

THE WHITE COLLAR

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Greater than the Sum of Our Parts: The Modern Nigerian Federation

"...ask not what your country can do for you—ask what you can do for your country"
—John F Kennedy

Inadvertently we begin in the battles of another nation, and the poignant words that resonate with us today even as they must have decades ago when they were first uttered. The reason they remain timeless and especially relevant to Nigeria today is that they show us there is no monopoly on a nation's struggle to progress. It is universal and in embracing that struggle we are able to find our identity, and more intentionally define the spirit of what it is to be Nigerian... just as JFK's country have.

The euphoria of the General Elections is far spent, and national conversation will move swiftly and necessarily, unto other pressing issues. But as Nigerians reconnect with the realities of daily life, now is a good time to be reminded of the significance of the delivered to the various arms of the government, and the need to protect it vigilantly. Governments may change every 4 years but we are the ones with the job permanently of creating the Nigeria we are. Now is as good a time as any to build on the successes gained and consolidate the right to demand accountability.

Part of protecting that mandate is ensuring that the hard fought mediums of collective expression remain open- (it will be a futile battle now if come another 4 years we must start the fight to recognise citizens right to vote and be heard again) It is also necessary to begin learning to use new mediums to express or direct the Nigeria we want to see by interacting with and informing the representation we receive at various levels of governance, be that by using social media to interact with the Government or as simply as getting to know your constituency representative, what their job is or even just writing a letter about changes you want to see.

Learning from the Past

While our discussion here is not simply 'how to protect your mandate post elections' this is a good place to start a conversation about our future, and more particularly about the interaction between the units of our Federation.



The question of whether we should operate a Federacy or what kind of Federation we ought to operate does not concern us here- it suffices to acknowledge that we are a Federation. Rather we are interested here in what we may learn from the historic nature of State interaction within the Federation. For this purpose a simple review of the legal structure of States' functions is important.

36 States and the Federal Capital Territory Section 3(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes the 36 States in Nigeria:

"There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara."

Section 297(1) further states, "There shall be a Federal Capital Territory, Abuja..."

and s.298 "The Federal Capital Territory, Abuja shall be the Capital of the Federation and seat of the Government of the Federation."

State Creation-Master Stroke or Death Blow

Section 8 of the Constitution contains one of

Nigeria's most effectively entrenched mechanisms in law. It is well documented that the issue of State creation, coveted and controversial as it is requires an unprecedented level of cooperation between local proponents for the creation of a state and other member-state representatives in the National Assembly.

The process is long and arduous and it is enough to say that it is four-pronged: First requiring 2/3 support of the representatives of the area requesting state creation (in the Senate, House of Representatives, House of Assembly and the Local Government Council). Second a Referendum approved by 2/3 of the constituents of the area requesting state creation. Third, approval by a Simple Majority- of all 36 States supported by the same in State Houses of Assembly. And finally 2/3 resolution in the Senate and House of Representatives.

Anyone conversant with the workings of the Nigerian Legislative process can recognise that this level of cooperation across various local and national stakeholders would be a Herculean task that would undoubtedly show a united intent if it were ever achieved. Prompting the question whether it was a Master Stroke of genius in the crafting of the 1999 Constitution designed to protect the unity of the Federation from partisan incentives or a deathly blow to the possibility of any kind of State creation at all?

State Finance and State Economies

In the modern Nigerian Federation most Government generated revenue i.e from collected Taxes and those derived from Natural Resources (excluding funds Internally Generated within states) by any tier of government is first paid into the "Federation Account". (S.162(1) of the Constitution). 13% of said funds derived from any natural resources are then allocated to beneficiaries of the Derivative Fund (essentially returned to the states they are derived from). The pooled funds are then distributed according to the Formula for the Distribution of Revenue from the Federation Account. While this does not ordinarily pose a problem on paper when we consider that only 2 of the 36 states (Lagos and Delta) are able to generate income substantial enough to run themselves without allocations from the Federal Account, we begin to understand the depth of the inadequacy we call normalcy.

Always Eating National Cake Never Making More

We can compare the situation of national Revenue Sharing to a family where every month 36 members gather at the family meeting to share income which essentially only two individuals generate. The problem is obvious and the distortion created is what currently defines the relationship between the Federating States and the Central Government. Where State Governments cannot generate income from Economic activity within their boundaries they become dependent on the allocation from the Federal Account. That dependence fosters unproductivity, an absence of innovation, and even a disinvestment in the progress of the State from the State Governments because with or without productivity they will get paid their allocation. Not all States are as successful as others, but the absence of productivity for some states means we actively try to make them all equally dependent.

Conversely, each State ought to be generating internal revenue through Sales Taxes, Motor Vehicle Taxes, Private and Public Partnerships, Land Income, Corporation Tax etc. such that any allocations from the Federal Account form only a percentage of its total income instead of the entirety. Let us imagine, for a moment that each of our 36 States produced a quarter of the revenue from Lagos State. That is the level of productivity required in this modern Nigerian Federation, where we are able to not just be the sum of our parts (something we do not achieve even today) but more with each State contributing tangibly to the Federation Account rather than waiting for a piece of the 'national cake.'

What we could be

The future requires grand thinking that steps away from the faulty definitions of the past. The problem is not the Federation; the problem is our understanding of it. What we require is active productive State Economies that provide the basis for healthy, stable State Revenue generation. Vibrant State initiatives that turn sparsely populated regions into innovative hubs for burgeoning progress. This will in turn replace the collective indolence we understand as normal in our States to positive and highly competitive regions for productivity. Think projects the size of Tinapa... but in every State! This ought to be the face of modern Nigeria, rather than managing failing infrastructure, which is failing because we are not making any money with which to maintain them.

Ask not what your country can do for you, rather ask what you can do for your country- economic productivity is key, indolence the rot eating away at the fabric of greatness Nigeria ought to be draped in. Ask not what your country can do for you, rather ask how we can turn our challenges and struggles into successes that define us as champions.

UNCONSTITUTIONALITY OF EKITI STATE GOVERNOR'S REMOVAL PROCEDURE

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Court has made appropriate orders. It therefore behooves that the right person to have served the Notice of Removal should have been the person occupying the seat and performing the responsibility assigned to the office. The section has also provided that all members of the House of Assembly must be served the Notice of Removal by the Speaker. The 19 APC lawmakers also breached that position by not causing the Notice of Removal to be served on their 7 PDP counterparts.

The 19 APC lawmakers in passing the motion for the removal of the Governor sat at an unknown location and not within the complex of the Ekiti House of Assembly. This action in itself has been declared illegal by the Court; the Court has even gone further to state that any decision of the House of Assembly reached outside the premises of the House of Assembly is a nullity, **AKINTOLA v ADEREMI** (1962) All NLR 440 at 44. Nikki Tobi JSC, stated in **INAKOJU v ADELEKE** (supra) "A Legislature is not a secret organisation or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a Legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion..." the dictum of the

learned Justice gives an insight to the inclination of the court regarding legislative proceedings carried outside the complex of the House of Assembly, such proceedings shall be declared a nullity. It would therefore not be wrong to say that sitting of the House of Assembly in an unknown location to pass the motion for the Notice of the Removal and also sitting at Mary Hills Boys High School, Ado-Ekiti to pass the motion requesting the Chief Judge to set up an inquiry panel is alien to our law and also illegal.

The Removal proceedings under Sec.188 CFRN 1999 3rd Alteration is a quasi-judicial proceedings which must observe strict adherence to the principles of fair hearing as provided for under Sec. 36 (1), (6) (a) CFRN 1999 3rd Alteration. Sec. 36 (6) (a) provides expressly thus: "every person who is charged with a criminal offence shall be entitled to: (a) be informed promptly in the language that he understands and in detail of the nature of the offence." Thus the right of Governor to be duly informed is a sacrosanct responsibility that cannot be abdicated by House of Assembly. Sec. 188 (2) (CFRN) 1999 3rd Alteration also provides "... 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..." Service of processes in any judicial proceeding in Nigeria is personal service; the Court has further held

that non-service of an adverse party entitles the adverse party to have the judgment set aside **MBADINUJU v EZUKA** (1994) 10 SCNJ 109. However, when the adverse party cannot be served because of circumstances beyond the control of the other party, it may approach the court for substituted service. It is therefore absurd that the Nineteen (19) APC lawmakers decided to effect service through courier and/or advertisement rather than through the Clerk of the House of Assembly. The proper procedure would have been for the Nineteen (19) APC lawmakers to serve the Governor through the Clerk of Ekiti State House of Assembly. The Court has never taken the issue of non-service lightly, and even a Court of first instance is empowered to set aside her own judgment if the adverse party brings an application for non-service. Hence, the improper service of the Notice of Removal by the Nineteen (19) APC lawmakers is a violation of the Governor's right which can vitiate the whole removal proceedings, as the court may not turn her eyes away from this violation. It could be safe to conclude that, owing to the aforementioned contraventions of the constitutional provisions by the Nineteen (19) APC lawmakers, the removal of Ekiti State Governor may end up being declared a nullity by the Court.

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