

The Attitude of the Courts to Ouster Clauses in the Second Republic

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Nigeria was ruled by the military from the years 1966 to 1979. After this period of military rule, the second republic was ushered in. The second republic was a democratic dispensation that lasted from 1979 to 1983. Due to the democratic nature of this period, the attitude of the courts to ouster clauses had to change.

One of the main reason for this change was due to the provisions of the 1979 Constitution which empowered the courts. The Constitution proclaimed itself as supreme in the provisions of S.1 (1). This was opposed to the previous military dispensation where the supreme law of the land was military decree. The constitution further provided that any laws that were contradictory to it would be null and void[1].

After asserting its authority, the constitution empowered the courts by granting it the inherent powers and sanctions of a court of law[2]. These inherent powers and sanctions of a court of law extend to all the powers that normally accrue to a common law court.

Also, the constitution in the provision of S.4 (8) precluded the legislature from enacting any legislation that contains an ouster clause which ousts the court's jurisdiction.

Finally, coupled with the general democratic atmosphere, the courts were emboldened against the operation of ouster clauses. Thus, during this period, there was no legislation which ousted the court's jurisdiction.

However, the provisions of the constitution didn't have a retrospective effect. This meant that acts which happened during the operation of military laws would be judged by military laws, regardless of the fact that the case was heard by the court during the operation of the 1979 Constitution.

In the case of *Uwaifo vs. AG Bendel State*[3], the property of the appellant was seized by the Bendel State government due to **Decree no 10 of 1977**. The appellant contested this in court. Despite the fact that the case was brought before the Supreme Court during the operation of the 1979 constitution, the court applied the provision of the Decree which was in operation at the time the cause of action arose.

Although the courts had a free reign during the second republic, there were ouster clauses that were contained in the provisions of the constitution. These provisions would be highlighted below.

Constitutional Ouster Clauses during the Second Republic

Â The attitude of the courts to constitutional ouster clauses during the second republic was one of unquestionable submission to the will of the people as contained in the constitution.

One of such provisions is found in S. 170 (10) of the 1979 Constitution. This provision was of the effect that the courts could not look into legislative actions that occurred during impeachment proceeding by the state legislature against the governor.

In the case of *Balarabe Musa vs. Hamza*[4], the state legislature impeached a governor although there were a series of irregularities. The court held that the provision of this section was sacrosanct and inviolable, thus it could not look into the validity of impeachment proceedings.

This pronouncement could be seen as a bad judgement since it gave the legislature the right to act with impunity during impeachment proceedings. Unfortunately, this case wasn't appealed to the Supreme Court level, thus preventing the apex court from giving a judgement.

Another constitutional ouster clause was contained in S.6 (6) (c) of the constitution which provided that the jurisdiction of the courts was ousted from hearing cases related to items contained under Chapter II of the constitution[5]. In the case of *Olubunmi Okogie vs. AG Lagos State*[6], the issue in contention concerned educational rights which were contained in Chapter II of the 1979 Constitution. The courts effectively excused itself from hearing this case since its jurisdiction had already been effectively ousted from hearing such matters.

References

[1] S.1 (3) Constitution of the Federal Republic of Nigeria 1979

[2] S.6 (6) (a) & S.236

[3] (1982) NSCC @221

[4] 1982 3 NCLR 229

[5] This part of the constitution concerned fundamental and directive principles of state policy

[6] 1981 1 NCLR 218 HC