

The Right to Fair Hearing of An Elected Politician Must Be Respected in an Impeachment Proceeding

- Alhaji Sani Abubakar Danladi v. Barr. Nasiru Audu Dangiri & Ors (2014) LPELR-24020

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Introduction.

On 21st November 2014, the Supreme Court of the Federal Republic of Nigeria held that the impeachment of Alhaji Sani Abubakar Danladi, the erstwhile Deputy Governor of Taraba State (“the Appellant”), by the Taraba State House of Assembly on 4th October 2012, was null and void. According to the Supreme Court, this was because the impeachment panel that investigated the allegations of gross misconduct against the Deputy Governor infringed on his right to fair hearing. The Supreme Court therefore ordered that the Appellant should resume immediately as the Deputy Governor of Taraba State.

The decision of the Supreme Court is a landmark one which would have a tremendous effect on impeachment jurisprudence in Nigeria. This is because the issues addressed by the judgment of the Court are very important in understanding the proper procedure for impeaching an elected office holder. We shall therefore highlight some of these issues in this paper with a view to contributing to the ongoing debate on the impeachment of elected officeholders in Nigeria.

Summary of facts in the case of: Alhaji Sani Abubakar Danladi v. Barr. Nasiru Audu Dangiri & Ors.

On 4th September 2012, members of the Taraba State House of Assembly presented a complaint of gross misconduct against Alhaji Sani Abubakar Danladi (“the Appellant”) who was serving his second term in office as the Deputy Governor of Taraba State. The complaint was served upon the Appellant on the same date and he promptly prepared his reply and forwarded it to the House of Assembly.

On 18th September 2013, pursuant to the provision of Section 188 (4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), members of the Taraba State House of Assembly passed a motion to investigate the allegations of gross misconduct against the Appellant. Consequently, the Speaker of the House of Assembly requested the Acting Chief Judge of the State to constitute a 7 (seven)-member panel (“the Panel”) to investigate the allegations of gross misconduct against the Appellant pursuant to Section 188 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The Panel was inaugurated on 24th September 2012 and it held its inaugural sitting on 25th September 2012. It is instructive to note that one Barrister Nasiru Audu Dangiri headed the 7(seven)-member panel, whilst the third member of the panel was one Barrister R.J. Ikitausai.

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Upon the constitution of the 7-member panel, the Appellant sensed a foul play and he decided to file an Originating Summons and Motion for interlocutory injunction in Court seeking to restrain the Panel from investigating him. Notwithstanding the fact that the Court processes in the Appellant's suit were duly served upon the Panel, the Panel went ahead with the investigation of the allegations of gross misconduct against the Appellant.

In its bid to prove the allegations of gross misconduct against the Appellant, the Panel called 5 (five) witnesses and then closed its case. The Appellant's Counsel, Yunus Ustaz Usman, SAN, who appeared before the Panel under protest, called 1 (one) witness and requested for a 4 (four)-day adjournment to enable the Appellant and two other witnesses testify on the Appellant's behalf. The request for an adjournment was also premised on the ground of ill health of the Appellant and the need to allow the two other witnesses travel to Taraba. The Panel however denied the Appellant Counsel's request for an adjournment and unilaterally closed the Appellant's case.

The Panel thereafter proceeded to submit its report to the Taraba State House of Assembly and the members of the Taraba State House of Assembly relied on this report to impeach the Appellant on 4th October 2014.

Notwithstanding his impeachment on 4th October 2014, the Appellant continued to prosecute his Originating Summons, but the suit was struck out by the trial Judge. The Appellant's appeal to the Court of Appeal was also dismissed by the Appellate Court and this was what necessitated his further appeal to the Supreme Court.

Analysis

The crux of the Appellant's case at the Supreme Court was that the Panel denied him his right to fair hearing as enshrined in Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) when it refused his Counsel's application for adjournment to enable himself and two other witnesses give their testimony before the Panel.

The Respondents' case on the other hand was that the Panel did not infringe upon the Appellant's right to fair hearing because the Appellant appeared before the Panel for over 6 hours in one of its sittings. The Respondents' further argued that the incomplete record of proceedings of the Panel, which the Appellant presented to the Court in support of his case for lack of fair hearing, does not support his case, as the Court cannot rely on an incomplete record of proceedings of the Panel to deliver judgment in favour of the Appellant. The Respondent therefore requested the Court to dismiss the appeal on the ground of the Appellant's failure to present a complete record of proceedings of the Panel.

The Supreme Court discountenanced the arguments of the Respondents on the ground that it was the Respondents who had a duty to present a complete record of proceedings of the Panel to the Court in order to establish that the Appellant's right to fair hearing was not breached by the Panel. The Supreme Court held that the failure of the Respondents to present the complete record of proceedings of the Panel shows that, the complete record of proceedings of the Panel, if produced, would have been unfavourable to the Respondents' case. The Supreme Court also noted that the Appellant was prevented from obtaining a copy of the Panel's record or proceedings because the Panel closed its secretariat immediately after the conclusion of its proceedings.



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The Supreme Court further held that the Panel erred in law and breached the Appellant's right to fair hearing when it refused to grant the Appellant Counsel's request for an adjournment to enable him call additional witnesses. The Court noted that since Section 188 (7) (C) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that the Panel shall within 3 (three) months of its appointment, report its findings to the House of Assembly, there was no legal justification for the Panel to rush its proceedings by sitting for only 6 days. The Court therefore set aside the impeachment of the Appellant as it was carried out without giving the Appellant the opportunity to defend the allegations against him. Ngwuta, JSC, whilst delivering the leading judgment of the Court, held thus:



"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 the 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."

Conclusion

The decision of the Supreme Court shows that the judiciary is indeed the last hope of both the common man and uncommon man. The Supreme Court in its elucidating judgment restored Justice, which was denied to the Appellant by the Panel, the Taraba State House of Assembly, the trial Judge and the Court of Appeal.

Another important point, which we need to note from the judgment of the Supreme Court is that there is an urgent need for Legal Practitioners to wake up to their role of ensuring that due process is always complied with at all times. If the two Legal Practitioners who were members of the Panel, which hurriedly investigated allegations of gross misconduct against the Appellant, had ensured that the Panel's proceedings was carried out in accordance with the law, there would not have been a need for the Appellant to approach the Courts to challenge the Panel's proceedings, which was clearly a travesty of justice. The Legal Practitioners on the Panel have, perhaps, failed to live for the direction of the society.

One therefore hopes that our politicians and members of the legislature would always ensure that they comply with the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the dictates of this judgment of the Supreme Court as well as several other decisions of the appellate courts on the subject matter of impeachment whenever they commence impeachment proceedings against duly elected public officeholders. This, we submit, is the only way by which we can prevent Nigeria from becoming a banana republic.



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