

SUPREME COURT OF NIGERIA
15TH DECEMBER. 2006. SC. 166/2004
CORAM:- S. U. ONU, D. MUSDAPHER, G. A. OGUNTADE,
M. A. MUKHTAR, F. F. TABAI, JJSC

1. THE GOVERNOR OF KWARA STATE
2. THE ATTORNEY-GENERAL & APPELLANTS/
COMMISSIONER FOR JUSTICE APPLICANTS
KWARASTATE
AND
1. ALH. ISSA OJIBARA
2. ALH. ISSA RAJI
3. MR. JOHNSON AINA
4. ALH. ABDULLAHI BERENDE RESPONDENTS
5. ALH. MAHMUD YARU
6. MR. M. O. TITILOYE
7. MR. MAMEEN YUSUF

CONSTITUTIONAL LAW - Amendment of Constitution - Duty of court
- Courts cannot amend the Constitution - Though they may introduce
change - Through interpretation of its words (H1)

ELECTIONS - Electoral commissions - Tenure of members - It is not
the intendment of the Constitution - That membership of electoral com-
missions - Should change with fortunes of political parties (H2)

ELECTIONS - Electoral commissions - Removal of members - Grounds
for - The ground on which the respondents were removed - Is not one
of the grounds recognized by the Constitution (H3)

INJUNCTIONS - Propriety of - Completed act - After an improper re-
moval from office - Where the office is protected by law - Injunctive
order could still lie - As such removal is null and void (H4)

FACTS

The Plaintiffs/Respondents sued the Defendants/Appellants at the High Court for sundry declarations, orders and injunctions, the effect of which was to challenge the dissolution of the Kwara State Independent Electoral Commission by the Appellants. The case of the Respondents was that they were appointed as members of the Electoral Commission on 27/11/2001, with the 1st Respondent as Chairman of the Commission. Under s. 199 of the 1999 Constitution, their tenure of office is five years. However, on 10/06/2003, the Appellants, by a letter, communicated to the respondents, the dissolution of the commission with immediate effect. Respondents were directed to hand over the commission's property in their custody. Though the constitution provides for the removal from office of members of such commission, it provides for such removal only for specified reasons. Those reasons are inability to discharge the functions of the office or misconduct. This notwithstanding, the text of the resolution of the State House of Assembly removing the Respondents only vaguely stated that Respondents' "activities left much to be desired".

After hearing, the learned trial judge, curiously, dismissed the action of the Respondents. Dissatisfied, Respondents appealed to the Court of Appeal which unanimously allowed the appeal. That court set aside the judgment of the High Court and nullified the purported dissolution of the Electoral Commission. It is against that judgment of the Court of Appeal that the Appellants have now appealed to the Supreme Court. It is argued for the Appellants that the Appellants have power under s.201 of the 1999 Constitution to dissolve the commission as they did.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right to have held that the removal of the respondents herein as Chairman and member of the Kwara State Independent Electoral Commission by the 1st appellant was unconstitutional, null and void and of no effect.

2. Whether the Court of Appeal was right to have granted all the reliefs claimed by the respondents in the special circumstances of this

case.”

HELD (Unanimously dismissing the appeal per **OGUNTADE JSC**)
Courts cannot amend the Constitution

1. A court has no duty to amend the Constitution. In *Bendel State v. The Federation* [1981] 10.S.C. 1 at 134, this Court per Obaseki JSC observed:

“Courts, it must be emphasized cannot amend the Constitution. They cannot change the words. They must accept the words, and so far as they introduce change it can come only through their interpretation of the meaning of the words which change with the passage of time and age.”
(p. 3689 H)

Electoral commissions - Tenure of members

2. The tenure of the governor of a State under the 1999 Constitution as well as that of the State legislature is four years. The Constitution however grants the members of a State Independent Electoral Commission, a tenure of five years. It ought not to escape attention that the deliberate purpose of the Constitution is to create an Electoral Commission, the life-span of which exceeds those of both the governor and the State Legislature. This is done with a view to create continuity and stability in the electoral process and governance. The same is done in relation to the State Civil Service Commission and the State Judicial Service Commission. It is not the intendment of the Constitution that the membership of those commissions should change with the fortunes of the political parties in a State.

This explains why section 200 of the Constitution provides stringent conditions for qualification for appointment as members of the three commissions mentioned. (p. 3690 B)

Electoral commissions - Removal of members

3. I have reproduced above the terms of the resolution of the Kwara State House of Assembly by which the respondents were removed from office. The ground relied upon was “activities much.... to be desired as

exemplified by their inglorious acts.” If one may ask, what is the meaning of this strange expression? Certainly, it does not amount to an inability to discharge the functions of the office or to a specific misconduct. The court below was firmly in the right to have reached the conclusion B that the removal of the respondents from office was not as provided under the 1999 Constitution of Nigeria. (p. 3691 A)

INJUNCTIONS - Propriety of

C 4. Under the second issue for determination, the argument of appellants’ counsel is that an injunctive order was not available to restrain an act that had been completed.

In Eperokun v. University of Lagos [1986] 4 NWLR (Part 34) 162 at 201, this Court relied on the observation of Viscount Kilmuir in D Vine v. National Dock Labour [1957] A.C. 488 at pp. 499/500 for its views that an improper removal from an office specially protected by Law would be deemed a null act. Viscount Kilmuir said:

“I now turn to the striking out of the declaration made by E Ormerode J..... First it follows from the fact that the plaintiff’s dismissal was invalid that his name was never validly removed from the register and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case, F there if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively determined, albeit in breach of contract. Hence, the removal of the plaintiff’s name from the register, being in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by G statute that status conferred on him. It is therefore right with the background of this scheme, the court should declare his rights.”

It is important to bear in mind that we are here concerned with the infraction of a constitutional provision. (pp. 3691 D/ 3692 A/3693 C) H

NOTABLE POINT OF INTEREST

TABAIJSC

1. Respondents cannot be removed based on the general interest of the

people

The Court of Appeal made a thorough appraisal of the affidavit evidence and a most comprehensible analysis of the provisions of section 201(1) of the 1999 Constitution. At page 98 of the record of appeal the Court of Appeal per JA' AFARU MIKA' ILU JCA summarized the reasons for the removal of the Respondents as follows:-

"(1) The activities of these commissions left much to be desired as exemplified by their inglorious acts.

(2) The over all interest of the generality of Kwarans is upper most in the minds of the present administration"

Commenting on these reasons the learned Justice said:

"Nobody knows what 'activities' as above were which could be said to have left much to be desired. There is not even a single point or to what acts of the Appellants could be said to be inglorious."

Continuing he said:-

"Section 201(1) of the Constitution does not provide for removal of the Appellants based on "the general Interest" of the people of a state as in the mind of the Administrator." The learned counsel for the Respondent has urged this court to consider the question of change of policy without clarification. The Constitution itself has not provided for the removal of the Appellant based on change of policy..."

I agree entirely with the above reasoning and conclusion and hereby wholly adopt same. The protection afforded the Respondents by the Constitution cannot just be wished away by the sheer whims and caprices of those in authority. (p. 3696 E)

REPRESENTATION

Jimoh Adebimpe Mumini Esq. (D.P.P. Kwara State) for the Appellants.
Chief Titus O. Ashaolu S.A.N. (Abiodun Dada Esq. with him) for the Respondents.

CASES REFERRED TO

Bendel State v. The Federation [1981] 10.S.C. 1 at 134
Ajewole v. Adetimo [1996] 2 NWLR (Pt.431)

Eperokun v. University of Lagos [1986] 4 NWLR (Part 34) 162 at 201
Viscount Kilmuir in Vine v. National Dock Labour [1957] A.C. 488 at pp.
499/500

Bashir Alade Shitta-Bey v. The Federal Public Service Commission [1981]

B 1 S.C. 26 at 39

Olaniyan v. University of Lagos [1985] 2 NWLR 599

Hodge v. ultra Electric Ltd. (1943) 1 KB 462 at 466

William Dixon Ltd. V. Patterson (1943) S.C. (J) 78 per Lord Copper at
85

C

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 197, 199, 201,
205.

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LEAD JUDGMENT BY OGUNTADE JSC

The simple question to be answered in this judgment is: In what
circumstances are the Chairman and members of a State Independent
Electoral Commission removable from office? Section 201(1) and (2) of
the 1999 Constitution which governs the procedure for such removal
provides thus:

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*“201 - (1) Any person holding any of the offices to which this
section applies shall only be removed from that office by the Governor of
that State acting on an address supported by two-thirds majority of the
House of Assembly of the State praying that he be so removed for inability
to discharge the functions of the office (whether arising from infirmity
of mind or body or any other cause) or for misconduct.”*

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*(2) This section applies to the offices of the Chairman and
members of the State Civil Service Commission, the State Independent
Electoral Commission and the State Judicial Service Commission.”*

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A careful reading of section 201 above reveals that the section
only provides two grounds for the removal of the chairman and members
of the three commissions mentioned in sub-section (2) of section
201. The grounds are:

“(1) Inability to discharge the functions of the office (whether

arising from infirmity of mind or body or any other cause)

(2) Misconduct.

Under the first ground above, the Constitution attempts, in the phrase under brackets, to explain the nature of the occurrences which may result in the inability to discharge the functions of the office. Another way to couch the ground in my view is ‘Inability to discharge the functions of the office for any cause’ or for infirmity of mind or body. It seems to me that the essence and effect of the ground is that the holder of the office is removable if for any reason, he is unable to discharge the functions of the office. The mention of ‘infirmity of mind or body’ is a manner of expressing that health indisposition will not be accepted as excuse for the inability to discharge the functions of the office. This is because the phrase ‘any other cause’ is embracive and much more extensive in scope than infirmity of mind or body.

With the above in the background, it is apposite to now consider the facts leading to the dispute out of which this appeal arose.

The respondents were the plaintiffs at the Ilorin High Court of Kwara State. They issued an originating summons against the appellants (as the defendants) claiming the following reliefs:

“1. A declaration that the purported dissolution of the State Independent Electoral Commission and termination of the Plaintiffs appointments as Chairman and members by the Defendants is unlawful, wrongful, illegal, unconstitutional, ultra vires, null and void and of no effect whatsoever.

2. A declaration that the letter dated 10/6/2003 written by the Defendants to the Plaintiffs conveying the dissolution of the Commission is wrongful, unlawful, illegal, unconstitutional ultra vires, null and void and of no effect whatsoever.

3. An order setting aside the purported dissolution of Kwara State Independent Electoral Commission.

4. An order of injunction restraining the Defendants from dissolving the Kwara State Independent Electoral Commission or terminating the appointments of the Plaintiffs as Chairman and members respectively until their 5 years tenure as guaranteed by the 1999 Constitution.

5. *An order re-instating the Plaintiffs as Chairman and members of the Kwara State Independent Electoral Commission.*”

The questions they wished the High Court to answer are these:

B “1. *Whether the Defendants who are the Executive Governor of Kwara State and the Chief Law Officer of the State have the powers to dissolve the Kwara State Independent Electoral Commission and thereby relieve the Plaintiffs of their appointments having regard to S. 197 and 199 of the 1999 Constitution of the Federal Republic of Nigeria.*

C “2. *Whether the Defendants are not bound by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 in their decisions and actions.*

D “3. *Whether the dissolution of the Kwara State Independent Electoral Commission and termination of the appointment of the Plaintiffs as chairman and members respectively was a violation of the provisions of S. 197 of the 1999 Constitution of Nigeria and thereby ultra vires and null and void.*

E “4. *Whether the letter dated 10/6/2003 written to the Plaintiffs severally by the secretary to the Kwara State Government acting for the Defendants is not ultra vires, null and void.*”

F The relevant facts are these. The respondents were appointed as members of the Kwara State Independent Electoral Commission on 27/11/2001. The 1st respondent was appointed the Chairman of the Commission. Under Section 199 of the 1999 Constitution of Nigeria, they were to enjoy a tenure of five years. However on 10-6-2003, the appellants by a letter of that date, communicated to the respondents, the dissolution of the commission with immediate effect. The respondents were directed to hand over the Commission’s properties in their custody.

G In these circumstances, the respondents issued an originating summons claiming as earlier stated in this judgment. Parties filed affidavit evidence. The counter-affidavit filed by the appellants revealed their supposed defence to the suit. Paragraphs 6-9 of the counter-affidavit read:

“6. *that on 4th day of June 2003, an address by the Executive Governor of the State was delivered on the floor of the House of Assembly on the need for dissolution of the Civil Service Commission, Judicial*

Service Commission and the State Independent Electoral Commission.

7. *That on the 5th day of the June 2003 the Executive Governor of the State delivered another address urging for a resolution of the House of Assembly to remove all the members of the Commission referred to in the preceding paragraph. A certified true copy of the said address is attached as exhibit MOJ 1.* B

8. *That consequent upon the Executive Governor's address a resolution of the State House of Assembly was passed on the 5th day of June 2003 with a two third majority removing the members of all the said Commissions. A certified true copy of the said resolution is hereby attached as Exhibit MOJ. 2.* C

9. *That I know as a fact that the members of the aforementioned commission were removed based on the address of the Executive Governor of Kwara State on 5th June 2003."* D

The resolution passed by the Kwara State House of Assembly on 5-6-03 removing the respondents from office reads:

"Whereas the established Statutory Commissions were set up to conform with the provisions of the Constitution of the Federal Republic of Nigeria, 1999." E

"Whereas the activities of those Commissions left must to be desired as exemplified by their inglorious acts and"

"Whereas the overall interest of the generality of Kwarans is uppermost in the minds of the present administration; F

And in view of the address of the State Governor requiring members of this house to support the removal of the appointed members of the Statutory Commissions;

This Hon. House is hereby called upon to invoke the provisions of Section 201(1) of the Constitution of the Federal Republic of Nigeria, 1999 and act as follows:- G

(i) That the Executive governor of the State should remove forthwith the appointed members of the Statutory Commissions namely: H
State Civil Service Commission;

State Judicial Service Commission; and

The State Independent Electoral Commission;

(ii) *That the State Governor should appoint people of proven integrity as new members of the Commissions.'*

Hon. Kayode Abdulwahab-Omotose

(Ilorin North)

Majority Leader"

B The letter written to the respondents on 10-6-2003 removing them from office reads:

"OFFICE OF THE SECRETARY TO THE STATE GOVERNMENT

C *Ref. No. S/POL./14B/I/49,
GOVERNOR'S OFFICE,
P.M.B.1378
ILORIN,*

D *KWARA STATE
10th June, 2003
Alhaji Issa Ojibara,
State Independent Electoral Commission,
Ilorin.*

E *DISSOLUTION OF STATUTORY COMMISSIONS IN THE STATE*

In accordance with the Powers conferred on him by the 1999 Constitution as well as the Resolution of the newly inaugurated Kwara State House of Assembly, I am directed to convey the approval of His Excellency, Dr. Bukola Saraki the Executive Governor of Kwara State for the dissolution of the Statutory Commissions in the State with immediate effect. In line with this, you are to hand over all government properties in your custody to the Permanent Secretary or Secretary of your Commissions as the case may be.

I am to similarly express the gratitude's of the State Government to you on your contributions to the development of the State during your tenure and wish you all the best in your future endeavours.

Thanks.

Engr. Idris Gana Umar

Secretary to the State Government"

The case was heard by Ibiwoye J. On 8/9/2003, the learned judge in his ruling concluded in these words:

“On the other hand I agree with the learned Attorney-General that section 201(1) of the Constitution of the Federal Republic of Nigeria, 1999 is very appropriate in this case. For the purpose of clarity section 201(1) of the Constitution provides:-

201(1) Any person holding any of the offices to which this section applies shall only be removed from that office by the Governor of that State acting on an address supported by two-third majority of the House of Assembly of the State praying that he be so removed of inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause or for misconduct.’

The definition of “any other” cause is not included in section 205 of the Constitution of the Federal Republic of Nigeria, 1999. However it is my candid opinion that ‘any other cause’ includes the Governor’s power to remove the chairman and members of the Kwara State Independent Electoral Commission.”

The respondents were dissatisfied with the ruling of the High Court. They brought an appeal before the Court of Appeal, Ilorin (hereinafter referred to as ‘the court below.’) On 21-4-04, the court below, in its unanimous judgment allowed the appeal. The ruling of the High Court was set aside and the reliefs claimed by the respondents granted. The appellants have now brought a final appeal before this court. They raised two issues for determination, namely:

“1. Whether the Court of Appeal was right to have held that the removal of the respondents herein as Chairman and member of the Kwara State Independent Electoral Commission by the 1st appellant was unconstitutional, null and void and of no effect.

2. Whether the Court of Appeal was right to have granted all the reliefs claimed by the respondents in the special circumstances of this case.”

Let me preface my approach to the issues by stating that **a court has no duty to amend the Constitution. In Bendel State v. The Federation [1981] 10.S.C. 1 at 134, this Court per Obaseki JSC ob-**

served:

“Courts, it must be emphasized cannot amend the Constitution. They cannot change the words. They must accept the words, and so far as they introduce change it can come only through their interpretation of the meaning of the words which change with the passage of time and age.”

The tenure of the governor of a State under the 1999 Constitution as well as that of the State legislature is four years. The Constitution however grants the members of a State Independent Electoral Commission, a tenure of five years. It ought not to escape attention that the deliberate purpose of the Constitution is to create an Electoral Commission, the lifespan of which exceeds those of both the governor and the State Legislature. This is done with a view to create continuity and stability in the electoral process and governance. The same is done in relation to the State Civil Service Commission and the State Judicial Service Commission. It is not the intendment of the Constitution that the membership of those commissions should change with the fortunes of the political parties in a State.

This explains why section 200 of the Constitution provides stringent conditions for qualification for appointment as members of the three commissions mentioned. In particular, I bear in mind section 202 of the Constitution which provides:

“202 In exercising its power to make appointments or to exercise disciplinary control over persons the State Civil Service Commission, the State Independent Electoral Commission and the State Judicial Service Commission shall not be subject to the direction and control of any other authority or person.”

The result is that the members of these commissions are expected to be independent and unbiased in their day to day judgment of affairs and events.

I have said this much in the hope that all players in the field of politics will imbibe the culture of paying due reverence and regard to the provisions of the Constitution. This has become necessary because in

these times there is an unrestrained inclination to disregard the Constitution and treat its terms with irreverence and disrespect. The Constitution is the very foundation and structure upon which the existence of all organs of governance is hinged. It must be held inviolable.

I have reproduced above the terms of the resolution of the Kwara State House of Assembly by which the respondents were removed from office. The ground relied upon was “activities much.... to be desired as exemplified by their inglorious acts.” If one may ask, what is the meaning of this strange expression? Certainly, it does not amount to an inability to discharge the functions of the office or to a specific misconduct. The court below was firmly in the right to have reached the conclusion that the removal of the respondents from office was not as provided under the 1999 Constitution of Nigeria.

Under the second issue for determination, the argument of appellants’ counsel is that an injunctive order was not available to restrain an act that had been completed. Counsel relied on *Ajewole v. Adetimo* [1996] 2 NWLR (Pt.431) where this court said:

“Where a court is asked to restrain a party from doing an act pending the decision in a matter before it, but the act has been done, no order to restrain will be made. This is so because what is sought to be prevented had happened.”

I think, with respect to the appellants’ counsel that the reliance he placed on *Ajewole v. Adetimo* (supra) is inapposite. The issue in that case was whether or not a chief who had been installed in office could be restrained from occupying the office before the conclusion of the substantive suit. The appeal that came before this Court was upon an interlocutory application to restrain the chief from acting which said application had been refused by the High Court and the Court of Appeal. In the instant case, the court below found that the respondents were removed from office in flagrant attempt to override the clear provisions of the Constitution. The court below pronounced the removal from office of the plaintiff null and void. The consequence of that pronouncement is that in the eyes of the law, the respondents had not been removed from

office. In *Eperokun v. University of Lagos* [1986] 4 NWLR (Part 34) 162 at 201, this Court relied on the observation of Viscount Kilmuir in *Vine v. National Dock Labour* [1957] A.C. 488 at pp. 499/500 for its views that an improper removal from an office specially protected by Law would be deemed a null act. Viscount Kilmuir said:

"I now turn to the striking out of the declaration made by Ormerode J..... First it follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case, there if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively determined, albeit in breach of contract. Hence, the removal of the plaintiff's name from the register, being in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute that status conferred on him. It is therefore right with the background of this scheme, the court should declare his rights."

Similarly this Court in *Bashir Alade Shitta-Bey v. The Federal Public Service Commission* [1981] 1 S.C. 26 at 39 (Reprint) upon an issue whether or not mandamus was available to a public officer wrongly removed from office said:

*"The judgment of Bada, J., impliedly confers on the appellant a right to be placed de facto in his original position i.e. a right to be reinstated; for, although his termination and retirement were declared 'invalid, null and void' and so, in law, he was never legally terminated or retired from his employment, there had been a de facto termination or removal from office. In the words of Tucker, J., reinstatement involves putting the specified person back in law and in fact in the same position as he occupied in the undertaking before the employer terminated his employment' (see: *Hodge v. ultra Electric Ltd. (1943) 1 KB 462 at 466*); and 'the natural and primary meaning of to 'reinstate' as applied to a man who has been dismissed (ex hypothesi without justification) is to replace him in the position from which he was dismissed, and so to restore*

the status quo ante the dismissal' (see: William Dixon Ltd. V. Patterson (1943) S.C. (J) 78 per Lord Copper at 85). In the event, I hold the view that the appellant has right of reinstatement to his former position and the respondent has the correlative duty by the combined operation of Section 147 of Act 20 of 1963 and Section 11 of Act No. 1 of 1964 to replace the appellant in the position he occupied before events which culminated in Exhibit 'D' aforesaid, and so to restore the status quo ante his purported retirement."

See also Olaniyan v. University of Lagos [1985] 2 NWLR 599.

It is important to bear in mind that we are here concerned with the infraction of a constitutional provision.

The result of what I have said is that this appeal has no merit. It is dismissed with N10,000.00 costs in favour of the respondents.

ONU JSC

Having been privileged to read before now the judgment just delivered by my learned brother Oguntade, JSC I am in entire agreement therewith that the appeal must perforce fail.

Consequently, I dismiss the appeal and make similar order as to costs as contained in the lead judgment.

MUSDAPHER JSC

I have had the pleasure to read in advance the judgment of my Lord Oguntade, JSC just delivered with which I entirely agree. For the same reasons contained in the aforesaid judgment which I respectfully adopt as mine, I too, find this appeal without any merit or substance, I accordingly dismiss it. I award the respondent N10,000.00 costs.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Oguntade, JSC; and I am in full agreement that the appeal lacks

merit and should be dismissed in its entirety. I dismiss the appeal and affirm the decision of the Court of Appeal, Ilorin Division. I also agree with the order as to costs.

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TABAI JSC

This action was initiated by way of an originating summons by the Respondent herein against the Appellants at the High Court of Justice, Kwara State. The questions for determination were:

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1. Whether the Defendants who are the Executive Governor of Kwara State and Chief Law Officer of the State have the powers to dissolve the Kwara State Independent Electoral Commission and thereby relieve the Plaintiffs of their appointments having regard to section 197 and 199 of the 1999 Constitution of the Federal Republic of Nigeria.

D

2. Whether the Defendants are not bound by the provisions of the Constitution of the Federal Republic of Nigeria 1999 in their decisions and actions.

E

3. Whether the dissolution of the Kwara State Independent Electoral Commission and termination of the appointment of the Plaintiffs as Chairman and members respectively was a violation of the provisions of Section 197 and 199 of the 1999 Constitution of Nigeria and thereby ultra vires and null and void.

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At the trial court the action was dismissed. Further appeal to the Court of Appeal was allowed and the judgment of the trial court set aside. The Appellants have now come on appeal before this court.

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This appeal centres on the provisions of section 210(1) and (2) of the 1999 Constitution. It provides thus

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“201(1) Any person holding any of the offices to which this Section applies shall only be removed from office by the Governor of that state acting on an address supported by two-thirds majority of the House of Assembly of the state praying that he be so removed for inability to discharge the functions of office (whether arising from infirmity of mind or body) or for misconduct.

(2) This section applies to the offices of the Chairman and mem-

bers of the State Civil Service Commission, the State Independent Electoral Commission and the State Judicial Service Commission.

There are two conditions under which members of the aforesaid bodies can be removed. The first is that the Chairman and members would be removed for inability to discharge the official functions arising from infirmity of body or mind. The other is for misconduct.

In the counter-affidavit filed in opposition to the facts deposed in support of the originating summons, the Appellants deposed as follows:

“6. *that on 4th day of June 2003, an address by the Executive Governor of the State was delivered on the floor of the House of Assembly on the need for dissolution of the Civil Service Commission, Judicial Service Commission and the State Independent Electoral Commission.*

7. *That on the 5th day of the June 2003 the Executive Governor of the State delivered another address urging for a resolution of the House of Assembly to remove all the members of the Commission referred to in the proceeding paragraph. A certified true copy of the said address is attached as exhibit MOJ. 1.*

8. *The consequent upon the Executive Governor’s address a resolution of the State House of Assembly was passed on the 5th day of June 2003 with a two third majority removing the members of all the said Commissions. A certified true copy of the said resolution is hereby attached as Exhibit MOJ. 2.*

9. *That I know as a fact that the members of the aforementioned commission were removed based on the address of the Executive Governor of Kwara State on 5th June 2003.”*

The resolution passed by the Kwara State House of Assembly on 5/6/03 removing the respondents from office read:

“Whereas the established Statutory Commissions were set up to conform with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.”

“Whereas the activities of those Commissions left must to be desired as exemplified by their inglorious acts and”.

...Whereas the overall interest of the generality of Kwarans is

uppermost in the minds of the present administrations;

And in view of the address of the State Governor requiring members of this house to support the removal of the appointed members of the Statutory Commission;

B *This Hon House is hereby called upon to invoke the provisions of Section 201(1) of the Constitution of the Federal Republic of Nigeria, 1999 and act as follows:-*

(i) That the Executive governor of the State should remove forthwith the Appointed members of the Statutory Commissions namely:
C *State Civil Service Commission;*

*State Judicial Service Commission; And
The State Independent Electoral Commission;*

(ii) That the State Governor should appoint people of proven
D *integrity as new members of the Commissions.*

*Hon. Kayode Abdulwahab-Omotose
(Ilorin North)
Majority Leader”*

E *I wish to state that our learned brothers of the Court of Appeal made a thorough appraisal of the affidavit evidence and a most comprehensible analysis of the provisions of section 201(1) of the 1999 Constitution. At page 98 of the record of appeal the Court of Appeal per JA’*
F *AFARU MIKA’ ILU JCA summarized the reasons for the removal of the Respondents as follows:-*

“(1) The activities of these commissions left much to be desired as exemplified by their inglorious acts.

(2) The over all interest of the generality of Kwarans is upper
G *most in the minds of the present administration”*

Commenting on these reasons the learned Justice said:

“Nobody knows what ‘activities’ as above were which could be said to have left much to be desired. There is not even a single point or to
H *what acts of the Appellants could be said to be inglorious.”*

Continuing he said:-

“Section 201(1) of the Constitution does not provide for removal of the Appellants based on “the general Interest” of the people of a state

as in the mind of the Administrator.” The learned counsel for the Respondent has urged this court to consider the question of change of policy without clarification. The Constitution itself has not provided for the removal of the Appellant based on change of policy...”

I agree entirely with the above reasoning and conclusion and I B hereby wholly adopt same. The protection afforded the Respondents by the Constitution cannot just be wished away by the sheer whims and caprices of those in authority.

For the foregoing considerations and the fuller reasons contained C in the judgment of my learned brother Oguntade JSC, I also dismiss the appeal for lack of merit. I also abide by the order on costs contained in the leading judgment.

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