IMPEACHMENT PANEL UNDER SECTION 188 OF THE 1999 CONSTITUTION: WHETHER A MERE FACT-FINDING PANEL?

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1.0 Introduction

The unprecedented removal from office of Mr. Simeon Achuba as the Deputy Governor of Kogi State by the House of Assembly despite the findings of the impeachment panel (the Panel) set up by the Chief Judge of Kogi State opened a new chapter in the history of impeachments in Nigeria. Before now, an attempt to remove the then Governor of Nasarawa State, Tanko Almakura had collapsed based on the 'dismissal' of the 16 charges against the Governor by the Panel set up for that purpose. However, in the Kogi case, the panel found that the impeachment allegations were not proved but the House of Assembly went ahead to remove the Deputy Governor. Why did the House do so?

Apparently aware that its decision was strange, the Kogi State House of Assembly through the Majority Leader defended its action in removing the Deputy Governor – in spite of a contrary finding by the Panel set up to investigate the impeachable allegations leveled against him – by arguing that the Panel set up by the Chief Judge of Kogi State was a "mere fact-finding panel which could not have returned any verdict". The House of Assembly reasoned that its power under the Constitution to make rules of procedure for the panel enabled it to delimit the powers and functions of the panel, and that going by the Rules of Procedure guiding the Panel; their assignment was merely to find facts and not to return any verdict. Furthermore, the House argued that the decision on whether the case against the Deputy Governor was proved or not was for the House of Assembly to make and not the Panel.

1.2 The Question

Flowing from the above position of the House of Assembly, one is tempted to ask the following necessary questions. First of all, is it true that an impeachment panel is merely a fact-finding body? Is the panel merely to make recommendations to the House of Assembly or to reach a verdict? Is the panel performing a quasi-judicial function? If the answer is in the positive, then is it right for the panel to deliver a verdict at the end of its activities? More importantly, what is the constitutional implication of such 'verdict' delivered by the Panel?

1.3 The position of the Constitution

It is settled that the procedure for removing a Governor or Deputy is clearly provided for under Section 188 of the Constitution. That section provides as follows:

1. The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this section.
2. Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly-

(a) is presented to the Speaker of the House of Assembly of the State;

(b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.

3. Within fourteen days of the presentation of the notice of the Speaker of the House of

Assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated.

4. A motion of the House of Assembly that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly.

5. Within seven days of the passing of a motion under the foregoing provisions of this section, the Chief Judge of the State shall at the request of the Speaker of the House of Assembly, appoint a panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section.

6. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice

7. A panel appointed under this section shall-

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the House of Assembly; and

(b) Within three months of its appointment, report its findings to the House of Assembly.

8. Where the panel reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

9. Where the report of the panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the House of Assembly shall consider the report, and if by a resolution of the House of Assembly supported by not less than two-thirds majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

10. No proceedings or determination or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.

11. In this section - "gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion in the House of Assembly to gross misconduct.

It is also settled from a long line of decided cases that the above provisions of the section must be read conjunctively and complied with strictly. See the cases of ***Dapianlong & Ors V. Dariye &Ors (2007) LPELR-928(SC), Danladi V. Dangiri & Ors (2014) LPELR-24020(SC) and Inakoju & Ors V. Adeleke & Ors (2007) LPELR-1510(SC)***.

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Providing a rationale for this, the Supreme Court in Danladi v. Dangiri (supra) per Ngwuta JSC had this to say:

"Impeachment of elected politicians is a very serious matter and should not be conducted as a matter of course. The purpose is to set aside the will of the electorate as expressed at the polls. It has implication for the impeached as well as the electorate who bestowed the mandate on him. Whether it takes one day or the three months prescribed by law, the rules of due process must be strictly followed. If the matter is left at the whims and caprices of politicians and their panels, a State or even the entire Country could be reduced to the status of a banana republic. The procedure for impeachment and removal must be guarded jealously by the Courts."

1.4 X-raying the provisions of Section 188 of the Constitution

It is with this solemn charge by the Supreme Court at the back of the mind that we approach a brief look at the provisions of Section 188 above, especially as it relates to an impeachment panel. First of all, an impeachment proceeding commences with the presentation of a notice of impeachment in writing presented to the duly elected Speaker of House of Assembly signed by not less than one-third of the members, excluding the Speaker[1]. It is important to state that the Speaker of the House of Assembly must not be a signatory to the notice of impeachment because of his constitutional role. Again, the Dapianlong case illustrated this point. A notice of impeachment was signed by 8 members out of the 24 members of the Plateau State House of Assembly, including the one who claimed to be the "Speaker Pro-tempore". The Supreme Court held that for the numerical and strict requirement of the subsection to be satisfied, the Speaker should not be a signatory to the notice of impeachment.

Then, the House is under an obligation, within seven days of receiving the notice, of causing the notice to be served personally on the holder of the office and on each member of the House (Section 188 (2)b). In the case of **Mike Balonwu v. Peter Obi (2007)5 NWLR (Pt.1028)488**, the Court frowned seriously at the service of the impeachment notice by publication. In fact, the removal of the Governor of Anambra State, Peter Obi was nullified on this score. Thus, the service of impeachment notice is a condition precedent or is sine qua non to an impeachment.

Having scaled the huddle of receiving and serving a valid impeachment Notice, the next constitutional requirement is that a reply statement received from the holder of the office on whom the notice is served is also served on each member of the House. Then, the House is required to, within fourteen days of the presentation of the notice of impeachment, pass a motion for the allegation of impeachment to be investigated. This motion must be supported by not less than two-thirds majority of all the members of the House of Assembly. The Supreme Court in the Dapainlong case held that this Section implies that all the members of the House of Assembly must be part of the calculation in ascertaining the numerical compliance with this section. It is not enough that two-thirds majority of the members who were present voted in support. All the duly elected members must be present, and where a vacancy exists, such vacancy must be filled first before such a motion can be duly moved. See Section 188(3).

Once there is a valid motion for the allegations to be investigated, the duly elected Speaker, shall within seven days of the passing of the motion for the allegation to be investigated, request the Chief Judge of the State to appoint an impeachment Panel comprising of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation. Section 188(5). This is where the Panel comes in. There is no doubt that the Panel is an investigative body, however the scope of its investigation is limited to the allegations contained in the Notice of impeachment. In

[1] In Dapianlong v. Dariye (2007) LPELR-928(SC), one of the issues was whether a notice of impeachment and an impeachment could be presided over by a person other than the Speaker of the House, even though the person was tagged 'speaker Protempore'. The Court held that only the duly elected speaker of the House can validly supervise an impeachment proceeding, ad send the request for a Panel to the CJ, see the concurring decision of Ogbuagu JSC .

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Ekpenyong v. Umanah (2010) LPELR8653, the Court of Appeal stated that the setting up of the impeachment panel by the Chief Judge of the State introduces a quasi-judicial dimension to the impeachment proceeding.

It seems that though the persons to be appointed into the panel is at the discretion of the Chief Judge, an objection could be taken to an impeachment proceeding where the Panel is improperly constituted as to the number and qualities of its members. That is, where there are less than seven members or where the requirements as to integrity, membership of the public service, political party or a legislative house are not complied with. In **Balonwu v. Obi (Supra)**, part of the complaint of the Claimant was that the Panel was not duly constituted as there was a vacancy in its membership. In **Danladi v. Dangiri (supra)**, the Supreme Court held that even after the Chief Judge had duly appointed such a Panel, the subsequent conduct of the Panel is subject to judicial scrutiny; the ouster clause in Section 188(10) would not avail the Panel. The Court held as follows;

"Granted that members of the Taraba State House of Assembly could proceed under Section 188 (2) to present a notice of allegation of gross misconduct by the appellant to the Speaker who in turn served the notice on the appellant and proceeded to write to the Chief Judge or Acting Chief Judge (as the case may be) to set up the seven-man panel to investigate the allegation, is the conduct of the seven-man panel immune from being challenged by the appellant? The answer is that it can be challenged."

Although, there is no express provision that the Panel must conduct a hearing, Section 188(6) expressly confers on the holder of the office being investigated the right to defend himself in person or by a legal practitioner of his own choice before the Panel. By implication of this subsection, the Panel is mandated to conduct hearings and to ensure that the parties are afforded the opportunities to present their cases. Where it is alleged that the Panel deprived the "accused" the opportunity to defend himself, it would amount to a denial of fair hearing and the impeachment founded on such proceedings will be declared unlawful and invalid. The case of Danladi v. Dangiri (supra) brought this to the fore. In that case, the seven-member panel investigating the allegation against Sani Danladi refused to grant him an adjournment to enable him present his case but hurriedly made its Report and submitted to the Taraba State House of Assembly, which acted upon the Report and removed him from office. The Supreme Court in setting aside the impeachment had this to say;

"From the undisputed facts of this case, one has the inevitable but disturbing impression that the Panel composed of the respondents was a mere sham and that the removal of the appellant from office was a done deal as it were. In my view, the respondents, in their purported investigation of the allegation made against the appellant, merely played out a script previously prepared and handed over to the panel."

By S.188 (7) a-b, the Panel is to have such powers and exercise its functions in accordance with such procedure as may be prescribed by the House of Assembly and it is required to report its findings to the House of Assembly within three months of its appointment. It seems that the argument of the Kogi State House of Assembly is hinged upon a casual reading of subsection 7a of this section and section 188(11) which leaves the matter of

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what amounts to gross misconduct to the discretion of the House. It (subsection 7a) seems to suggest that the House of Assembly can by its Rules of procedure, prescribe what the powers of the Panel will be, and that would include the power to determine what the Panel should do or not do. However, a careful consideration of the entire subsection would discourage such conclusion. This is so because the power of the House to make rules is for the purpose of further conferring powers on the Panel and to enable it exercise its functions. The function of the Panel is well spelt out and it is to investigate the impeachment allegation and to make a report within three months. A combined reading of both section 188 (7) b and subsections 8 and 9 puts this beyond peradventure. The Panel in its report is required to make a finding or report (using the words of the Constitution) that the allegation has been proved or not proved. In **APC v. PDP (2015) LPELR-24587(SC)**, the Supreme Court stated that "the impeachment panel has power only to find that the allegations against the Governor are proved or not proved"

A report indicating whether or not the allegation is proved or not is very fundamental to the impeachment process. This seems settled position of the law. Again in **Dapianlong v. Dariye (Supra**), the Supreme Court held that a report on whether or not the allegations were proven is crucial to the impeachment process. An interim report would not be sufficient. To argue that the Panel had no power to return any resolution, judgment or verdict as canvassed by the Kogi State House of Assembly is to assert that the function of the Panel expressly conferred upon it by the Constitution can be unilaterally taken away under the guise of making procedural rules for the Panel.

To make this argument, one would have to contend with the inconsistency rule enshrined in Section 1(3) of the Constitution, which is to the effect that the Constitution is supreme law and any other enactment which contradicts the provisions of the Constitution shall to the extent of the inconsistency be null and void. Thus, a rule of procedure by the House of Assembly which purports to take away a power conferred by the Constitution would be ultra vires the powers of the House of Assembly as same could only be achieved through the amendment of the Constitution.

It is necessary to point out that by S.188 (8), a report that the allegations are not proved marks the end of the impeachment proceedings, just like we saw in the aborted impeachment of Tanko Almakura in 2014[2]. On the other hand, a report that the allegations are proved means the House of Assembly can proceed to adopt same in a resolution removing the holder of that office. Even at this stage, the law still requires that there must be a resolution supported by two-thirds majority of all the members of the House in adopting the report of the panel. Where there is no such resolution,

1.5Conclusion

[2] Retrieved from http://tribuneonline.com/why we impeached Kogi dep gov–assembly on 25/1/2020.

In view of the foregoing provisions of the law and decided cases, one can safely conclude that the Constitution is clear that the impeachment Panel set up to investigate impeachment allegations against the Governor or Deputy Governor has a constitutional mandate to return a verdict or make a report on whether the allegations were proven or not. Thus, a Panel set up to investigate the impeachment allegations leveled against a Governor or Deputy Governor would be doing its job if it makes a report and in the Report indicate that the allegations were not proved. There is a shift in role from the power to determine what amounts to gross misconduct to the role of ascertaining whether the allegation is proved or not by the Panel. In closing, one can only await a judicial pronouncement of the impeachment of the Deputy Governor of Kogi State on this issue, if the issue arises.

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