency or even of his political party could inform the Member that his Seat in the House has become vacant.
- The Speaker who is under section 86 a creature of the Constitution, has a duty to preside at the sittings of the House of Assembly and under the common law, any person presiding at a meeting is in charge and full control of the conduct of the meeting⁵².

If the above was the position of the law under the 1979 Constitution, it is our humble opinion that the position under the 1999 Constitution cannot be anything different. This is because the provisions of the latter Constitution on the issue in focus here are on all fours with those of the former Constitution which were interpreted by their Lordships. Thus, considering the fact the celebrated case of *Oloyo V Alegbe* (*supra*) has not been set aside by the Supreme Court in a latter decision, the above position remains the law. The wording of the 1999 Constitution is so clear on this point when it says:

*The Speaker of the House of Assembly shall give effect to subsection (1) of this section, so however that the Speaker or a Member shall first present evidence satisfactory to the House that any of the provisions of that subsection has become applicable in respect of that member*⁵³.

What happened in 1983 under the 1979 Constitution in Bendel state was repeated on 4th December, 2019 under the 1999 Constitution when 12 Legislators of Edo state repeatedly absented themselves from the House sittings and the Speaker of the State House of Assembly declared their Seats vacant. This matter was however not tested in court so we couldn't have the benefit of doubt whether the Supreme Court would have overruled itself

⁵¹ The provisions of the 1979 Constitution on this ground of vacation are on all fours with S. 109(1) (f) (2) and (3) of the 1999 Constitution (*Supra*).

⁵² per Kayode Eso. JSC at pg. 325 of *Oloyo V Alegba* (*Supra*)

⁵³ See S. 109(2) of the 1999 Constitution, ditto as in S. 68 (2) of the same Constitution in respect of NASS LegislatorS.

if the matter had come before it. The law on this issue therefore remains as it was decided in *Oloyo V Alegbe*⁵⁴.

From the above therefore, the Edo state House of Assembly Speaker was the right person to have declared vacant, the Seats of the 12 staying-away House Members-elects.

1.6.6 Whether the National Assembly could have Constitutionally taken over the functions of the Edo state House of Assembly based on the prevailing circumstances of this case?

Thus contrary to the condition stipulated in the 1999 Constitution to justify the National Assembly taking over the functions of a State House of Assembly, which is the inability of the latter to perform its functions by reason of the situation prevailing in that State, the paper submits that the Edo State House of Assembly never at any time then stopped sitting nor was prevented from performing its legislative functions since the House of Assembly was able to be holding its meetings and performing its businesses⁵⁵.

Therefore, the resolution of the National Assembly threatening to take over the functions of the Edo State House of Assembly if the Governor of the State then failed to repeat the issuance of a fresh Proclamation, was not in consonance with the 1999 Constitution. The resolution constituted a blatant, egregious and unmitigated assault on the concept of federalism, democracy, the rule of law and constitutionalism. The Court, rather than the National Assembly, would have been the proper arm of government that would have resolved the stalemate at that material time⁵⁶.

1.7 Conclusion and Recommendations

This work has examined in the main, the threat of the Senate of the National Assembly, in its purported supervisory jurisdiction to take over the functions of Edo State House Assembly, where the State Governor failed, refused and or neglected its directives to repeat the Proclamation for inaugurating the House afresh. Several Constitutional concepts and principles on the running of Legislative Houses as well as decided cases were examined and discussed in order to see whether the threatened action of the National Assembly was constitutional but it was found to be otherwise. Rather, the Inauguration of the Edo State House of Assembly on the 17th July, 2019 conducted by the Clerk of the Edo State House of Assembly pursuant to the Proclamation issued earlier by the Governor was established as valid and the same cannot be impeached on any ground. Equally, the directive to the Edo state Governor to re-issue the Proclamation for a fresh Inauguration of the House has been said to be totally *ultra vires* the National Assembly, null and void, a legislative meddlesomeness and rascality.

⁵⁴ (Supra)

⁵⁵ See Ibid at S.11(5)

⁵⁶ See A.G Bendel state V A.G Federation (supra) and A.G Federation V Atiku Abubakar (supra)

Consequently, it has been asserted that the 12 Members-elects of the Edo state House of Assembly, who refused to present themselves for Inauguration and swearing-in, were found to have rightly lost their Seats due to unconstitutional absenteeism. Furthermore, it was asserted that the Speaker of the Edo State House of Assembly, as the appropriate authority, declared those Seats vacant. In order therefore to avoid the bitter lessons of a repeat of the ugly occurrence of the 2019 Edo state House of Assembly and for advancement of Nigeria's democracy, the following recommendations are offered:

- iv) The establishment of Constitutional Court has become more imperative than ever before. This Court will with dispatch, decide as required, all political, constitutional and related cases.
- v) *Amicus curia* should be encouraged to take up public interest litigation cases particularly in this area of practice of law. With this, the lingering situation in Edo state House of Assembly matters for instance would have been treated and disposed of with dispatch whether or not *locus standi* existed in the initiators of such cases.
- vi) Part-time legislature is recommended for Nigerian democracy in order to reduce the acrimony for legislative public office with the consequent reduction in cost of governance and attendant acrimony among the political actors.
- vii) The siege of political godfatherism should be laid to rest in Nigeria through voters' education and reduction in the perquisites of office at every arm of government.

It is hoped that implementing these recommendations will bring sanity into the Nigerian political landscape.