

IMMUNITIES AND TENURES OF OFFICE IN THE THREE ARMS OF GOVERNMENT IN NIGERIA: LEGAL PERSPECTIVE

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ABSTRACT: *The Nigerian 1999 Constitution clearly recognises and upholds the principle of the separation of power and the need to ensure that each arm of the government operates within the purview permitted by law. Thus, to ensure that each arm of government discharges its functions effectively, the Constitution or existing enactments further provide for their immunities and tenures of office of the members of the executive, legislature as well as the judiciary. The intention of this article is to critically examine from the legal angle the scope and extent of the immunities granted to office holders in the three arms of government as well as the security of their appointments.*

KEYWORDS: Immunity, Constitution, Executive, Legislature, Judicial Officer, Tenure of Office

INTRODUCTION

The structure of our system of government and the Constitution is founded on the concept of the separation of powers. The purpose of the principle of separation of powers is to guarantee good governance and development and to avoid abuse of power. Recognising the importance of this age-long doctrine, the 1999 Constitution of the Federal Republic of Nigeria, patterned after the American Constitution, provides for the legislature, the executive and the judiciary and vests on each arm of the organs of government certain powers and functions. To enable the office holders in the constitutionally recognised three arms of government to perform their functions, the law either expressly by the Constitution or by statutes have provided for immunities from law suits for the office holders in the course of the performance of their legislative, executive and judicial duties. This paper intends to critically examine the scope and extent of the various immunities enjoyed by the executive, legislature and judiciary during their tenures in office. Also discussed in this article are the tenures of office in the three arms of government. A comparative view with some foreign jurisdiction regarding the immunities of the referenced officers is further examined in the article.

Immunity of the executive office holders

The frequent manner in contemporary democratic societies of providing for restrictions on legal proceedings against the President and Vice-President of a country or a Governor and Deputy-Governor of a State has been said to be a “functionally mandated incident” of the executive office holder’s exclusive office.¹ The reason for granting executive office holder immunity is to afford him a peaceful tenure free from harassment on personal matters rather

¹ Kehinde Mowoe, *Constitutional Law in Nigeria* (Lagos: Malthouse Press Limited, 2003), p.140.

than matters of office. It is to give the office holder total commitment to the high office which pertains to the welfare and stability of governance.²

Consistent with many modern day Constitutions of the world, section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter called, the 1999 Constitution) provides in the clearest possible language that “notwithstanding” anything to the contrary in the said Constitution, no civil or criminal proceedings shall be instituted or if already instituted, continued against any person to whom that section of the Constitution applies during his period of office.³ Sub-section (3) of the section under reference indicates that the restriction on legal proceedings applies to a person holding the office of President or Vice-President, Governor or Deputy Governor. In line with the said section 308, such office holder cannot be arrested or imprisoned during his tenure of office either in pursuance of the process of any court⁴ or otherwise. No process of any court requiring or compelling his appearance shall be applied for or issued.⁵ Section 308(2) however, prescribes that the bar to civil or criminal proceedings against the office holder shall not apply to civil proceedings instituted against any of the relevant public officers in his official capacity or to civil or criminal proceedings in which he is only a nominal party.

The court has been firm in asserting that the immunity granted to the executive office holder under section 308 of the 1999 Constitution is an absolute immunity and cannot be waived either by the beneficiary or the court.⁶ Any purported waiver of such immunity is ineffective.⁷ However, there are certain limitations to the enjoyment of the constitutionally recognized immunity. It has been held that the constitutional immunity terminates when the person who enjoys the immunity ceases to hold office by which he enjoyed the constitutional immunity;⁸ it does not extend to election matters;⁹ the immunity clause does not shield the office holder from police investigations of allegation of crime, though he may not be prosecuted during the currency of his tenure in office;¹⁰ it is not intended to deprive a holder of an office to which immunity attaches right of fair hearing guaranteed under Section 36 of the 1999 Constitution during the period in which he enjoys the immunity.¹¹ The immunity clause equally does not prevent the office holder from commencing an action against any other person in his personal capacity.¹²

In *Global Excellence Communications Ltd. v. Donald Duke*,¹³ the respondent as plaintiff, then the incumbent State Governor of Cross River State, instituted an action at the High Court of Cross River State, Calabar Judicial Division against the appellant claiming damages for libel published in two editions of the 1st appellant's Global Excellence Magazine of May 11-May

² *Tinubu v I.M.B. Securities Plc*, (2001) FWLR (Pt. 77) 1003 at 1044.

³ Section 308(1)(a) of the 1999 Constitution

⁴ The extent of the immunity granted under section 308 of the 1999 Constitution extends to prosecutions before courts established under Section 6(5) of the 1999 Constitution or a Tribunal established by paragraph 15(1) of the Fifth Schedule to the 1999 Constitution. See *Attorney-General of the Federation v. Abubakar* (2007) All FWLR (Pt. 389) 1264 at p.1299.

⁵ Section 308(1)(b)(c) of the 1999 Constitution.

⁶ *Tinubu v I.M.B. Securities PLC*, *op. cit.*, at pp. 1026-1027.

⁷ *Alamieyeseigha v. Teiwa* (2002) FWLR (Pt. 96) 552 at 574.

⁸ *Ibid*, p 572.

⁹ *Amaechi v. INEC* (2008) All FWLR (Pt. 407) 1; *A.D v. Fayose* (2004) All FWLR (pt.218) 951

¹⁰ *Fawehinmi v. I.G.P.* (2000) FWLR (Pt. 12) 2015; *Fawehinmi v. I.G.P.* (2002) FWLR (Pt. 108) 1355 at 1386

¹¹ *Alamieyeseigha v. Teiwa*, *op. cit.* at p. 573.

¹² *Media Tech. Nig. Ltd v. Adesina* (2005) 1 NWLR (Pt. 908) 461 at 475.

¹³ (2007) All FWLR (Pt. 387) 782.

17, 2004 and May 25-May 30, 2004. At the trial court, the appellants entered a conditional appearance and filed a notice of preliminary objection challenging the jurisdiction of the trial court to entertain the suit on the ground that the respondent (then the plaintiff), being a serving Governor at the material time, could not institute the action by virtue of the provision of section 308 of the Constitution of the Federal Republic of Nigeria, 1999. The preliminary objection was upheld and the case struck out.

Aggrieved by the lower court's decision, the plaintiff filed an appeal before the Court of Appeal which overturned the lower court's judgment. On a further appeal to the Supreme Court by the defendants, the central issue for determination before the apex appellate court was, whether going by the provision of section 308 of the 1999 Constitution, a serving Governor of a State could sue or initiate proceedings for reliefs in his personal capacity while in office. The Supreme Court was of the view that although section 308 of the 1999 Constitution expressly stated that a serving Governor of a State and other executive office holders named therein cannot be sued in their personal or private capacities, nevertheless the Constitution was mute on whether or not an incumbent Governor or President can sue in his personal or private capacity. Thus, since he is not expressly incapacitated by any provisions of the Constitution, an incumbent President or a Governor of a State can sue in his private personal status.¹⁴

But whether the immunity clause extends to the bank account of an incumbent executive officer holder has recently become a subject of great debate. Recently, the Economic and Financial Crime Commission (EFCC) announced that it has obtained a court order to freeze the bank account of Governor Ayo Fayose of Ekiti State.¹⁵ Upon freezing the bank accounts, Governor Ayo Fayose instituted a court action at the Federal High Court, Ado Ekiti, Nigeria challenging the purported freezing of his accounts contending *inter alia*, that being an incumbent State Governor his immunity also covered his bank accounts. Accordingly, he asked the court to de-freeze his accounts.¹⁶

For the avoidance of doubt, a careful examination of the enabling statute shows that the Economic and Financial Crime Commission (Establishment) Act¹⁷ provides for freezing order on banks and other financial institutions. It provides mainly that regardless of any contrary provision in any other statute, where the Commission is satisfied that an arrested or detained person pursuant to an offence committed under the Act has money in the bank or banks which is a proceeds of an offence committed under the Act, it may apply to the court by an ex-parte application for an order to direct the relevant bank or financial institution to freeze the account or accounts.¹⁸ The Commission may also require the bank or financial institution to furnish it with relevant information and bank documents relating to the alleged account as well as

¹⁴ *Ibid*, at pp. 801, 802. See also *Onabanjo v. Concord Press of Nigeria Ltd.* (1981) 2 NCLR 355, where the plaintiff, the then incumbent Governor of Ogun State in Nigeria, in his personal status sued the defendant who was the publisher of Concord Newspapers for libel claiming monetary damages. See also the dissenting opinion of Ayoola, J.S.C. in *Tinubu v I.M.B. Securities Plc* (2001) FWLR (Pt. 77) 1003 at 1050.

¹⁵ See Sahara Reporters, "Court Order Freezing Governor Fayose's Zenith Bank Accounts." Available at <http://saharareporters.com/2006/06/28/court-order-freezing-governor-fayoses-zenith-bank-accounts-surfaces>. Accessed on 29 June 2016.

¹⁶ See. Rotimi Ojomoyela, "Account Freezing: Court Summons EFCC, Adjourns Fayose's Mandatory Application." Available at <http://www.vanguardngr.com/2016/06/account-freezing-court-summons-efcc-adjourns-fayoses-mandatory-application/>. Accessed on 29 June 2016.

¹⁷ No. 1 of 2004. Also referred to as "the EFCC Act."

¹⁸ *Ibid*, section 34(1).

mandate the financial institutions to “stop all outward payments, operations or transactions (including any bill of exchange) in respect of the account of the person.”¹⁹

It is submitted that going by the express wordings of section 34 of the EFCC Act, for the Commission to validly obtain the order to freeze any account, it is required that such an account must be in relation to a person arrested or detained by the Commission. The account in question must be proceeds of an offence committed under the Act. In the instant case, Governor Fayose was neither arrested nor was he detained by the Commission as section 308 of the 1999 Constitution serious frowns at such an unconstitutional action on an incumbent Governor. It is therefore, my strong view that an attempt by the Commission to freeze an account of a sitting Governor would be regarded as *ultra vires* and unconstitutional. Even under international law, the person of a diplomatic agent is sacrosanct. This diplomatic immunity extends to his private residence,²⁰ papers, correspondences, property²¹ and their bags.²² Members of the family of a diplomatic agent forming part of his household enjoy specified privileges and immunities if not citizens of the receiving country.²³ Though the purview of the Nigerian constitutional immunity may not be as wide as that obtainable under the international law, it should nonetheless be wide enough to cover the bank account of an incumbent Governor of a State. As at the time of writing this article, the court action instituted by Governor Ayo Fayose against the EFCC and Zenith Bank was still pending before the court. It is hoped that when eventually decided it is decided it would lay the controversy to rest

Legislative Immunity²⁴

This is simply the immunity of a legislator from civil liability arising from the performance of his legislative duties.²⁵ Although, the 1999 Constitution of Nigeria does not expressly provide for immunity from legal proceedings for a member of a legislative house, yet by section 3 of the Legislative House (Powers and Privileges) Act,²⁶ no civil or criminal proceedings may be commenced against any person who is a member of legislative house²⁷ in “respect of words spoken before that house or committee” or with regards to words “written in a report to that” legislative house or to “any committee of the House or in any petition, bill, resolution, motion or question brought or introduced by him therein.”

In *Edwin Ume-Ezeoke v. Makarfi*,²⁸ the Speaker of the House of Representatives read a letter from the Chairman of the plaintiff’s party on whose platform he was elected into the House asking that the plaintiff be suspended from membership of the House Committees which he got as a result of his membership of the party. This was supposedly because he had publicly dissociated himself from a decision of the National Directorate of the party and had been suspended from the party. Before the House could take any action in that direction, the plaintiff sued the Honorable Speaker and asked for declaration that the announcement of the message was unconstitutional. It was held by the court that the court lacked jurisdiction to question any

¹⁹ *Ibid*, section 34(2).

²⁰ Vienna Convention on Diplomatic Relations, Article 30(1).

²¹ *Ibid*, Article 30(2).

²² *Ibid*, Article 27(3) and (4).

²³ *Ibid*, Articles 29-37, generally.

²⁴ In other jurisdiction like the USA, this is also called, Congressional immunity.

²⁵ Bryan A. Garner (Ed.), *Black’s Law Dictionary*, 8th edn, p. 766.

²⁶ Cap L12 *Laws of the Federation of Nigeria* 2004 (see also Cap. 208, *Laws of the Federation of Nigeria* 1990).

²⁷ The Act defines a “Legislative House” to mean the Senate, the House of Representatives, or a House of Assembly of a State as constituted under the 1999 Constitution.

²⁸ (1982) 3 NCLR 663.

matter or procedure which tends only to regulate the affairs of any legislative house. In a subsequent case of *Ndaeyo Uttah v. House of Assembly Cross River State*,²⁹ it was pointed out that:

*What is said or done within the walls of parliament cannot be inquired into by a court of law. The jurisdiction of the house over its own members and their right to impose discipline within their walls is absolute and exclusive.*³⁰

However, in *El-Rufai v. House of Representatives*,³¹ it was pointed out that the immunity from suit granted under section 3 of the Legislative Houses (Powers and Privileges) Act can only be invoked when the legislature or any of its members is acting within the provisions of the Constitution. The court went further to pronounce on when the protection conferred under section 30 of the Act, which provides to the effect that:

Neither the President or Speaker... of a Legislative House nor any officer of a Legislative House shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or any court in respect of the exercise of any power conferred on or vested in him by or under this Act or the Standing Orders of the Legislative House, or by the Constitution.

On when the legislative immunity protection could be invoked by the beneficiary, the Court stated thus:

*The protection given to the 1st defendant(i.e. House of Representatives) under Section 30 (of the Act)... is only invocable when it (a legislative house or its member) is acting under (the Act) and its Standing Orders in so far as either or both of them is/are not in conflict with the provisions of the Constitution. (Words in bracket supplied).*³²

Other than immunity from proceedings granted under Section 3 of the Act which encourages freedom of speech of members of a legislative house before that house or a committee thereof, the Act also by its section 31 prohibits the service or execution of any civil process issued by any court of law in Nigeria in the exercise of its civil jurisdiction in the Chambers or precincts of a Legislative House while that House is sitting or through the President or Speaker or any officer of a Legislative House.³³ Also by section 22 of the Act, no legal action shall lie against any member of a legislative house who forcibly removed a recalcitrant suspended member of the House from the Chambers or precincts of the House.

²⁹ (1985) 6 NCLR 761

³⁰ *Ibid* at p. 765

³¹ (2003) FWLR (Pt. 173) 162.

³² *Ibid* at p.191.

³³ However, Ademola Johnson, J. in *Tony Momoh v. Senate of the National Assembly* (1981) 1 NCLR 21 at pp. 22-24 did not hesitate to declare this statutory provision which purports to prohibit the service of civil process on the Chamber of precincts of a legislative house as being inconsistent with the then 1979 Constitution of the Federal Republic of Nigeria and consequently null and void. It is submitted that had that case been decided under the 1999 Constitution, the position would not have been different as the referenced provision under the then 1979 Constitution is identical with that of the Constitution.

Nevertheless, the immunity from legal proceedings granted to members of a legislative house does not extend to criminal conduct as the Act sanctions any member of a legislative house who accepts or obtains for himself or for any person a bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting or on account of his having so spoken or refrain from speaking;³⁴ engages in contemptuous conducts, assaults or obstruction of a member of a legislative house within the Chambers or precincts of the House or assaults or obstruct any officer of the Legislative House while in the execution of his duty or has been convicted of any offence under the Act.³⁵

Whether the alteration of the proceedings or documents of the parliament by some of its members would come within the area of criminal conducts sanctioned under the Act is currently an issue before the court of law. The Senate President, Senator Bukola Saraki, and his Deputy, Senator Ike Ekweremadu, are now facing criminal prosecution over an alleged forgery of the Senate Standing Rules 2011, which purportedly paved the way for them to occupy the positions. While the members of the Senate consider the matter as an internal affair of the Senate which the other arms of government lack jurisdiction to question, the Federal Attorney-General sees it differently.³⁶

Furthermore, the Act does not preclude or disallow the institution of legal proceedings, either civil or criminal, against any member of a Legislative House in respect of assault or obstruction of any member or officer of the House.³⁷ Legislative immunity in Nigeria could therefore, be said to be a statutorily limited one and not as wide as that enjoyed by the members of the executive arm. Attempts by the National Assembly to provide a constitutional immunity for the principal officers of the house in a manner similar to that enjoyed by the President, the Governors and judicial officers have been strongly opposed by some lawmakers,³⁸ civil societies and the Nigerian people who have in recent times been canvassing for the removal of the executive immunity.³⁹

³⁴ Legislative House (Powers and Privileges) Act, section 20

³⁵ *Ibid*, section 21.

³⁶ See Sunday Aborisade, "Forgery Suit: Presidency not Assembling Witnesses against Saraki, Ekweremadu, says Enang." *The Punch*. Available at <http://punchng.com/forgery-suit-presidency-not-assembling-witnesses-saraki-ekweremadu-says-enang/>. Accessed on 2 July 2016. As at the time of writing this article the case was still pending before the court and judgment had not been delivered.

³⁷ Legislative House (Powers and Privileges) Act, *op. cit*, section 21(4).

³⁸ See John Ameh, "Reps in Rowdy Session over Proposed Immunity for Saraki, Dogara." *The Punch*. Available at <http://punchng.com/rep-rowdy-session-proposed-immunity-saraki-dogara/>. Accessed on 14 July 2016. Some lawmakers have been canvassing that the provision of section 308(3) of the 1999 Constitution should be amended by adding the words "Senate President, Speaker, Deputy Senate President, Deputy Speaker" immediately after the word, "Vice President," and also to incorporate the words, Speaker of a State House of Assembly, Deputy Speaker of a State House of Assembly immediately after the word, Deputy Governor. The proponents of this position assert that the legislature require as much protection in the execution of their constitutional duties as does the executive arm of the government. One of the strong supporters of this pro-immunity clause group for the parliament is Hon. Leo Ogor, the House of Representatives Minority Leader.

³⁹ See Ben Agande, "Nigerians Reject Immunity for Senate President, Speaker." *Vanguard*. Available at <http://www.vanguardngr.com/2015/10/nigerians-reject-immunity-for-senate-president-speaker/>. Accessed on 3 July 2016. See also Dapo Akinrefon, Abulwahab Abdulah and Gbenga Oke, (June 20, 2016), "Reactions Trail Immunity Bid for Senate President, Speaker." *Vanguard*. Available at <http://www.vanguardngr.com/2016/06/reactions-trail-immunity-bid-senate-president-speaker/>. Accessed on 3 July 2016.

Judicial Immunity⁴⁰

This is the immunity granted to a judicial officer from civil liability arising from the performance of his judicial duties. The 1999 Constitution does not expressly provide for the immunity of judicial officers from law suits for acts done or ordered to be done by them in the discharge of their judicial duties. But some statutes which under section 315 of the 1999 Constitution are regarded as existing laws guarantee this judicial protection.⁴¹ The general rule at common law is that persons exercising judicial functions in a court or tribunal are exonerated from all civil liability whatsoever for anything done or ordered to be done in their judicial capacity.⁴² The words which he speaks are protected by an absolute privilege. Both the orders made and the sentences imposed by him cannot be made the subject of civil litigation against him, notwithstanding that the judicial officer was under some gross error or ignorance, or motivated by envy, or hatred and malice, he cannot be liable to any civil action instituted by an aggrieved litigant.

The earliest reported decision on judicial immunity by a court in Nigeria was in the case of *Onitiri v. Ojomo*,⁴³ where the plaintiff had been accused before the defendant, a Chief Magistrate, of a criminal offence and had applied to transfer the case from the defendant's court. Upon reading a paragraph of his application for transfer at the request of the defendant, the plaintiff was informed by the defendant that he had committed a contempt of court. The defendant formulated a charge against him and remanded him in custody pending his trial before another Magistrate. Subsequently, the plaintiff instituted an action against the defendant claiming £600 damages for unlawful imprisonment. It was held by the Court that the defendant was entitled to immunity under the then Section 6(1) of the Magistrates' Courts Ordinance, which provided that:

*No Magistrate, Justice of the Peace or other person acting judicially, shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction. Provided that he at the time, in good faith, believe himself to have jurisdiction to do or order the act complained of.*⁴⁴

The rationale for judicial immunity is established on public policy because of the need to protect judicial officers whether from superior court of record or not from wanton attack of infuriated litigants whose main grouse and grievance against the judicial officer is that they have lost a suit.⁴⁵ The object of this judicial privilege is not therefore, to protect malicious or corrupt judicial officers, but to protect the public from the danger to which the administration

⁴⁰ See generally, E. M. Akpambang, "Nigerian Judiciary under the 1999 Constitution," *Journal of Law and Diplomacy*, Vol. 6, No. 2, 2009, pp. 19-20.

⁴¹ See for example, Federal High Court Act, Cap. F12, *Laws of the Federation of Nigeria* 2004, section 63(1); National Industrial Court Act No. 1 of 2006, section 52(1); High Court Law Cap. H3, *Laws of Lagos State* 2003, section 88(1); *High Court Law*, Cap H57, *Laws of Ogun State*, section 71(1); High Court Law, Cap 62A, *Laws of Ondo State of Nigeria* 2006, Vol. 2, section 72 (1); High Court Law of Cross River State, section 56(a).

⁴² *Sirros v. Moore* (1974) 3 All E.R. 77 at pp. 781-782, where Lord Denning M.R. traced the origin of the concept of judicial immunity even beyond the year 1613.

⁴³ (1954) 21 NLR 19. See also Abimbola A. O. Olowofoyekun, *Law of Judicial Immunities in Nigeria*, (Ibadan: Spectrum Law series, 1992), p. 33.

⁴⁴ See also Magistrates' Courts Law, Cap 90, *Laws of Ondo State of Nigeria*, 2006, section 57(1).

⁴⁵ *Egbe v Adefarasin* (1985) 1 NWLR (Pt. 3) 549 at p. 567

of justice would be exposed if the judicial officer is made subject to inquiry as to malice or to litigation with those whom his decision might offend.⁴⁶

Generally speaking, both under the common law and under statute, there is no criminal liability for judicial officers in Nigeria for acts performed or carried out in their judicial capacity.⁴⁷ In *Awosanya v. Board of Custom*,⁴⁸ the appellant was found guilty of criminal contempt of court by Belgore, J (as he then was) for disobedience to an order of the then Federal Revenue Court (now Federal High Court) to stay proceedings in a case which the appellant was trying. On a further appeal to the Supreme Court, the appellant was held not guilty of criminal contempt and was accordingly discharged and acquitted. The principle according to Elias, CJN, was that:

*An error of judgment on the Magistrate's part whether as to jurisdiction or as to the precise order to make in the circumstances with which he was confronted can hardly be characterised as criminal and no amount of argument as to a suspected improper motive would make it a criminal offence in itself.*⁴⁹

The statutory provisions for immunity from criminal liability of judicial officers for acts done in their judicial capacity can also be found in section 31 of the Criminal Code Law.⁵⁰ It provides that:

Except as expressly provided by this Code or the enactment constituting the offence, a judicial officer⁵¹ is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

A judicial officer is also statutorily exculpated from liability in respect of criminal defamation if the publication takes place in any proceedings held before or under the authority of any court or in any inquiry held under the authority of any Act, Law, Statute or Order-in-Council.⁵² This absolute privilege covers all courts and also quasi-judicial bodies.⁵³ However, apart from this general principle of law, a judicial officer who accepts bribe or is in the least degree corrupt or has perverted the course of justice cannot escape criminal liability.⁵⁴ Sections 98, 98A, 98B and 98C of the Criminal Code prohibit judicial corruption and abuse of office. The sections principally sanction any judicial officer who, corruptly acts, receives or obtains or agree or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity.

⁴⁶ *Halsbury Laws of England*, 3rd ed., Vol. 3, para. 1352.

⁴⁷ Abimbola A., Olowfoyeku, *op. cit.*, p. 128.

⁴⁸ (1975) 1 All NLR 106.

⁴⁹ *Ibid* at p. 116.

⁵⁰ Cap 37, *Laws of Ondo State of Nigeria* 2006, Vol. 1.

⁵¹ A judicial officer includes the Chief Judge or a Judge of a High Court, the President or Judge of the Customary Court of Appeal, a Magistrate, the Chief Justice of Nigeria and Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, and when engaged in any judicial act or proceeding or inquiry, an Administrative Officer – *ibid*, section 1.

⁵² *Criminal Code*, section 378(3).

⁵³ Abimbola A., Olowfoyeku, *op. cit.*, p. 135-136

⁵⁴ *Sirros v. Moore*, *op. cit.* at p. 782. See also *S.B.M. Services (Nig.) Ltd v Okon*, *op.cit.* at p. 1134.

The respective sections of the statute prescribe a seven years term of imprisonment for any judicial officer found guilty of this felonious act. However, before any criminal proceedings could be commenced against any judicial officer who violates any of the provisions of these sections, a complaint or information signed by or on behalf of the Attorney General of the Federation or Attorney General of the State, as the case may be, is required.⁵⁵ Thus, from the above decided and statutory authorities, it is obvious that the scope of judicial immunity is absolute, universal and unqualified and as long as the judicial officer is acting or performing in his judicial capacity, he is immunised.⁵⁶

Immunities in some foreign jurisdictions

There is no provision in the United State of America's Constitution which suggest that the executive office holders enjoy any immunity during their tenure in office. In fact, Article II section 4 of the American Constitution states that:

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III section 2, paragraph 3 thereof goes further to provide that the trial of all crimes unless in cases of impeachment shall be by jury and that such trial shall be held in the State where the said crime was committed. In respect of crimes committed not within any State, the trial is to be at such a place or places as the Congress may by law direct. Thus, in America, there is no constitutional immunity for the executive office holder. Any corrupt public office holder will be made to face the wrath of the law as he cannot "flee from justice."⁵⁷

Similarly, there is neither immunity clause in the Canadian Constitution Act of 1867 nor even in the amendment introduced in 1982. Every public officer is held liable for his action or conduct.⁵⁸ In France, the French Constitution has some degree of immunity for legislators and the President of the Republic. For the parliamentarians, it covers them for their actions and contributions to the debate in the Parliament. Article 68 of the French Constitution is to the effect that the President of the Republic shall not be held accountable for actions performed in the exercise of the office unless in the case of high treason. He shall be tried by the High Court of Justice.

Regarding judicial immunity, the position is that in England, just like Nigeria, judicial officers enjoy immunity in respect of actions taken by them in their judicial capacities.⁵⁹ In the United States of America, the first significant acceptance of judicial immunity came in 1810 when

⁵⁵ Criminal Code Act, Cap C38, *Laws of the Federation of Nigeria*, 2004, section 98C (2).

⁵⁶ *S.B.M. Services (Nig) Ltd v. Okon* (2004) All FWLR (Pt. 230) 15 at p. 1134. In *M.P. Ogele v Hon. Justice Omoleye* (2006) All FWLR (Pt. 296) 809 at p. 85, it was held that a judicial officer who acted under section 188(5) of the 1999 Constitution (regarding the setting up of a panel by the Chief Judge of a State at the request of the Speaker of a State's House of Assembly for the investigation of a Governor or Deputy Governor of a State for impeachment purposes) was not covered under judicial immunity, as she was not acting judicially but constitutionally.

⁵⁷ U.S. Constitution, Article IV, section 2 paragraph 2. It would be recalled that in 1998, a former President Bill Clinton was investigated and found guilty of improper sexual relationship with Monica Lewinsky. He narrowly escaped being impeached. Governor James Ferguson of Texas was indicted for embezzlement and later got impeached. Evan Meacham of Arizona was also impeached in 1988 after he had been indicted by a Jury.

⁵⁸ Akinyemi Akinlabi, "Executive Immunity in other countries." Available at <http://www.gamji.com/article5000/NEWS5367.67>.

⁵⁹ *Sirros v. Moore, op.cit.* See also *Halsbury's Laws of England*, 3rd edn; Volume 30, paras 1351-1353.

James Kent authored the New York decision of *Yates v. Lansing*.⁶⁰ There, Yates brought a civil action against Chancellor Lansing for violation of the Habeas Corpus Act. The New York Supreme Court held that the Defendant Chancellor was protected by judicial immunity.

After more than a century of near silence, the doctrine of judicial immunity resurfaced in the United States of America's legal jurisprudence in the case of *Stump v. Sparkman*.⁶¹ In that case a mother brought a petition before Judge Stump to have her "somewhat retarded" 15 years old daughter sterilised, because according to the mother, her daughter was promiscuous and that the sterilisation would be in the best interest of the child. The Judge granted the application without giving the daughter notice or an opportunity of being heard. When the daughter was married some years later and discovered that she had been sterilised, she brought the action against the Judge for breach of her constitutional right. Relying on the doctrine of judicial immunity, the Supreme Court held that the Judge was absolutely immune from a suit for damages as he was acting judicially.⁶²

However, some years after the decision in *Stump's* case, the court in *Pulliam v. Allen*⁶³ held that judicial immunity does not bar an award of attorney fees against a Judge when a plaintiff wins a suit against that judicial officer for injunctive or declaratory relief.⁶⁴ The facts of the case were that the respondents were arrested for non-jailable misdemeanors by the petitioner, a Magistrate. The petitioner imposed bail, and when the respondents were not able to meet the bail terms, the petitioner committed them to jail. Subsequently, the respondents sued the petitioner contending that the Magistrate acted unconstitutionally. Again, in *Forrester v. White*,⁶⁵ a former probation officer instituted an action against an Illinois State Judge alleging that she was demoted and discharged on account of her sex in violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. Although the jury found in her favour, the court granted summary decision in favour of the respondent reasoning that he was entitled to absolute immunity from a civil damages suit. This decision was upheld by the Court of Appeals.⁶⁶

On a further appeal to the Supreme Court, it was held that the action of the Judge in firing Ms. Forrester was not protected by judicial immunity.⁶⁷ It was reasoned by the court that although Judges have long enjoyed absolute immunity from liability in damages for their judicial or adjudicatory functions, yet true judicial acts of a judicial officer must be distinguished from the administrative, legislative, or executive functions which judicial officer may occasionally be assigned to perform by law.⁶⁸ Likewise, when a judicial officer is conscious of the fact that he

⁶⁰ 5 Johns. R 282 N.Y. 1810.

⁶¹ 435 US 349 (1978)

⁶² *Ibid* at pp. 355-364.

⁶³ 466 US 522 (1984).

⁶⁴ *Ibid* at pp. 528-543.

⁶⁵ 484 US 219 (1988).

⁶⁶ *Forrester v. White* (1986) 792 F.2d 647; *Forrester v. White* (1988) 846 F.2d 29 which are the Court of Appeals' decisions.

⁶⁷ *Forrester v. White* 484 US 219 at 223-230(1988).

⁶⁸ See also *Helen Jean Guercio v. Honourable George Brody* 814 F. 2d 1115 (1987) – Guercio was hired by Judge Brody as his personal and confidential secretary. Guercio, in the course of her employment, made various exposures regarding corruption in the Bankruptcy Court. Her disclosures culminated in the resignation of a bankruptcy judicial officer as well as the criminal convictions of an attorney and court clerk. Following her termination, she sued alleging wrongful termination of her employment. The substantive issue in the case was whether the Judges Brody and Feikens were acting in their judicial capacities in firing Guercio. Relying on the decision of *Stump v. Sparkman* (*supra*), it was held that the actions of the judicial officers were outside protected

lacks jurisdiction or he acts in the face of an obviously valid statutes which clearly deprives him of jurisdiction, he cannot claim to rely on judicial immunity.⁶⁹

Thus, it could be logically inferred from the above decided cases that there is no absolute judicial immunity in the United States of America, though there have been numerous efforts made in the Federal Congress, pressed mainly by the American Bar Association, to restore absolute judicial immunity in the American legal jurisprudence.⁷⁰

Tenure of office of the executive in Nigeria

Under the 1999 Constitution of the Federal Republic of Nigeria, the term of office of the President, Vice President, Governor and the Deputy Governor is for four years beginning from the date he subscribes to the Oath of Allegiance and the prescribed Oath of Office.⁷¹ At the Federal level, the Oath is administered by the Chief Justice of Nigeria or the person for the time being appointed to exercise the functions of that office.⁷² At the State level, the Oath is administered by the Chief Judge of the State or Grand Kadi of the Sharia Court of Appeal of the State or the President of the Customary Court of Appeal of the State or the person for the time being respectively appointed to exercise the functions of any of these offices in any State.⁷³ The executive office holder shall continue in office until his four-year term ends or until when his successor in office takes the oath of that office or he dies whilst holding such office,⁷⁴ or his resignation takes effect; or he otherwise ceases to hold office in accordance with the provision of the Constitution.⁷⁵ One of such constitutional instance that may abort the tenure of office of an executive office holder is removal or impeachment under sections 143 and 188 respectively of the 1999 Constitution on grounds of gross misconduct in the performance of the functions of the office. Although the Constitution gives the legislature the power to determine what in their opinion amounts to “gross misconduct,”⁷⁶ the courts have repeatedly

judicial acts and that the doctrine of absolute immunity does not extend to non-judicial acts of a judicial officer. See also *McMillian v. Svetanoff* 793 F. 2d 149 (7th Cir.), where it was also held that hiring and firing of employees is basically an administrative function, involving personal decisions rather than a judicial act.

⁶⁹ *Rankin v. Howard* (1980) 633 F.2d 844.

⁷⁰ Demosthenes Lorandos, “Immunity Broken.” Available at http://www.nfpacar.org/Legal/references/immunity_broken_abstract.htm. Accessed on 5 July 2016.

⁷¹ *Obi v. INEC* (2007) All FWLR (Pt. 378) 1116 at p. 1172. The 1999 Constitution, section 140(1) and Section 185(1). However, if the territory of Nigeria is physically involved in a war and it is not practicable to conduct elections, the National Assembly may by resolution extend the period from time to time but such extension shall not be more than six months at any given time, section 135(3) and section 180(3), respectively of the 1999 Constitution.

⁷² The 1999 Constitution, section 140(2).

⁷³ *Ibid*, section 185(2).

⁷⁴ As was the case of President Goodluck Jonathan stepping into the office of the President following the demise of former President Umaru Musa Yar'Adua.

⁷⁵ The 1999 Constitution, sections 135(1) and 180(1).

⁷⁶ Under the American Constitution, Article II Section 4 provides that the President and Vice-President are removable from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors. The grounds for impeachment in the American Constitution are more specific than the vague phrase in the Nigerian counterparts. The nebulous phrase, “gross misconduct” as exists in the Nigerian Constitution has given room to a lot of speculations as to what may constitute it. See for example *Inakoju v. Adeleke* (2007) All FWLR (Pt. 353) 3 at pp. 85-86, 146.

held that any impeachment by the legislature which does not follow the constitutionally led down procedures would be regarded as null and void.⁷⁷

Furthermore, the President, Vice-President, Governor or Deputy Governor may also cease to hold office on grounds of permanent incapacitation if by a resolution of two-thirds majority of the members of the Executive Council,⁷⁸ he is declared incapable of discharging the functions of his office due to infirmity of body or mind.⁷⁹ Such a resolution must be verified after a medical examination carried out by a medical panel appointed by the President of the Senate or the Speaker of the State House of Assembly (in the case of a Governor or his Deputy) comprising of five medical practitioners in Nigeria,⁸⁰ one of whom must be the personal physician of the office holder in question.⁸¹ Upon certification in the report by the medical panel that the executive office holder in question is suffering from such infirmity of body or mind as to render him permanently incapable of discharging the functions of his office, a notice signed by the Senate President and the Speaker of the House of Representatives, or at the State levels, by the Speaker of the State House of Assembly, shall be published in the official gazette and the holder of the office will cease to hold office from the date of publication of the notice.⁸²

However, in an attempt to forestall a re-occurrence of the political impasse faced by the country when the late President Yar'Adua travelled out of the country for over three months on grounds of health conditions without transmitting to the Senate President and the Speaker of the House of Representatives a written declaration that he was proceeding on a vacation or that he was otherwise unable to discharge the functions of his office, coupled with the failure of the Executive Council of the Federation to act in accordance with the requirement of section 144 of the 1999 Constitution, a new subsection (2) has been added to the provision of section 145 and section 190 of the 1999 Constitution in the amended Constitution.⁸³

By the amendment, it becomes mandatory for the President or a Governor of a State to transmit a written declaration to the legislature at the Federal or State level when going on either vacation or is otherwise unable to discharge the functions of his office. In the event that the President or the Governor is unable or fails to transmit the written declaration within 21 days, the Federal legislature or State legislature, whichever is applicable, shall by a resolution made by a simple majority of the vote of each House of the National Assembly authorise the Vice-President or Governor as either Acting President or Acting Governor until the substantive President or Governor transmits a letter to the Senate President, Speaker of the House of Representatives or Speaker of the House of Assembly that he is now available to resume his functions of the President or Governor.⁸⁴

⁷⁷ *Dapianlong v Dariye* (No. 1) (2007) All FWLR (Pt. 373) 1 at pp. 46, 78-79; *Dapianlong v Dariye* (No. 2) (2007) All FWLR (Pt. 373) 81 at pp. 129-131; pp. 136-137; *Inakoju v. Adeleke*, *op.cit*; *Adeleke v Oyo State House of Assembly* (2007) All FWLR (Pt. 345) 211; *Ekpenyong v Umana* (2010) All FWLR (Pt. 520) 1387

⁷⁸ This refers to the body of "Ministers of the Federation" at the Federal level and "Commissioners of the Government of the State" at the State level – see The 1999 Constitution section 144(5) and section 189(5).

⁷⁹ The 1999 Constitution section 144 (1) and section 189(1).

⁸⁰ Aside from the personal physician, the four other medical practitioners must have, in the opinion of the Senate President or Speaker of the House of Assembly attained a high degree of eminence in the field of medicine relative to the nature of the examination to be performed on the office holder in question.

⁸¹ The 1999 Constitution, section 144 (4) and section 189(4).

⁸² *Ibid*, section 144(2) and section 189(2)(3).

⁸³ The Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010, sections 14 and 20.

⁸⁴ *Ibid* sections 14(2) and sections 20(2).

Tenure of the legislature in Nigeria

The Senate, House of Representatives and the State House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House.⁸⁵ If the Federation of Nigeria is physically engaged in war and it becomes impracticable to hold elections, the National Assembly is empowered to make a resolution extending the period from time but not exceeding the period of six months at any given time.⁸⁶

Sections 68 and 109 of the 1999 Constitution provide for circumstances which may cause a member of a legislative house to vacate his seat before the expiration of the constitutional four years term. Thus, a member of a legislature may vacate his seat in the House if any of the factual situations stated in the section occur:

- (a) becomes a member of another legislative house;
- (b) circumstances arise which would disqualify him for membership of the House, had he not already become one;⁸⁷
- (c) ceases to be a citizen of Nigeria;
- (d) becomes the President, Vice President, Governor, Deputy Governor, a Minister, Commissioner of the government of a State or a Special Adviser;
- (e) becomes the member of a commission or other body established by the Constitution or any other law;
- (f) absents from meetings of the House without just cause⁸⁸ for more than one-third of the total number of days during which the House meets in any one year;⁸⁹
- (g) before the expiration of his tenure, he becomes a member of another political party other than the one that sponsored him.⁹⁰ However, where there is a division or factionalisation or a merger of two or more political parties with the original party that sponsored him, the Constitution permits him to cross-carpet; and
- (h) receipt by the head of the legislative house a certificate signed by the Chairman of the Independent National Electoral Commission (INEC) that a member has been recalled by a member's constituency either under section 69 or section 110 of the 1999 Constitution.⁹¹

⁸⁵ The 1999 Constitution, section 64(1) and section 105(1). The President or Governor is empowered by the Constitution to issue a proclamation for the holding of the First Session of the House – *Ibid*, section 64(3) and section 105(3).

⁸⁶ *Ibid*, section 64(2).

⁸⁷ For disqualification of membership, see section 66 and section 107 of the 1999 Constitution.

⁸⁸ A member of a legislative House is deemed to be absent without just cause from a meeting of the house 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 – see section 68(3) and section 109(3) of the 1999 Constitution. Also in *Akinwumi v Diете-Spiff* (1982) 3 NCLR 342, the court expressed the view that a “just cause” does not necessarily cover engaging in private work or profession contrary to the code of conduct.

⁸⁹ The 1999 Constitution requires a legislative house to sit for a period of not less than 181 days in a year – see sections 63 and 104 of the 1999 Constitution. See also *Oloyo v. B.A. Alegbe, Speaker Bendel State House of Assembly* (1983) 7 SC 85; (1985) 6 NCLR 61.

⁹⁰ *Attorney-General of the Federation v. Abubakar* (2007) All FWLR (Pt. 375) 405 at pp. 551-553.

⁹¹ It is worthy of note that for transparency sake, the signatures of the members of the constituency recalling a parliamentarian must be verified by INEC. However, how such verification would be carried out is not stated in the amended section of the Constitution. See the Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010, sections 3 and 9.

In the event that any of the above factual situations occur, the 1999 Constitution requires that the President of the Senate, the Speaker of the House of Representatives or the Speaker of the House of Assembly must first present satisfactory evidence to the House establishing that any of the above enumerated provision has become applicable in respect of the member.⁹² It would appear that on the authority of *Oloyo v. B.A. Alegbe, Speaker Bendel State House of Assembly*,⁹³ once the head of a legislative house has done this, the seat of the affected member automatically becomes vacant by operation of law. The Senate President or the Speaker can after the automatic ceasing of the term of the member following the happening of any of the event in section 68(1) and section 109(1) above and in pursuance of his enforcement of the constitutional provisions inform the member concerned either verbally or in writing as to the fact of that vacancy of his seat. The matter of his seat being vacant could also be brought to the attention of the affected member by any member of that legislative house or any member of his constituency or even of his own political party. The aggrieved member is at liberty to seek a remedy in the court. However, where the affected member refuses to withdraw honourably, the law allows the Senate President or the Speaker to use the services of the Sergeant-at-Arms to eject him.⁹⁴

It is instructive to note that there are no procedural steps laid down in the 1999 Constitution for the removal of principal officers of a legislative house such as the President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives, Speaker and Deputy Speaker of the House of Assembly. However, by Section 50 (2) and 92 (2) of the 1999 Constitution, the President or Deputy President of the Senate or the Speaker and Deputy Speaker of a House of Representatives or the Speaker and Deputy Speaker of a House of Assembly is to vacate his office under the following circumstances:

- (a) he ceases to be a member of the Senate or of the House or Representatives or the House of Assembly, as the case may be otherwise than by reason of a dissolution of the Senate or the House of Representatives House of Assembly;
- (b) when the House of which he was a member first sits after any dissolution of that House;
- (c) he is removed from office by a resolution of the Senate or of the House of Representatives or of the House of Assembly, as the case may be, by the votes of not less than two-thirds majority of the members of that House.⁹⁵

Compared to the detailed constitutional provisions set out for the removal of the executive office holders, the procedure for the appointment or removal of the principal officers of the legislative houses are left for the discretion of the members of the appropriate legislative House. This possibly accounts for why there is hardly any legal action instituted in the court by an

⁹² The 1999 Constitution, section 68(2) and 109(2).

⁹³ *Supra*.

⁹⁴ *Ibid*, p. 63.

⁹⁵ It is submitted that the membership contemplated of by the 1999 Constitution would be two-thirds majority of the totality of all the members constitutionally assigned for the respective legislative Houses – see *Dapialong v. Dariye* (No. 1), *op.cit*, at pp. 57-58; *Dapialong v. Dariye* (No.2) *op.cit*, at pp. 129-131. The purported removal of the Speaker of Ogun State House of Assembly, Mr. Tunji Egbetokun, by a faction of the House (nine members out of a total membership of twenty-six members of the House) which was less than the two-thirds majority required by the 1999 Constitution sometime ago was a mockery of the Constitution and accordingly null and void. Even recently, a similar action was taken by the members of the Kogi State House of Assembly which rocked the House into controversy and paved the way for the House of Representatives to take over its legislative functions pursuant to section 11(4) of the 1999 Constitution.

aggrieved impeached principal officer of a legislative house even when such impeachment are at times most embarrassing and unceremonious, like in the cases of former Senate Presidents, Late Senator Evans Enwerem and Senator Adolphus Wabara or former House of Representatives Speakers, Honourable Buhari and Honourable (Mrs.) Patricia Olubunmi Ette.⁹⁶ The current leadership of the Nigerian Senate is under pressure by some Nigerians to step down by reason of pending criminal charges in the courts of law and the Code of Conduct Tribunal.⁹⁷

Tenure of office of judicial officers in Nigeria⁹⁸

Under the 1999 Constitution, the security of tenure of office for judicial officers is protected. By section 291 thereof, the Chief Justice of Nigeria, Justices of the Supreme Court and the Court of Appeal may retire when they attain the age of sixty-five years and shall compulsorily vacate office on the attainment of seventy years of age. Other than these, other judicial officers like the Chief Judges, Judges, Grand Kadi and President and Judges of the Customary Court of Appeal, etc. may retire when they attain sixty years and shall automatically cease to hold office upon the attainment of sixty-five years.

However, by section 292 of the 1999 Constitution, a judicial officer may be removed from his office before his age of retirement upon the happening of the circumstances prescribed by the Constitution. Accordingly, both the Federal and State Judicial Service Commissions are empowered to recommend to the National Judicial Council (NJC) the removal from office of judicial officers.⁹⁹ It is on the strength of the recommendation that NJC may recommend to the President or the State Governor, whichever is applicable, for the removal from office of the affected judicial officers¹⁰⁰ on the ground of his “inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct¹⁰¹ or in contravention of the code of conduct.¹⁰²

In relation to removal of judicial officers before the retirement age at the Federal level, the President is required to act on an address supported by two-thirds majority of the Senate praying for the removal of the judicial officer based on the above stated ground. Within this fold are the Chief Justice of Nigeria and the various heads of the federal Courts listed under section 6 (5) of the 1999 Constitution and the National Industrial Court.¹⁰³ Other judicial officers of the Federal courts are removable by the President acting purely on the

⁹⁶ See Akin Ibidapo-Obe, “The Theory and Practice of Impeachment” in Lai Olurode (ed.) *Impeachment and the Rule of Law: The Future of Democracy in Nigeria*, (Lagos: Irede Printers Limited, 2007), pp. 50-52.

⁹⁷ The Senate President, Senator Bukola Saraki is facing criminal charges at the Code of Conduct Tribunal for false declaration of assets and also another criminal prosecution along with his Deputy, Senator Ike Ekweremadu, and some other workers in the National Assembly over forgery of the Senate Standing Rules 2011.

⁹⁸ See generally, E. M. Akpambang, “Nigerian Judiciary under the 1999 Constitution” *op.cit.*, p. 19.

⁹⁹ Section 13(b), Part I of the Third Schedule to the 1999 Constitution; section 6(b), Part II of the Third Schedule to the 1999 Constitution.

¹⁰⁰ *Ibid*, section 21(b)(d), Part I of the Third Schedule to the 1999 Constitution.

¹⁰¹ Recently, a High Court Judge was sacked for street fighting and assault contrary to Code of Conduct of Judicial officers as well as the Oath of Office he had subscribed to – See the *Punch*, Tuesday, March 16, 2010, p. 9, and *The Punch*, Thursday, May 13, 2010, p.8.

¹⁰² See Section 292(1) of the 1999 Constitution.

¹⁰³ See generally the Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010, sections 2 and 9.

recommendations of the NJC. At the State level, the Governor of the State is required to remove the heads of the judiciary listed as State courts under Section 6 (5) of the Constitution acting on an addressed supported by two-thirds majority of the House of Assembly praying for the removal of the affected judicial officer. Other State judicial officers are removable by the Governor acting on the recommendation of the NJC.¹⁰⁴

In the case of *Eri v. Kogi State House of Assembly*¹⁰⁵ the substantive issue was whether a State House of Assembly was clothed with power to investigate allegations of crime alleged against the State Chief Judge or remove him from office. The court pointed out that the body constitutionally empowered to exercise disciplinary control over judicial officers in Nigeria was the National Judicial Council (NJC). It went further to assert that it is only the NJC that is constitutionally charge with the responsibility to investigate any complaint or act of grave misconduct against any judicial officer and thereafter make necessary recommendations to the Governor. The purported removal of the judicial officer by House of Assembly was rightly declared unconstitutional, null and void.¹⁰⁶

CONCLUSION

The article has examined the tenures and immunities of office holders in the three arms of government in Nigeria. We have seen that unlike in the case of the executive office holders where the Constitution expressly provided for immunity from law suits regarding the President, Vice President, Governor and Deputy Governor, this is not the case with regard to the legislators and the judicial officers. The concepts of legislative and judicial immunities in Nigeria are derived from statutes and from the common law.

The 1999 Constitution, like its predecessors, does not even make reference to such concepts as judicial and legislative immunities. With respect to judicial immunity, Karibi-Whyte, J.S.C.(as he then was) made a desperate attempt to explain this omission in *Egbe v. Adefarasin*¹⁰⁷ when he stated that “it will seem that the provisions of the various High Court Laws by section 274 of the (1979) Constitution were deemed sufficient for the purpose of the protection of judges of superior courts.”¹⁰⁸ If the view expressed by His Lordship were correct, then it means thereof, that the principle of judicial immunity or legislative immunity which are products of “existing laws”¹⁰⁹ must not be found to be inconsistent with the Constitution failing which they would be declared unconstitutional, null and void to the extent of their inconsistencies.

The constitutionality of judicial immunity was raised in *Ogor v. Kolawole*.¹¹⁰ In that case, the Counsel to the applicant challenged the constitutionality of section 57(1) of the Magistrates’ Courts Law which guaranteed the judicial immunity for the 1st respondent, on the ground that it was inconsistent with some provisions of the erstwhile 1979 Constitution. The trial Judge, Ayorinde, J. held that the relevant section of the Magistrate Court Law was not

¹⁰⁴ The discriminatory approach in the removal of judicial officers under the 1999 Constitution has been condemned by a writer as such could directly or indirectly affect their tenure and independence – See Oluyede & Aihe, *Cases and Materials on Constitutional Law in Nigeria*, (Ibadan: University Press Ltd, 2003) pp. 425-426.

¹⁰⁵ (2009) All FWLR (Pt. 468) 343.

¹⁰⁶ *Ibid*, pp. 399-341; see *Governor of Ebonyi State v Isuama* (2004) 6 NWLR (Pt. 870) 511.

¹⁰⁷ (1985) 1 NWLR (Pt. 3) 549; ((185) 16 NSCC (Pt. 1) 643.

¹⁰⁸ *Ibid*, at p. 559.

¹⁰⁹ Section 315 of 1999 Constitution.

¹¹⁰ (1983) 1 NCR 342

unconstitutional.¹¹¹ It is therefore, necessary to incorporate the concepts of judicial and legislative immunities into the Constitution as is constitutionally done with regard to the executive office holders.

Moreover, there have been various calls for the removal of executive immunity from the Constitution as the same is seen as an engine of fraud and corruption. The proponents of this opinion have cited the example of United State of America where there are no similar immunity clause provisions in their Constitution. Tempting as these contentions have been, one must not forget in a hurry the rationale for granting an executive immunity, especially given the Nigerian political background. It is the view of this present writer that since the immunity clause under 308 of the 1999 Constitution does not prevent the person protected thereunder from police investigations for an allege crime, it therefore, means that the evidence emanating from such investigations may be useful for impeachment purposes if the legislative houses may have need of it.¹¹² What Nigeria needs consequently is a courageous legislature that would be willing to impeach a corrupt executive irrespective of political affiliations or leanings, and in the best interest of the country. In the words of Niki Tobi, J.S.C:

*... members should be most loyal to the Oath they took on that eventful day of their swearing in ceremony. On that, they swore or affirmed inter alia, to perform "my functions honestly to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and the rules of the House of Assembly (Senate/House of Representatives) and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria..." (Words in bracket supplied)*¹¹³

It is also necessary for the Constitution to expressly stipulate elaborately the procedure for the removal of principal officers in the parliament as is done with respect to the judiciary and the executive arms. This would forestall unnecessary speculations as to what constitutes impeachable offences for such officers as well as prevent avoidable political confusions which usually follow when minority members purport to remove the house leadership as were the cases in Ogun and Kogi States Houses of Assembly, respectively.

¹¹¹ This judgment has been criticised by a learned writer – see Abimbola A.Olowofoyeku, *op.cit*, pp. 1888, 189.

¹¹² In the impeachment of Joshua Dariye, former State Governor of Plateau State, a copy of a report detailing financial corruption on the part of the governors was forwarded to the House by the Economic and Financial Crime Commission. The House made use of that report in securing the impeachment of the Governor. Although the impeachment was subsequently nullified by the court for failure to comply with the constitutional procedure, yet the court never stated that the House was wrong in acting upon the EFCC's report – See *Dapianlong v Dariye*, *op.cit*. Also, cogent evidence of corrupt enrichments provided by the EFCC compelled an hitherto unwilling Bayelsa State House of Assembly to impeach Governor Alamieyeseigha-see Derin K. Olgbenla, "The Law of Impeachment and its Implication for Democracy," Impeachment and the Rule of Law, *op.cit*.pp.82-86.

¹¹³ *Inakoju v. Adeleke*, *op.cit* p.84. See also Seventh Schedule to the 1999 Constitution, "Oath of a Member of the National Assembly or a House of Assembly."