Constitutional Democracy and Local Government Transition Committees: An Appraisal of the Decision in Barr Jezie Ekejiuba V Governor of Anambra State & 2 Ors

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ABSTRACT:

This paper reviews the constitutionality of the Local Government Transition Committees set up by some states in Nigeria. This has become imperative in view of the agitations from various parts of the country both for and against such committees. Several judicial pronouncements have also emerged on the issue. This includes that recently made by the Anambra State High Court in the above-stated case, which forms the background of this work. This paper argues that the current constitutional framework operational in Nigeria does not recognize such bodies and thus they should be dissolved, since their creation is unconstitutional.

BACKGROUND:

By an Originating Summons dated 6th December 2010, the plaintiff sought, *inter alia*, for a declaration that in view of S. 1(2) and 7(1) of the 1999 C.F.R.N. (as amended), it is illegal and unconstitutional for the Governor of Anambra State or any of the defendants to appoint, deal with or recognize Local Government Transition Committees or Sole Administrators or Heads of Local Government Administration (as presently in place) or whatever name so called as the system of Local Government in any or all of the 21 Local Government Areas of Anambra State.

The case of the plaintiff was that considering S. 1(2) and 7(1) of the C.F.R.N. (as amended), the governing of the 21 Local Government Areas in Anambra State by any person or group of persons appointed by the defendants is unconstitutional, null and void. He also contended that the Anambra State House of Assembly has no competence to make any law empowering the defendants to make any such appointment. The defendants contended that the appointment of Local Government Transition Committees was made pursuant to the Local Government (Amendment) Law of 2002 and Local Government (Amendment No. 4) Law of 2010, which are

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[1] Unreported judgment of the High Court of Anambra State in Suit No. A/250/2010, delivered on 21st September, 2012 by Hon. Justice H.O. Ozoh.

laws made by the Anambra State House of Assembly in exercise of the legislative powers conferred on it by the constitution and is therefore valid.

In his judgment, the learned trial judge considered the provisions of the Local Government (Amendment) Law of 2002, S. 3 of the Local Government (Amendment No. 4) Law of 2010, S. 4(7) and S. 12 of Part II, 2nd Schedule to the 1999 C.F.R.N. (as amended) and held that the appointments of Local Government Transition Committees or Caretaker Committees or Heads of Local Government Administration (as is presently in place) or whatever name so called as the system of Local Government in the 21 Local Government Areas of Anambra State is in accordance with the Local Government (Amendment) Law of 2002 and Local Government (Amendment No. 4) Law of 2010. These laws are not inconsistent with S. 1(2) and 7(1) of the 1999 C.F.R.N. (as amended) or any other section of the Constitution.

CONSTITUTIONAL DEMOCRACY:

The essence of governance to a great extent is to achieve the ultimate good of the people governed. So far, no form of government practiced in the organization of human societies has attained this goal as much as one limited under a constitution that has the force of supreme overriding law.[2] Basically, this form of government, otherwise recognized as constitutional democracy, connotes a system of government based on popular sovereignty in which the structures, powers and limits of government are set forth in a constitution.[3]

Professor B.O Nwabueze (S.A.N.), who has subjected the concept of constitutional democracy to considerable thought, states that the concept was established to limit the arbitrariness inherent in government and to ensure that its powers are used for public good. In Nwabueze's view,

> *Government is a creation of the constitution. It is the constitution that creates the organs of government, clothes them with their powers, and in so doing delimits the scope within which they are to operate. A government operating under such a written constitution must act in accordance therewith; any exercise of power outside the constitution or which is unauthorized by it is invalid. The constitution operates therefore with a supreme, overriding authority.* [4]

By contrast, government in a regime of personal rule is uncertain and problematic because it is largely contingent on men, upon their interests and ambitions, their

[2] A.E. Obidimma, *"The Impact of the Judiciary on the Nigerian Constitutional Democracy"*, **(2011) Unizik Law Journal Vol. 8 No. 2, p. 288.**

[3] *Ibid.*, p. 289.

[4] I. Sagay, *"The Rule of Law and Democratic Culture"*, **(2012) The Advocate, International Journal of the Law Students' Society, O.A.U., Ile Ife, Vol. 30, pp. 52-53.**

desires and aversions, their hopes and fears and all other predispositions that the political animal is capable of exhibiting and projecting upon political life, and further because it is restrained, to the extent that it is restrained at all, only by private tacit agreements, prudential concerns and personal ties - and dependencies, rather than by public rules and institutions.[5] Thus in constitutional democracy, the constitution is the source of power wielded by government over people. Under a written constitution as supreme law, government has no more powers than are granted to it, either expressly or impliedly, by the constitution, and any exercise by it of power not so granted to it is unconstitutional and void.[6] The above principles are enshrined in the provisions of S. 1(1) and (3) of the C.F.R.N. (as amended) which provides as follows:

> *This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria… If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.*

Elucidating the import of the above provision to fatality, the apex court, in **A.G-Ondo State v A.G-Federation & 35 Ors,**[7] stated that "*the Constitution is an organic instrument which confers powers and also creates rights and limitations. All agencies of government …stand in relationship to the Constitution to the extent it permits of their existence and functions… In the Constitution of the country, all the provisions for the governance of the Nigerian nation have been set out.*" Indeed, Niki Tobi J.C.A. (as he then was), in **Phoenix Motors v N.P.F.N.B**,[8] opined that "*the Constitution is the highest law of the land. All other laws bow or kowtow for salvation before it. No law which is inconsistent with it can survive; that law must die for the good of the society.*"

LOCAL GOVERNMENT SYSTEM UNDER THE 1999 CONSTITUTION:

The concept of local government in Nigeria is traceable to S. 3(6) of the C.F.R.N. (as amended) which provides that "*there shall be 768 Local Government Areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule.*" S. 7(1) of the C.F.R.N. (as amended)

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[5] *Ibid.*

[6] *Ibid. c.f.* B.O. Nwabueze, **Judicialism and Good Governance in Africa**, Nigerian Institute of Advanced Legal Studies, 2009, p. 8-9.

[7] **(2002)9 N.W.L.R. [pt. 722] p. 222.** Also see the cases of **F.R.N. v Ifeagwu (2003)15 N.W.L.R. [pt. 842] p. 113 @ 184; I.N.E.C. & Anor v Musa & 4 Ors (2003)3 N.W.L.R. [pt. 806] p. 72 @ 157; A.G-Abia State & 35 Ors v A.G-Federation (2002)6 N.W.L.R. [pt. 763] p. 264 @ 479; Adisa v Oyinwola (2002)10 N.W.L.R. [pt. 674] p. 116 @ 191.**

[8] **(1993)1 N.W.L.R. [pt. 272] p. 718 C.A; Kalu v Odili (1992)5 N.W.L.R. [pt. 240] p. 130 @ 188 S.C; National Assembly v President (2003)9 N.W.L.R. [pt. 824] p. 104 C.A; Liyanage v The Queen [1967] A.C. 259; Marbury v Madison 5 U.S. 137 [1803]; Harris v Minister of Interior [1952]1 A.C. 428; Bribery Commissioners v Ranasinghe [1965]2 All E.R. 785 P.C.**

provides that "*the system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.*"

In **Barr Anthony Towoju & Ors v Governor of Kwara State & Ors,**[9] it was held that where the words used in the Constitution are clear and unambiguous, the natural grammatical and ordinary meaning should be ascribed to them. This is in view of the fact that the object of interpretation of the Constitution or any other statute is to discover the intention of the law-maker, and this intention is only deducible from the language used.[10] Indeed, it is trite law that a statute should be construed as a whole and should be given an interpretation consistent with the object and general context of the entire statute.[11] Thus, in arriving at the true import of the above provisions, other relevant provisions must also be considered. S. 4(1) of the C.F.R.N. (as amended) provides that "*the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.*" S. 4(6) provides that "*the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.*" Paragraph 11 of Part II of the 2nd Schedule to the Constitution provides that "*the National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council.*" Paragraph 12 of Part II of the 2nd Schedule to the Constitution provides that "*nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any made by the National Assembly.*"

Juxtaposing the relevant provisions of the Constitution above stated, and more especially considering the meaning of the term '*guarantee*' as given by the Blacks' Law Dictionary,[12] *(i.e. the assurance that a contract or legal act will be performed),* the natural meaning to be ascribed to S. 7(1) of the C.F.R.N. (as amended) is that the 768 Local Government Areas created by S. 3(6) of the Constitution **shall** always be governed by democratically elected leaders. The Constitution pledges itself by giving the assurance that such elections will always be held. To this end, paragraph 11 and 12 of Part II of the 2nd Schedule to the Constitution authorizes the legislature (i.e. both the National Assembly and the State Houses of Assembly) to employ the

[9] **(2005)18 N.W.L.R. [pt. 957] p. 333 C.A.** Also see the cases of **A.G-Bendel State v A.G-Federation & Ors [1981] 10 S.C. 1; Awuse v Odili (2005)16 N.W.L.R. [pt. 952] p. 426 C.A.** Indeed, the Constitution must not be construed in a manner as to frustrate or defeat the obvious intention of its makers – **Okeahialam v Nwamara (2003)12 N.W.L.R. [pt. 835] p. 597.**

[10] **A.G-Kaduna State v Hassan (1985)2 N.W.L.R. [pt. 8] p. 483.**

[11] **P.D.P. v I.N.E.C. (1999)11 N.W.L.R. [pt. 626] p. 200; S.P.D.C. v Isaiah (1997)6 N.W.L.R. [pt. 508] p. 236; Omoijahe v Umoru (1999)8 N.W.L.R. [pt. 614] p. 178 @ 188.**

[12] B.A. Garner, **Blacks' Law Dictionary (Abrd. 8th ed.),** Thomson West, St. Paul-Minnesota, 2005, p. 585.

legislative powers conferred on them by S. 4 of the Constitution to make laws towards fulfilling this solemn pledge of always providing, at all times, a democratically elected leadership for the local government councils. This solemn pledge is constitutionally sealed in S. 1(2) of the C.F.R.N. (as amended) which provides that "*the Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.*" This interpretation is reinforced by the judgment of the Court of Appeal in the case of **Barr Enyinna Onuegbu & 26 Ors v Attorney General of Imo State & 3 Ors,**[13] which declared the action of the Governor of Imo State in purporting to dissolve the democratically elected Local Government Councils in the State before the expiration of their constitutionally guaranteed tenure as illegal and unconstitutional. In a unanimous judgment, the court which was presided over by Justice Uwani Abbaji, stressed that the governor lacked the powers to sack elected governments at the third-tier of governance in the state, and also nullified the appointment of Transition Committee Chairmen by the governor to replace the sacked council chairmen.

Indeed, the legislative powers provided for under S. 4 of the Constitution is not a blanket power but is strictly to be applied towards attaining constitutional objectives, in view of the rule that the legislature has no inherent powers, to make laws outside the clear provisions of the Constitution.[14] Indeed, any attempt by the legislature to employ the powers conferred on it under S. 4 of the Constitution to make a law that will under any circumstance permit the local government councils to be governed otherwise than by democratically elected leaders will be inconsistent with S. 7(1) of the Constitution and to that extent void.

BARR JEZIE EKEJIUBA v GOVERNOR OF ANAMBRA STATE & 2 ORS REVIEWED:

Even at risk of prolixity, it will be recalled that the plaintiff in the case under review had called on the High Court of Anambra State to interpret the provisions of S. 1(2) and 7(1) of the 1999 C.F.R.N. (as amended) and thereon pronounce on the constitutionality or otherwise of the appointment of Local Government Transition Committees to head the 21 Local Government Areas in Anambra State. The court, *coram* Hon. Justice H. O. Ozoh, held that the appointment was validly done under the Local Government (Amendment) Law of 2002 and S. 3(A)(2) of the Local Government (Amendment No. 4) Law of 2010 which provides thus:

[13] Unreported judgment of the Court of Appeal, Owerri Judicial Division in Appeal No. CA/OW/215/2011, delivered on the 5th of July, 2012.

[14] In A.G-Abia State v A.G-Federation (2002)6 N.W.L.R. [pt. 763] p. 300 S.C., the apex court held that the National Assembly has no inherent power to make laws. It is a creation of the Constitution and it can only exercise such powers as are conferred on it by the Constitution.

> *"Where an emergency or any other situation arises which makes impossible the holding of local government elections within the period stipulated under the principal as amended, the Governor shall, in respect of each Local Government Area in the state, nominate and forward to the House of Assembly a list of not less than five (5) persons to be considered for appointment into a Transition Committee, provided that such persons are qualified to vote or be voted for in that Local Government Area."*

The court also held that this law was made by the Anambra State House of Assembly under the powers conferred by S. 4(7) and paragraph 12 of Part II of the 2nd Schedule to the Constitution and that these laws are not inconsistent with S. 1(2) and 7(1) of the Constitution or any other section thereof.

Laudable as the logic in this decision may seem, it is our humble submission that the learned trial judge erred in law when he failed to pronounce on the import of S. 1(2) and 7(1) of the Constitution throughout the 11-page judgment. Rather, the court misdirected itself by embarking on an a voyage of its own to interpret S. 4(7) and paragraph 12 of Part II of the 2nd Schedule to the Constitution and the provisions of the Local Government (Amendment) Laws.

It is trite law that though Schedules are useful in interpretation of statutes, they cannot override the express provisions in the main part of the Statute.[15] Moreso, by virtue of S. 1(1) & (3) of the Constitution, any other law that is inconsistent with the Constitution is null and void. If the learned trial judge had adverted his mind to this rules, perhaps he would have realized that any purported application of the legislative powers conferred by S. 4 to enact a law under paragraph 12 of Part II of the 2nd Schedule to the Constitution in a manner inconsistent with the express provisions of S. 1(2) and 7(1) of the Constitution renders the law so enacted null and void. This is the full import of the dictum of Hon. Justice Niki Tobi in the **Phoenix Motors' case.**[16] To hold otherwise means that, without prejudice to the provisions of S. 305 of the Constitution which deals with the proclamation of a state of emergency, the National Assembly is entitled to employ the legislative powers conferred on it by S. 4 of the Constitution, to enact a law under paragraph 22 of Part I of the 2nd Schedule to the Constitution, authorizing the President, when it appears impossible to hold Governorship elections *(whatever that might mean)*, to appoint a person as Governor provided the person is qualified to vote and be voted for in that state. This clearly cannot be a true reflection of the General Will of the people of Nigeria as codified in the Constitution.

[15] **Egolum v Obasanjo [1999]5 S.C.N.J. 120**
[16] *Supra.*

CONCLUSION:

Constitutional government recognizes the necessity for government but insists upon a limitation being placed upon its powers. It is the antithesis of arbitrary rule, which connotes government conducted not according to predetermined rules, but according to the momentary whims and caprices of the rulers. The Nigerian State is predicated on the principle of constitutional democracy, one of the postulates of which is the doctrine of constitutional supremacy. All persons, including the agencies of government must kowtow in obeisance to the dictates of the Constitution. Since the Constitution does not recognize the concept of Local Government Transition Committees as is currently in place in most states of the Federation, a call is hereby made for the immediate dissolution of all such illegal bodies. Again, the legislature must refrain from exercising its law-making powers in a manner inconsistent with the Constitution, considering the fact that the principle of legislative supremacy[17] is unknown to the Nigerian legal system. The courts must also be vigilant and not hesitate to exploit any opportunity that presents itself through the cases to insist that the dictates of the Constitution must be sanctimoniously obeyed. This is the only antidote against arbitrariness, impunity and anarchy for any society.

References:

1. Koehn, P. (1989). Competitive Transition to Civilian Rule: Nigeria's First and Second Experiments. *Journal of Modern African Studies*, *27*(3), 401-430.
2. Oyediran, O., & Agbaje, A. (1991). Two-partyism and democratic transition in Nigeria. *Journal of Modern African Studies*, *29*(2), 213-235.
3. Sklar, R. L. (2004). *Nigerian political parties: Power in an emergent African nation*. Africa World Press.

[17] This is the principle that the legislature is superior to any law, including the Constitution since it reserves the power to amend same. This principle cannot hold in Nigeria where even the powers of the legislature to amend the Constitution must be exercised in the manner provided by S. 9 of the Constitution itself or else, any such purported amendment will be null and void.