

A LEGAL X-RAY OF THE POWER OF THE STATE HOUSE OF ASSEMBLY TO SUMMON THE GOVERNOR OR ANY RESIDENT OF THE STATE

Samuel Ogeh, Esq.*

Abstract

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN 1999) constitutes the fundamental legal framework governing Nigeria's constitutional democracy and delineates the parameters within which governmental powers may be legitimately exercised. Central to this constitutional architecture is the imperative of establishing robust mechanisms of checks and balances designed to prevent the arbitrary exercise of power, curb executive overreach, and ensure governmental accountability. Within this context, the investigative and oversight functions of State Houses of Assembly, particularly their powers to summon the Governor and other residents of a State, have emerged as subjects of considerable constitutional controversy and scholarly debate. This article undertakes a comprehensive legal examination of the constitutional authority vested in State Houses of Assembly to issue legislative summons to Governors and State residents pursuant to sections 128 and 129 of the CFRN 1999. Employing doctrinal legal research methodology and drawing upon primary constitutional sources, statutory provisions, and judicial pronouncements, this study critically analyses the interplay between legislative oversight powers and the immunity provisions enshrined in section 308 of the Constitution. The article advances the proposition that legislative summons, when properly issued in furtherance of legitimate investigative functions; neither contravenes the fundamental rights of individuals nor undermines the constitutional immunity accorded to executive officers. Rather, such summons constitutes essential instruments for effective lawmaking, the exposure of corruption, and the promotion of transparency in governance. Through rigorous textual analysis and purposive constitutional interpretation, this article demonstrates that State Houses of Assembly possess unequivocal constitutional authority to summon any person, including the Governor, subject to prescribed procedural safeguards and constitutional limitations. The study concludes by recommending targeted constitutional amendments to explicitly enumerate the Governor among persons subject to legislative summons and to prescribe appropriate sanctions for non-compliance, whilst simultaneously advocating for institutional checks against potential abuse of these oversight powers by legislative bodies. These reforms, the article contends, would significantly enhance accountability, transparency, and the rule of law in Nigeria's federal democratic governance.

Keywords: *Legislative Oversight, Constitutional Immunity, State House of Assembly, Executive Accountability, Legislative Summons, Separation of Powers*

1 Introduction

Nigeria's constitutional democracy is enabled and protected by the provisions of the Constitution of the Federal Republic of Nigeria (1999) as amended (CFRN 1999) provides the legal authority for the assumption and exercise of powers.¹ In every constitutional democracy, the independence and transparency of the various organs of government – the Legislature, Executive, and Judiciary, is

* LL.B (RSU), B.L (Abuja), TEL: +2348037246712, E-Mail:samogeh234@gmail.com

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 2.

guaranteed by the theory of separation of powers, which also underpins the relationship between the various arms of government. The legislature, being the embodiment of the people's will, plays a critical role in ensuring transparency, accountability, and good governance through its oversight functions.² One of the most potent tools of legislative oversight is the power to summon individuals, including public officers, to appear before it to give evidence or produce documents in aid of its legislative and investigative functions. This oversight function of the legislature is prominent in Nigeria because of its Presidential system of government that sees the constitutional empowerment of the legislature to checkmate the executive arm of government.³

Nwabueze,⁴ argued that legislative oversight is indispensable for maintaining a responsible government, especially where elections are conducted for the executive, who is likely to claim an independent mandate against the interest of the State. Here, legislative oversight becomes an instrument for balancing and checking the propensity for abuse of powers by the executive. This oversight function, however, must be understood within the context of the separation of powers doctrine which, although aimed at preventing tyranny, also necessitates functional interdependence among the organs of government.⁵

In Nigeria, the constitutional foundation for legislative oversight is enshrined in the Constitution of the Federal Republic of Nigeria (as amended) (CFRN 1999).⁶ By the said provisions, the House of Assembly is empowered to direct or cause to be directed an investigation into: any matter or thing with respect to which it has the power to make laws; and the conduct of affairs of any person, authority, ministry, or government department charged with the duty of or responsibility for executing or administering laws enacted by the House of Assembly or managing public funds.⁷ To properly perform this function, the CFRN 1999 was explicit when it vested on the House of Assembly, the powers to summon any person to appear before it for the purpose of giving evidence or producing documents.⁸ The phrase "any person" adopted in the CFRN 1999,⁹ has provoked quite a number of debates as to whether or not offices covered by the immunity clause could be included; in particular, whether the Governor of the State can be summoned by the House of Assembly. While the drafters of the Constitution are silent as to whether or not the Governor could be summoned, the principle of executive immunity under Section 308 of the Constitution raises a constitutional dilemma.

The necessary question then is whether or not the House of Assembly, in exercise of its oversight powers, can summon the Governor to appear before it, in view of the immunity clause protecting the Governor? While the Supreme Court has emphasized on the importance of the doctrine of checks and

² A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 70.

³ B O Nwabueze, *The Presidential Constitution of Nigeria* (C Hurst & Company 1982) 228–229.

⁴ B O Nwabueze, *Presidentialism in Commonwealth Africa* (C Hurst & Company 1974) 136.

⁵ E Barendt, *An Introduction to Constitutional Law* (Oxford University Press 1998) 19.

⁶ CFRN 1999, ss 128 and 129.

⁷ *ibid*, s 128(1).

⁸ *ibid*, s 129(1)(c).

⁹ CFRN 1999, s 129(1)(c).

balances in the case of *Inakoju v Adeleke*¹⁰, the Court did not resolve the precise boundaries of legislative power to summon a Governor.

Meanwhile, it is no argument that the application of legislative summons has broader implications for the rule of law and constitutional governance in Nigeria than argued by many, because the extent of immunity allowed by the CFRN 1999 can undermine the very essence of legislative oversight necessary for proper working of our presidential system in Nigeria. Abdulfattah and Others,¹¹ have argued that should the executive remain immune from legislative scrutiny, even in administrative and policy matters, the very objective of legislative oversight could be undermined.

Aiyede,¹² re-emphasised that legislative oversight is vital to the development of Nigeria's democracy, while noting the inimical effect of political interference and institutional constraints on it. Olowu¹³ contends that the ambiguity in the Constitution on the extent of legislative investigative powers, particularly as it concerns the powers of the House of Assembly to summon the Governor, has resulted in frequent institutional friction.

This article, therefore, aims to critically examine the scope and limitations of the powers of the House of Assembly to summon the Governor and other residents within a State. It seeks to evaluate the legal framework, judicial interpretations, and practical realities of legislative summons in Nigeria. The study will also investigate whether the existing legal regime adequately balances the need for executive accountability with the constitutional protections afforded to certain public officers.

2. The House of Assembly of a State

The legislative powers of a State are vested in the House of Assembly of that State.¹⁴ The law to be made by a State House of Assembly shall be for the peace, order and good government of the State or any part thereof with respect to:

- a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution;
- b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto; and
- c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.¹⁵

¹⁰ *Inakoju v Adeleke* (2007) 4 NWLR (Pt 1025) 423.

¹¹ R A Abdulfattah and Others, 'Oversight Functions of the Legislature and the Roles of the Judiciary in Nigeria: The Challenges for the Rule of Law' [2022] *Global Journal of Politics and Law Research* 59–70.

¹² E O Aiyede, 'Legislative Oversight and the Paradox of Executive Accountability in Nigeria' [2013] 4(2) *Journal of African Studies and Development* 27.

¹³ D Olowu, 'The Nigerian Legislature and the Oversight Function: Constitutional Perspectives and Practical Challenges' [2002] (18)(3) *Obafemi Awolowo University Law Journal* 56.

¹⁴ CFRN 1999, s. 4(6).

¹⁵ *ibid*, s. 4(7).

It follows from the provisions of the Constitution that the House of Assembly of each State has exclusive jurisdiction to make laws for the State only. This power of the House of Assembly of each State to make laws for the State is limited not just by the provisions of section 4(7), but also by section 11(4) of the Constitution, which vests on the National Assembly with powers to make laws for any State when that State's House of Assembly cannot be able to make such laws – such as during war time or Declaration of state of emergency in the State.

In *AG of Lagos State v Eko Hotels Ltd*,¹⁶ the Supreme Court, per Tobi, JCS, captured the essence of the legislative powers of a State House of Assembly thus:

As it is, the House of Assembly of a State is restricted to make laws on matters not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. It can only make laws in matters included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto. There is also a third arm which is omnibus and it is that the House of Assembly of a State can make laws on any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution. The subsection clearly vindicates the concept of federalism and it should be so because the country operates a Federal Constitution.

However, by virtue of section 4(5) of the Constitution, if any law enacted by the State House of Assembly is inconsistent with any law validly made by the national Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void. This is also known as the doctrine of covering the field and is evident of the practice of federalism.

The phrase covering the field means that where a matter legislated upon is in the concurrent list and the federal government has enacted a legislation in respect thereof, where the legislation enacted by the State on the same matter is inconsistent with the legislation of the Federal Government, the legislation of the State House of Assembly is void and of no effect for inconsistency.¹⁷ In the Court of Appeal case of *Okafor v Okonkwo*,¹⁸ it was held that the essence of the doctrine of covering the field is to support the principles of hierarchy of legislations as a practical demonstration of the supremacy of the Federal Act, when the Federal and State legislations touch upon the same matter.

¹⁶ *AG of Lagos State v Eko Hotels Ltd* (2006) All FWLR (Pt 342) 1398, 1471.

¹⁷ *Lakanmi v A G Western Region* (1970) 6 NSCC 143.

¹⁸ *Okafor v Okonkwo* (2002) 17 NWLR (Pt 796) 262.

3. Justifications of the Investigative Powers of a State House of Assembly

The State House of Assembly has many functions the main of which is law making under section 4 of the CFRN 1999.¹⁹ Yet, lawmaking is a complex process requiring deep understanding of the social, cultural, economic, political or scientific basis of the issues which the law seeks to address. It would be recalled that one of the theoretical bases of this article is the sociological theory of law. By this, the law must be understood as not existing in a vacuum but rather in a society. This way, law cannot exist or be made or interpreted without recourse to the society that it is intended to operate.²⁰ Hence, the legislative powers of the National Assembly must be approached within this larger sociological perspective.

This is further supported by section 10(2) of the Interpretation Act which provides that an enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it. By this, the legislative powers of a State House of Assembly must be construed as including powers to do all other things necessary for effective lawmaking. Here, in some instances, it may be necessary for the State House of Assembly to conduct investigations for the purpose of lawmaking which includes amendments. Herein is the broader justification for the investigative powers of the State House of Assembly.

Another perspective to the ancillary powers of the State House of Assembly like investigation is for the purpose of checks and balances. Recall that one of the theoretical frameworks of this article is separation of powers which is intended to provide checks and balances against abuse of power. Hence, beyond lawmaking, the CFRN vests the State House of Assembly with related powers. For instance, under sections 120 to 124 of the CFRN, the State House of Assembly has control over the finance of the State and must, by law approve the appropriation of the State for any fiscal year. Again, this article takes the view that since the State House of Assembly has the constitutional power to control the finance of the State; it acquires the incidental power to conduct investigation into the finance of the State.

The constitution also provides expressly that subject to the provisions of the constitution, a House of Assembly shall have power by resolution published in its journal or in the Office Gazette of the Government of the State to direct or cause to be directed an inquiry or investigation into any matter or thing with respect to which it has power to make laws; and the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for executing or administering laws enacted by that House of Assembly, and disbursing or administering moneys appropriated or to be appropriated by such House.²¹

¹⁹ A Emiko, *The Theory and Practice of Constitution Law in Nigeria* (Benin: Mufti Press 2001) 37.

²⁰ C C Wigwe, *Jurisprudence and legal Theory* (Readwide Publishers 2011) 254.

²¹ CFRN 1999, s 128(1).

4. Subject Matter and Purpose Safeguards of Investigative Powers

The investigative powers conferred on a House of Assembly under the provisions are exercisable only for the purpose of enabling the House to-

- a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
- b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.²²

The Constitution by the above provides two important safeguards against abuse of investigative powers by the State House of Assembly. The first is the subject matter safeguard while the second is the purpose safeguard. These safeguards are important even in the perspective of the power to summon the governor or resident of a State since the investigation for which the summons is issued must satisfy the two safeguards. This argument is supported by the settled principle of law that constitutional or statutory powers must be exercised strictly within the circumference of the enabling statute.²³ Another way to put it is that where a statute conferring powers also imposes limitations, they are binding and must be respected.²⁴

5. Procedural Issues in the Exercise of the Power to Summon

The procedural requirements for the exercise of the power of legislative summons are very important for two particular reasons. The first is that it acts as checks against abuse of the power of summons by the legislature. This is as a matter of due process and rule of law. The legislature is obligated to follow strictly the procedure and cannot therefore purport to exercise the power of summons outside the laid down procedure. The second is that procedural requirements are important for the protection of the human rights of persons that a legislative summons may be served on. Here, procedure guides against arbitrary summons of persons.

It should be recalled that the legislative power to summon does not exist in a vacuum. Put differently, it is not a stand-alone power but merely contained within the investigative powers of the legislature and so complementary of the said investigative powers. This is clear from the tenor of section 129(1)(c) of the CFRN that “For the purposes of any investigation under section 128 of this Constitution... a House of Assembly or a committee... shall have power to summon any person in Nigeria to give evidence”. Legislative summons cannot therefore be used for any other purpose, except pursuant to ongoing legislative investigation.

²² CFRN 1999, s 128(2).

²³ *Sanusi v Ayoola & Ors.* (1992) NWLR (Pt 265) 275.

²⁴ *Amasike v Registrar-General, Corporate Affairs Commission* (2010) 13 NWLR (Pt 1211) 337.

The implication of situating the power of legislative summons exclusively within the investigative powers of the State House of Assembly implies that first; the procedural requirements to activate legislative investigation must be complied with before the ancillary power to summon can be invoked. The procedure for summons must therefore begin with the passage of a House resolution to investigate a particular issue which must be within a matter within the legislative competence of the House.²⁵ The Constitution is silent on the voting requirement to pass the resolution, implying that a simple majority vote will be sufficient.

Upon the passage of the resolution to investigate, the House must publish the resolution in its journal or in the official Gazette of the Government of the State. The investigation may be done by the House or a Committee of the House. As part of investigation, the House is empowered to procure evidence which may be documentary, oral or circumstantial and to examine all persons as witnesses whose evidence may be material or relevant to the subject matter.²⁶

It is important to emphasise that the House can only examine persons as witnesses where their evidence is relevant. In law, evidence of a person is relevant “if it is logically probative or disapprobative of a matter that requires proof”.²⁷ The legal implication is that only persons whose testimony or evidence is material or relevant can be witnesses in any investigation of a State House of Assembly. By this, the power to summon can only be exercised in respect of vital witnesses. The State House of Assembly is precluded from undertaking witness shopping or summoning persons randomly.

As a matter of procedure, it is only in respect of a person whose evidence is relevant to an ongoing investigation that a House of Assembly can issue a summons. The summons must be signed by the Clark of the House or the Committee issuing the summons; must state time and venue, document or matter that the person will be required to give evidence of.²⁸ One important procedural requirement here is that the summons must be signed. Further, it is only the Clark of the House (for a summons by the House), or Committee (for a summons by a Committee) that can sign a summons. Signature is important to authenticate and identify the issuing authority.

In *Omega Bank (Nig) Plc v OBC Ltd*,²⁹ the Supreme Court held that “a document which is not signed does not have any efficacy in law... the document is worthless and a worthless document cannot be efficacious”. Signature by the appropriate authority is therefore a major validating step which must be taken to give effect to a summons. Again, the summons must contain particulars of what the witness is required or will be required to give evidence of. This is important for the person summoned to challenge the constitutionality of the summons based for instance on ground relevancy. A blanket summons is therefore not valid in law.

²⁵ CFRN 1999, s 128.

²⁶ *ibid*, s 129(1)(b).

²⁷ *DPP v Kilbourne* (1973) AC 729, 756.

²⁸ Legislative Houses (Powers and Privileges) Act 2017, s 3(1).

²⁹ *Omega Bank (Nig) Plc v OBC Ltd* (2005) 8 NWLR (Pt 928), 582, para A.

The final procedure is adopted where a person summoned does not appear. Section 4(1) of the Legislative Houses (Powers and Privileges) Act 2017 provides that where the person summoned does not appear on the named date, the president or speaker of the House upon being satisfied that the person was duly served may issue a warrant of arrest to the Police or Sergeant at-arms for the person to be arrested and brought before the authority that issued the summons.

The law is firmly settled that service of a process or document on a party is fundamental.³⁰ Hence, it must be satisfied that the summons was in fact served on the person. Under section 3(2) of the Legislative Houses (Powers and Privileges) Act 2017, the summons is to be served at the person's office, residence or last known address either personally, by registered post or pasting at the door or wall. In *United Nigeria Press Ltd & Anor v Timothy Olu Adebajo*,³¹ Fatayi –Williams stated the position of the law, inter alia, thus:

In our opinion, the object of all types of service of processes, whether personal or substituted, is to give notice to the other party on whom service is to be effected so that he might be aware of, and able to resist, if he may, that which is sought against him. Therefore, since the primary consideration in an application for substituted service is as to how the matter can be best brought to the attention of the other party concerned, the Court must be satisfied that the mode of service proposed would probably, after all practical means of effecting personal service have proved abortive, give him notice of the process concerned.

This article submits that the options of service of summons provided satisfy the legal thresholds and objective of service. In further analysis, it is only the Speaker of the House under section 4(1) of the Legislative Houses (Powers and Privileges) Act 2017 that can issue a warrant of arrest for a witness who fails to honour a summons. This is contrasted with the point that the Clerk or a Committee of the House can sign summons. However, to arrest, only the speaker can issue the warrant. This underscores the importance attached to the rights of the witness.

6. Legislative Summon of a Resident vis-à-vis Fundamental Rights

Section 129(1)(b) confers on a State House of Assembly the power to “summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions”. The first rule is the adoption of the literal meaning of the provision considering that it is clear and unambiguous.

³⁰ *Auto Import Export v Adebayo* (2003) FWLR (Pt 158) 1181.

³¹ *United Nigeria Press Ltd & Anor v Timothy Olu Adebajo* (1969) 1 ALL NLR 432.

The power granted is to “summon any person in Nigeria”. It seems on the face of the provision that as long as the person is in Nigeria, a House of Assembly can actually summon the person. In *A G Lagos State v Persons Unknown*,³² the Court noted that the lawmaker does not use any word or phrase in vain meaning that every word must be given its full effect. By this, the word “any person” means nothing more and nothing less than “any person”. Taken literally, it means a State House of Assembly can summon a resident since he/she falls clearly within the class of “any person”.

The second rule of interpretation of the Constitution given by the Supreme Court is that all the sections of the Constitution must be read in community. The implication is that “any person” in section 129(1) of the Constitution cannot be read in a vacuum with regards to other provisions of the Constitution. Moreover, section 129(1) of the CFRN begins thus: “For the purposes of any investigation under section 128 of this Constitution, and subject to the provisions thereof”. What this means is that “any person” must be understood in the context of other constitutional provisions.

This provision has been a subject of controversy especially as regarding the National Assembly. In a case where the Senate summoned the Inspector General of Police, he refused to appear before the Senate. The refusal of the IGP to answer the summons provoked the Senate to passing a vote of no confidence on the IGP and declaring him unfit for any public office.³³ The incidence also sharply polarized lawyers on the question of whether the Senate has the power to summon the IGP- a situation similar to the one under discuss with regards to the power of summon of a State House of Assembly.³⁴ The constitution haven vested in the State House of Assembly the power to summon “any person”, the only legal issue at this point is whether there is any other provision that may qualify or limit the power with respect to a resident of the State. A perspective that usually comes to mind is the impact of protected human rights on the power of legislative summon.

Section 36 (1) of the 1999 Constitution of Nigeria provides that in the determination of his civil rights and obligations, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constitution in such a manner as to secure its independence and impartiality. The principle or doctrine of fair hearing is derived from the principles of natural justice and its twin pillars, namely *audi alterem partem*, which means “hear the other side”, and *nemo judex in causa sua*, which means “no one should be a judge in his own cause.”³⁵

Consequently, any proceedings conducted in breach of a party’s right to fair hearing, no matter how well conducted would be rendered a nullity.³⁶ Thus, in carrying out its investigative functions, the State

³² *A G Lagos State v Persons Unknown* (2016) All FWLR (Pt 815) 245

³³ C Asadu, ‘Falana to Senate: ‘Accept My Sympathy, You Lack Power to Summon IGP’ <<https://www.thecable.ng/falana-taunts-senate-acceptsympathy-lack-powers-even-summon-president>> Accessed 10 July 2024.

³⁴ I Effiong, ‘Senate versus IGP: A Dissection of the Law’ <<http://saharareporters.com/2018/05/10/senate-versus-igp-dissection-law-inibeheffiong>> Accessed 10 July 2024.

³⁵ *Inogha Mfa & Ors. v Mfa Inogha* (2014) LPELR-22010 (SC)

³⁶ *Tsokwa Motors (Nig) Ltd. v UBA PLC* (2008) All FWLR (Pt 403) 1240, 1255, paras A-B; *Abubakar Audu v FRN* (2013) 53 NSCOR 456, 469.

House of Assembly or any of its committees are bound by the right to fair hearing of those affected or to be affected by the proceedings and its outcome.³⁷

The attitude of the State House of Assembly is usually to insist that any person summoned must answer the summons in person and not to be represented by a counsel.³⁸ This may not be unconnected to the nature of such investigation, which in most cases have been to expose inefficiency and corruption.

However, as the Courts have insisted in *Tony Momoh v The Senate of the National Assembly & Ors.*,³⁹ the power of summons may only be exercised in furtherance of legitimate legislative business and not permitted to breach human rights of persons. Further from the perspective of fair hearing, legislative summons cannot be employed in respect of an allegation against the legislature as this will amount to the legislature sitting as judge in its own case contrary to fair hearing- *Adikwu & Ors v Federal House of Representatives and Ors.*⁴⁰

In the final analysis, this article submits that legislative summons does not violate the right to fair hearing. This is because the fundamental essence of fair hearing is giving a person a fair opportunity to be heard. In fact, it is the considered view of this article that legislative summons complements the right to fair hearing. It affords the person summoned an opportunity to be heard regarding the issue under investigation. Moreover, the right to challenge the summons in Court still inures in favour of the person. Personal liberty is 'the right not to be subject to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification.'⁴¹ The meaning of personal liberty was construed by the court in *Adewole v Jakande*,⁴² where the court held:

Personal liberty' means privileges, immunities, or rights enjoyed by prescription or by grant. It denotes not merely freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men.⁴³

The issue of personal liberty comes into play when the State House of Assembly has to enforce its summons through arrest. Section 35(1) of the CFRN 1999 provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty. The question then arises whether

³⁷ CFRN 1999, s 36 (11).

³⁸ O Obayuwana, 'Legislative Oversight: The Executive Arm at a Crossroad' [2000] (17-18) *Ahmadu Bello University Law Journal* 43.

³⁹ (1981) 1 NCLR 105.

⁴⁰ *Adikwu & Ors v Federal House of Representatives and Ors* (1982) 3 NCLR 394.

⁴¹ *Oba Gabriel Orogie v A.G.Ondo State* (1982) 3 NCLR, 349 per Justice Orojo

⁴² *Adewole v Jakande* [1981] 1 NCLR 262, 278.

⁴³ *ibid.*

the issuance of arrest warrant for failure to honour a legislative summons is not a breach of the right to personal liberty.

Under section 35(1) of the CFRN 1999, the relevant exceptional circumstances in which the right to personal liberty may be derogated relate to the execution of the order of a Court of law or for the purpose of bringing a person before a Court. It must therefore be conceded that there is no mention of whether failure to comply with a legislative summons cannot warrant derogation of the right to personal liberty. Yet, a section of the constitution is not to be interpreted in a manner that will render other provisions nugatory since the lawmaker cannot be said to have intended to contradict. By this, the constitution haven expressly vested in the State House of Assembly the power to summon and to issue warrant of arrest, it will be wrong to interpret the right to personal liberty in a manner that renders that power nugatory. Rather, a purposeful interpretation will have to be adopted.

Now, section 35(1)(b) allows the derogation of the right to personal liberty in order to “secure the fulfilment of any obligation imposed upon a person by law”. That is, once a law imposes an obligation on a person, he can be arrested and detained for the purpose of compelling him to fulfill the obligation. This article shall argue subsequently that the power to issue warrant of arrest implies the existence of a legal obligation to obey legislative summons and therefore such arrest will not be in breach of the right to personal liberty.

7. Legislative Summons and the Duty of Citizens

The legislative power of summons may be balanced against the duty of citizens for the purpose of justification. It should be recalled that under section 128(2) of the CFRN 1999, the purposes of legislative investigation are lawmaking, exposing corruption, inefficiency and waste in government. These core objectives naturally require the cooperation as well as the contribution of citizens. Morally, the purposes of the powers are beneficial to the citizens and it is therefore morally obligated for them to provide needed support.

Besides, the point needs to be made that legislative summons is not a criminal accusation, indictment or conviction. Section 129(1)(c) of the CFRN is abundantly clear that the person summoned is coming to give evidence. Summons is not stand trial before the legislative House. A material witness in a matter of elementary evidential law can be compelled to appear for the purpose of giving evidence as part of his civic responsibility.⁴⁴

Moreover, the CFRN is clear on the duty of a citizen of Nigeria. It is provided that it shall be the duty of every citizen to abide by the Constitution, respect its ideals and its institutions and legitimate Authorities; help to enhance the power, prestige and good name of Nigeria.⁴⁵ The constitutional ideal in this circumstance is a House of Assembly that is able to effectively investigate issues related to its

⁴⁴ *Onyegbu v State* (1995) 4 NWLR (Pt 391) 510.

⁴⁵ CFRN 1999, s 24.

lawmaking powers and to expose corruption. A citizen has a duty to respect this constitutional ideal. Moreover, the State House of Assembly is a legitimate authority which a citizen is also obligated to respect. This, it is submitted includes respecting a lawful summons from the House.

8. Power to Summon the Governor vis-à-vis Constitutional Immunity

The point has already been made that the House of Assembly has power to summon “any person” under section 128(1)(b) of the CFRN 1999. As earlier pointed out, “any person” must be understood haven regards to other sections of the Constitution, this is because the constitution must be interpreted as a whole and in segments. The question then arises whether considering other sections of the Constitution; the governor of a State is included in the catch pronoun of “any person” that a House can summon.

Ojukwu,⁴⁶ has argued that the power of legislative summons cannot be used against persons enjoying constitutional immunity under section 308 of the CFRN 1999. These persons are the president, vice president, governor and deputy governor. He argued that a “summons is a legal process of compulsion and compellability, disobedience to which can be enforced by the Police and can lead to detention and imprisonment”,⁴⁷ from which the President (Governor) is exempt as a result of the immunity provisions in section 308 of the Constitution.

The point has been sufficiently made that the power of legislative summons is subject to other provisions of the Constitution. This necessarily includes section 308 of the CFRN. It is necessary to reproduce and analyse the provision and to situate it against the power of summons before a logical conclusion can be reached.

The Court in *AG Federation v Abubakar*,⁴⁸ offered some explanations into the scope of immunity. It needs to be pointed out that immunity under section 308 above is construed strictly. That is, its scope is only to the limit expressly provided in the Constitution. The rule here is “*expressio unius est exclusio alterius*” – the express mention of one thing is the express exclusion of every other thing not mentioned. This is illustrated in the case of *R v Inhabitants of Sedgely*.⁴⁹ The “*Noscitur a sociis*” rule also appears relevant; it postulates that “words (used in a statute) have no meaning except in the context they are used”.⁵⁰ The meaning of an enactment must be ascertained from its text, in light of its purpose and in its context. The legislature must be taken in a statute to have said exactly what it means, and also to mean exactly what it has said therein. It therefore goes without saying that interpretation of a word or expression must depend on the text and the context. In *People v Jefferson*,⁵¹ the California Court

⁴⁶ E Ojukwu, ‘House of Reps has no Powers to summon President Buhari under sections 88and 89 of the Constitution- Prof. Ojukwu’ <<https://www.barristerng.com/house-of-reps-has-no-powers-tosummon-president-buhari-under-sections-88-and-89-of-the-constitution-prof-ujukwu/>>accessed 6 May 2024.

⁴⁷ Ojukwu (n 152).

⁴⁸ *AG Federation v Abubakar* (2007) LPELR-8995(CA)

⁴⁹ *R v Inhabitants of Sedgely* (1831) 2 B & Ad 65 (UK)

⁵⁰ *Inland Revenue v Frere* [1964] 3 All ER 796.

⁵¹ *People v Jefferson* (1999) 21 Cal.4th 86, 94 [86 Cal.Rptr.2d 893, 980 P.2d 44.

observed that the role of the courts in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law.

The Governor is not above the laws of the land by the letters of the Constitution and in view of sections 308, 128 and 129 of the Constitution 1999. In *Military Governor of Lagos State v Odumegwu-Ojukwu*, Oputa, JSC declared that,⁵² “here in Nigeria, even under a Military Government, the law is no respecter of person, principalities, government or power”. The rule of law requires that every person is subject to the ordinary law within the jurisdiction.

A convenient point to begin our analysis is that section 308(1) of the CFRN which contains executive immunity opens with the clause “Notwithstanding anything to the contrary in this Constitution”. This is contrasted with section 128 dealing with the legislative summons which opens with “subject to” to other provisions of the Constitution. Clearly, executive immunity under section 308 of the CFRN applies notwithstanding any other provision to the contrary in the Constitution. Clearly therefore, immunity against being summoned only applies to court processes. A State House of the Assembly therefore has the power to summon the governor of a State.

Moreover, immunity from civil processes does not apply to the governor in his official capacity. What this means is that immunity from summons or even court processes only relate to the personal capacity of the governor and not his official capacity. That is, whereas, the occupant of the office has civil and criminal immunity to the extent provided in section 308 of the CFRN, the office of governor as a legal entity does not have civil immunity at all. This supports the argument that the governor (office of the governor) can be summoned by the State House of Assembly. The only challenge is that immunity against arrest and detention is absolute. Thus, whereas a legislative summons can be served on the governor, if he does not appear, the summons cannot be enforced through a warrant of arrest. That is, he can be summoned but cannot be compelled through arrest to appear.

The distinction between the personal capacity of the governor and his official capacity is very important. This is because according to section 5(2) of the CFRN, the executive powers of a State vested in the governor (as an office) may, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State. What this means is that the governor summoned in his official capacity can appear before the State House of Assembly through a Commissioner or other officers in the State public service.

9. Conclusion

The investigative power of the State House of Assembly and its antecedent power to summon residents under section 128 of the 1999 Constitution of Nigeria is meant to be exercised to assist the Assembly to make and correct existing law within its legislative competence, check inefficiency or waste in the management of funds approved by it, and to expose corruption within and outside the public sector. As the Supreme Court stated in *Senator Abraham Adesanya v President, Federal Republic of Nigeria*

⁵² (1986) LPELR-3186(SC)

(1981) 2 NCLR 358 at 377, "the purpose of legislative oversight is to ensure that the executive acts in accordance with the law and that public funds are properly accounted for. This power is fundamental to democratic governance and the rule of law." Similarly, in *Attorney-General of Bendel State v Attorney-General of the Federation* (1981) 10 SC 1, the Supreme Court held that "legislative oversight is an essential check on executive power and serves the public interest in transparent and accountable government."

The jurisprudential foundation established in cases such as *Fawehinmi v Inspector-General of Police* (2002) 7 NWLR (Pt 767) 606, *Attorney-General of the Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1, and *Governor of Ekiti State v Bamidele* (2014) 11 NWLR (Pt 1419) 135 collectively supports the conclusion that State Houses of Assembly possess constitutional authority to summon Governors for purposes of legislative oversight, subject to the limitation that such summons cannot be enforced through arrest and detention.

The controversy over the power of the State House of Assembly to summon the Governor is, however, far from over. While this article has submitted strongly that the Assembly is vested with the constitutional power to summon the Governor, there is need for judicial determination to effectively settle the issue. Moreover, the only option available to the Assembly to enforce its summons is warrant of arrest. However, the Governor is absolutely immune to arrest and detention under section 308 of the Constitution. As the Supreme Court observed in *Military Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621, "no one in Nigeria, regardless of position, is above the law." However, this principle must be harmonized with the constitutional immunity provisions. The proper approach, as suggested by the Court in *Tinubu v IMB Securities Ltd* (2001) 8 NWLR (Pt 71) 583, is to recognize that while immunity prevents arrest and judicial proceedings, it does not preclude investigation, documentation, or the gathering of evidence for future action.

10. Recommendations

The article examined critically the legislative powers of a House of Assembly to summon a resident and Governor of the State. Based on the findings reached by the article and the conclusion drawn, drawing upon the jurisprudence established in Nigerian case law and comparative constitutional experiences, it is recommended as follows:

i) Constitutional Amendment on Enforcement Mechanisms

In order to enhance the oversight powers of a State House of Assembly, particularly to summon a person and to compel attendance, the National Assembly should amend section 129 of the CFRN 1999 to resolve the problem of the limitation of warrant of arrest to compel the attendance of persons summoned. This recommendation finds support in the Supreme Court's observation in *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 that "constitutional provisions must evolve to meet contemporary

governance challenges while maintaining fundamental protections." Specifically, the amendment should:

- a. Provide alternative enforcement mechanisms beyond arrest warrants, such as financial penalties, contempt proceedings before superior courts, or adverse findings that can be acted upon after immunity expires;
- b. Clarify that immunity under section 308 does not preclude legislative summons but only prevents physical arrest and detention;
- c. Establish specific procedures and timelines for compliance with legislative summons;
- d. Create a graduated system of consequences for non-compliance that respects immunity while ensuring accountability.

ii) Judicial Determination

The State House of Assembly should approach the Court for a final determination on whether its legislative oversight powers pursuant to sections 128 and 129 of the CFRN 1999 include the power to summon a Governor taking into consideration the provisions of immunity in section 308 of the same Constitution.

As the Supreme Court held in *Attorney-General of the Federation v Attorney-General of Abia State* (2002) 6 NWLR (Pt 764) 542, "the proper forum for resolving constitutional disputes is the court of law, which has exclusive jurisdiction to interpret constitutional provisions." Such judicial determination should specifically address:

- a. Whether section 308 immunity extends to legislative summons or is limited to court processes;
- b. The distinction between personal and official capacity in the context of legislative summons;
- c. Whether the Governor can satisfy a summons through authorized delegates when summoned in official capacity;
- d. The appropriate remedies available to a House of Assembly when the Governor declines to honor a summons;
- e. The jurisdictional boundaries between legislative investigation and judicial inquiry.

iii) Strengthening Legislative Oversight Framework

The National Assembly should enact comprehensive legislation pursuant to section 4(2) of the CFRN 1999 to provide a more detailed framework for legislative oversight functions. Such legislation should:

- a. Codify the procedures for legislative investigation and summons at state level;
- b. Establish clear standards for relevance and materiality of evidence;
- c. Provide safeguards against abuse of legislative summons powers;
- d. Create mechanisms for expedited judicial review of disputed summons;
- e. Define sanctions for frivolous or vexatious investigations;
- f. Establish protocols for handling confidential or privileged information;

- g. Provide for the rights of persons summoned, including right to counsel, right against self-incrimination, and protection from adverse employment consequences.

This recommendation is supported by the principle established in *Registered Trustees of Nigerian Bar Association v Attorney-General of the Federation* (2012) 12 NWLR (Pt 1315) 209 that "legislative powers, while broad, must be exercised within a framework that protects individual rights and prevents arbitrary action."

iv) Inter-Governmental Protocol

The National Council of State, pursuant to its advisory functions under section 153 and Part I of the Third Schedule to the CFRN 1999 should develop protocols for managing situations where Governors are required to appear before State Houses of Assembly. Such protocols should:

- a. Establish dignified procedures for executive attendance before legislative committees;
- b. Provide for adequate notice periods and scheduling considerations;
- c. Create mechanisms for resolving disputes without resort to confrontation;
- d. Ensure that oversight functions do not unduly disrupt executive functions;
- e. Promote cooperative intergovernmental relations.

v) Capacity Building and Institutional Development

State Houses of Assembly should invest in building institutional capacity for effective oversight, including:

- a. Training for legislators on constitutional limitations and procedural requirements;
- b. Establishment of specialized oversight committees with technical expertise;
- c. Development of investigative research capabilities;
- d. Creation of ethics frameworks to guide oversight activities;
- e. Engagement with civil society and anti-corruption agencies.

As the Supreme Court observed in *Attorney-General of Bendel State v Attorney-General of the Federation* (1981) 10 SC 1, "constitutional powers are most effectively exercised when accompanied by institutional capacity and adherence to due process."

vi) Amendment of Section 308

Consideration should be given to amending section 308 of the CFRN 1999 to explicitly clarify that immunity does not extend to:

- a. Legislative investigations and summons conducted in accordance with sections 128 and 129;
- b. Administrative inquiries by constitutional bodies;
- c. Investigations by anti-corruption agencies (though prosecution may be deferred);
- d. Proceedings before specialized tribunals such as election petition tribunals or code of conduct tribunals.



The amendment should maintain protection against arrest and detention while allowing for documentation and investigation that can inform future legal action. This approach balances the need for executive function with the imperatives of accountability, consistent with the principle in *Tinubu v IMB Securities Ltd* (2001) 8 NWLR (Pt 71) 583 that immunity is "temporary protection, not permanent impunity."