

**REVISITING THE JURISPRUDENCE OF POLITICAL
DEFECTION IN NIGERIA: THE CASE OF PDP V INEC & 3 ORS
SUIT NO: FHC/ABJ/CS/920/2021 IN PERSPECTIVES**

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Abstract

The Federal High Court of Nigeria, Abuja Division on the 8th Day of March, 2022, delivered a judgement sacking the Governor of Ebonyi State Dr David Umahi. The judgement further ordered that INEC shall replace Governor Umahi as Governor of Ebonyi State with a PDP candidate. This judgement generated lots of controversies and intellectual polemics. While some were in support of the judgement, others were opposed to it. This development prompted the question on whether the said judgement of the Federal High Court was done in aberration or compliment of the 1999 Constitution of the Federal Republic of Nigeria. It was from this background that this paper drew its inspiration. This paper was aimed at exploring the legal positions regarding defection of political office holders such as those in the executives. The work established that while Nigeria's constitution legalized the sacking of legislatures whenever they defected from the party that brought them into power, the constitution does not penalize the President, Vice President, Governors and Deputy Governors. The work deployed the use of statutes, case laws,

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textbooks, journals, magazines and other related reference materials in the course of this discourse.

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1.0 INTRODUCTION

This paper is a censorial jurisprudence on the judgement of the Federal High Court of Abuja delivered on the 8th of March, 2022.¹ The work explores the jurisprudence surrounding political defections by the legislators and head of executives like the president, governors and their deputies. Its primary aim is to explore the statutory and judicial precedents relating to defections in Nigerian laws. Thus, this paper is structured into four parts. The first part deals with conceptual clarifications of terms associated with defections. It also discusses the history of Nigeria's constitutional history with respect to defections. This part further examines the efforts made by preceding Nigerian Constitutions, prior to the emergence of the 1999 Constitution of the Federal Republic of Nigeria, in combating defections. The second part explores the facts, reliefs and ratios of the Federal High Court in the case of *PDP v INEC & 3 ORS*.² In the third part of this work, the writer attempts to establish why the decision of the Federal High Court in sacking Governor Dave Umahi and his Deputy is not justified by law for defecting to a rival political party. The fourth arm of this work examines the ratio of the Federal High Court relating to the defection of Governor Dave Umahi and his deputy. It analyses, distinguished and constructively criticizes the judgement of the Federal

² Suit No: FHC/ABJ/CS/920/2021

High Court in sacking Dave Umuahi. The work ends in the fifth part where the constitutional and political flaws associated with defection in Nigeria are examined. It concludes by proffering solutions on how to improve on the present jurisprudence of political defections in Nigeria.

1.1. APPRAISAL OF CONCEPTUAL TERMS ASSOCIATED WITH DEFECTIONS

Under this sub heading, conceptual terms associated with the subject-matter of this discourse will be examined. Concepts such as meaning, types, reasons and historical evolution of defections in Nigeria's constitutions will be discussed. This will further help in better understanding of the subject-matter of this paper.

(a) Meaning of Political Defections

Etymologically, the word defection is derived from the Latin word, *defectionem*, meaning 'an action of deserting or abandoning a political leader'.³ It refers to a situation where a person intentionally abandoned and decamped from the original political party that brought him into power, and switch his allegiance to another political party. It is the abandoning of one's party to another political party that is considered an enemy.⁴ It is a voluntary desertion and transfer of allegiance of one's political party to another party.

(b) Reasons of Political Defection

There are several reasons adduced to justify why people embark on political defection. Some of these reasons that deserves mentioning include the

2.Enonbong Mbang, Akpambang and Omolade Adeyemi Oniyende," Political Party Defections by Elected Officers in Nigeria: Nuisance or Catalyst for Democratic Reform?" *International Journal of Research in Humanities and Social Studies*, V7, 12; 2020, Pp.13-14.

3.AS Hornby, "Oxford Advanced Learner's Dictionary" (Oxford, 2010)P.382-383

absence of political ideology, personal interests/aggrandizements, personal ambitions, failure of political parties to fulfill its campaign promises or executes its party agenda, avoiding persecution/ prosecution⁵, lack of internal democracy, solidarity with supporters or loyalty to mentors, and constitutional ambiguity.⁶

(c) History of political defections in Nigeria and Constitutional attempts to tame the menace Before the birth of the 1999 Constitution of the Federal Republic of Nigeria.

Political defection is a monster that greeted Nigeria's political space since the countdown to independence. Unfortunately, this was not adequately addressed; rather it is condoned, even in the present political and legal dispensation. The history of political defections in Nigeria cuts across the pre-independence era, post – independence and the current political dispensation.

(i) Instances of Political Defections in Pre-independence Colonial Nigeria

The first instance of political defection was in 1951 during colonial era. When the 1951 Macpherson Constitution established the Regional Houses of Assembly, and allowed Nigerians to form political parties in preparation for independence. The National Council of Nigeria and Cameroon (NCNC), was having majority members in the Western House of Assembly.⁷ However, for the fear of having Nnamdi Azikiwe, an Ibo man to become Premier of Western Region (where the people of Yoruba were

4.Enonbong Mbang, Akpambang and Omolade Adeyemi Oniyende, Ibid @Pp.13-14.

5.Aan Abraham, Adzaigba Terwarse and Vihimga Terungwa Lawrence, " The 2019 General Elections and the Politics of Party Defection : Implication on Democratic Consolidation", *Nigerian Journal of Administrative Studies VOL. 5 NO.1*, 2020, Pp-135-138.

6.Ibid

in the majority), made some parliamentarians to cross-carpet to Action Group (AG) where Obafemi Awolowo was a leader. Due to that incidence of cross-carpeting, the AG had more members than the NCNC (National Council of Nigeria and Cameroons). Because of this development, Awolowo became a Premier of the Western Nigeria.

The above incident made Nnamdi Azikiwe to resign from the Western House of Assembly and returned to Eastern Nigeria. Prior to coming of Nnamdi Azikiwe to Eastern Region, Sir Eyo Ita, a Calabar man was the Premier of Eastern Nigeria. But when Nnamdi Azikiwe came to power he ousted Eyo Ita.⁸

Again, while in Eastern Nigeria, Dr Nnamdi Azikiwe and Dr Kingsley Mbadiwe had some political misunderstandings. These led to the defection of Dr Kingsley Mbadiwe from NCNC to form a new party known as Democratic Party of Nigeria Citizens (DPNC). The DPNC further established a political alliance with AG at the federal level in preparation towards the 1959 Elections.

(ii) Instances of Political Defections in Nigeria During the First Republic

The First Republic (1960-1963) also witnessed some instances of political defections. Following an intra-party dispute between Chief Obafemi Awolowo and Samuel Akintola Ladoja, the latter defected from Action Group (AG) and formed Nigerian National Democratic Party (NNDP).

During the Second Republic (1979-1983), there were three instances of political defections. The first was the defection of Chief Akin Omoboriowo

7. The ousting of Eyo Ita by Nnamdi Azikiwe, made Eyo Ita to form a new political party then, known as National Independence Party (NIP). See A. Abraham, Adzaigba Terwase and Vihinga Terungwa Lawrence Loc. Cit

from UPN to National Party of Nigeria (NPN) in 1983, Chief Akin Omoboriowo decamped to UPN in order to contest the Gubernatorial Election of 1983. This led to a crisis after the election.⁹

Also, in Kano state, Abubakar Rimi decamped from the People's Redemption Party (PRP) to National People's Party in an attempt to seek re-election. However, Rimi lost to a PRP candidate in that election of 1983.¹⁰

Again, there was a defection by one of the members of Nigeria People's Party (NPP), Alhaji Waziri Ibrahim. This followed after a series of irreconcilable differences; Alhaji Waziri Ibrahim decamped from NPP and formed another political party called Great Nigerian People Party (GNPP). From the above discourse it is clear that the history of defection permeated all the constitutional and legal regimes in Nigeria. The actors in this theatre of political defections were both the legislature and the executive. The question is that, how did the various constitutions of Nigeria address the issue of political defection before the emergence of the 1999 Constitution? An attempt to answer this question is reflected in the next part of this work- Constitutional Approaches in combating political defections before the coming of the 1999 Constitution.

(d) Constitutional Approaches in Combating Defections Prior to the Birth of the 1999 Constitution

In order to tackle the negative effects of political defections on Nigeria's polity and national security, there were series of constitutional measures

8.Ibid

9.Ibid.

taken by Nigeria as a nation. One of the measures taken under the various constitutions is the enactment of anti-defection clauses, outlawing defection in certain circumstances.¹¹ It was expected that in order to combat the incidences of political defections in the pre-independence Nigeria, the 1960 Constitution should have cured the malady of defection. However, the 1960 constitution was silent on the issue of cross carpeting.¹² Unfortunately, it was expected that the 1963 Republican Constitution should come to the rescue but it also failed to address the issue surrounding political defections. Despite the constitutional reigns of the 1960 and the 1963 Republican Constitutions, defections persisted with its dastard effects on Nigerian politics. It was the 1979 Constitution that made the first constitutional attempts to curtail political defections. These efforts are contained in the provisions of sections 64 (1) (g) and 103 (1) (g) of the 1979 constitution. Section 64 (1) (g) which deals with tenure of the members of Senators or Members of House of Representatives provides that:

A member of the Senate or of the House of Representative shall vacate his seat in the House of which he is a member if-

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political before the expiration before which that House was elected;

Provided that this membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more

10. This is seen in the provisions of sections 64(1) (g) and 109 (1) (g) of the 1979 Constitution as well as sections 68 (1) (g) and 109(1) (g) of the 1999 Constitution of the Federal Republic of Nigeria.

11. This is evident from the provision of sections 41 to 44 of the 1960 Constitution which deals with the qualification, disqualification and tenure of Senators and House of Representative members. See also sections 8 to 13 of the Nigerian (Constitution) Order in Council, 1960.

political parties or factions by one of which he was previously sponsored.

With respect to the tenure of the Houses of Assembly, section 103 (1) of the 1979 Constitution provides that:

A member of House of Assembly shall vacate his seat in the House if-

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration before which that House was elected;

Provided that this membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

The import of the above provisions is that they seek to prohibit and sanction defection. In order to allow some leeway for politicians, division among the political parties is seen as one of the grounds for justifying defections. Also, defection is allowed where there is a merger among the political parties. However, one peculiar feature of anti-defection clause under the 1979 Constitution is that it appears even to apply to governors. Thus, where a Governor acquires any status (via defection) or suffers any disability, in a similar manner as those of the Senators, he shall not qualify for re-election. This is captured in section 166(1) of the 1979 Constitution which states that:

A person shall not be qualified for election to the office of Governor if –

- (a) he does any act, acquires any status or suffers any disability which, if he were a member of the Senate, would have disqualified him from membership of the senate.*

However, it is important to note that this provision can only disqualify a governor for the purpose of re-election, and not determination of his tenure. This section appears to address the defections by some governors seeking re-election as in the cases of Abubakar Rimi and Mohammed Goni in Kano and Borno respectively, in the Second Republic.¹³ This further means that a governor cannot lose his seat when he defected during the subsistence of his tenure, but he can be disqualified for seeking re-election under a new political party, if he defects to another party.

The 1999 Constitution of the Federal Republic of Nigeria equally provides for anti-defection clause in a similar manner to the 1979 Constitution. Section 68 (g) of the Constitution deals with the tenure of Senators and Member of House of Representatives, while section 109 (1) (g) deals with the tenure of members of Houses of Assembly. For clarity the anti-defection clause in section 68(g) provides as follows:

A member of the Senate or of the House of Representative shall vacate his seat in the House of which he is a member if-

- (g) being a person whose election to the House was sponsored by a political party, he becomes a member of another*

12. Aan Abraham, Adzaigba Terwarse and Vihinga Terungwa Lawrence, Loc.Cit.

political party before the expiration before which that House was elected;

Provided that this membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

In similar way, section 109 (1) (g) of the Constitution provides for anti-defection as follows:

A member of House of Assembly shall vacate his seat in the House if-

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration before which that House was elected;

Provided that this membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

Having examined the conceptual frameworks on defection and its constitutional evolution in Nigeria's history, at this juncture, it is apposite to examine whether the decisions of the Federal High Court in the case of Governor Umahi Dave is incorrect in the eyes of the law.

2.0. EXPOSITION OF THE CASE OF PDP V INEC & 3 Ors SUIT NO: FHC/ABJ/CS/920/2021 WITH RESPECT TO DEFECTION

(a) Facts of the Case

Governor Dave Umahi was elected as governor of Ebonyi Under the auspices of People Democratic Party (PDP). He later decamped and joined the All Progressive Congress (APC). Consequently, the People Democratic Party instituted a suit against Governor Dave Umahi and his Deputy Governor.

(b) The Facts in Issue or Issues For Determinations

The case of PDP V INEC & 3 ORS SUIT NO: FHC/ABJ/CS/920/2021 had raised certain issues for determination before the Federal High Court Abuja. Principally, it sought the interpretations of certain provisions of the constitution. Some of the constitutional and legal provisions include the interpretations of sections 1(1), 1(2), 172, 177 (c), 179,182,187,121, 222 of the 1999 CFRN and section 87 of the Electoral Act. In this case, the Plaintiff sought the court to interpret these sections, to the effect that since the Defendants defected to from APC to PDP; their seats have to be declared vacant.¹⁴ Also, another reason is that votes belong to political parties and not an individual and thus, where an individual defect from a political party that sponsors him, he is deemed to have resigned from that office and should vacate that office.

For the purpose of elucidating on the parts of the judgement that relates to defection, this work shall refer to (a) questions for determinations, (b) the part of the judgment of the court that relates to defection, and the declaration of the court vacating tenure of Eng. David Umuahi as Governor

13. See PDP V INEC & 2Ors@<https://www.Nigerianlawyer.com><accessenApril 14, 2022>

of Ebonyi State. After that, (c) a critique of the judgement of the Federal High Court delivered by Hon. Justice I.E. Ekwo will be examined.

(i) Questions for Determination Relating to Defection

The question for determination that addresses defection is No.7 which states that:

“Whether the 3rd and 4th Defendants have not resigned or deemed to have resigned by operation of the law from the office of the Governor and Deputy Governor of Ebonyi State or vacated the said offices having become members of another political party, the 2nd Defendant other than the party that won the majority lawful votes at the election, (that is the Plaintiff) in view of the provisions of sections 177(c), 179 (2), 180 (c) and (d) and 221 of the Constitution and the decisions in Amaechi v INEC (2008) 5 NWLR (PT.1080) 227 and Falake v INEC (2016) 18 NWLR (PT. 1543) 61

- (ii) The Relief with respect to defection that is gleaned from Question No.7

The relief No. 7 states that:

“A DECLARATION that by defecting from Peoples’ Democratic Party (PDP) on which platform they were sponsored and elected as Governor and Deputy Governor of Ebonyi State to the 2nd Defendant, All Progressive Congress (APC), a political party that did not win governorship election of Ebonyi State, the 3rd and 4th Defendants have resigned or are deemed to have resigned from the office of Governor and Deputy Governor Of Ebonyi

State, by virtue of which the Plaintiff as winner of the governorship election of Ebonyi State on March 2019, is entitled to submit the names of its candidates to occupy the offices of the Governor and Deputy of Ebonyi State for the remainder of the term secured by virtue of the Plaintiff's victory on 9th March, 2019."

(c) Parts of Judgement of the Federal High Court relating to defection

The court started by saying:

... the main issue in this case and in my opinion, and the question that is capable of determining this case in its entirety effectively and completely is:

What is the constitutional effects of the defection of the 3rd and 4th Defendants from Peoples' Democratic Party (Plaintiff) to All Progressive Congress (2nd Defendant) having been elected Governor and Deputy Governor respectively of Ebonyi State on the Platform of the Plaintiff by the votes given to the Plaintiff by electorates in the governorship election of 9th March, 2019.

On the issue of defection, the court further went ahead and held that:

It can be noted that the Constitution does not treat the issue of defection lightly. ...Examples can be seen in the provisions of section 68(1) (g) of the 1999 Constitution (as amended) where it was stated that: "68 (1) (g). A member of the Senate or of House of Representatives shall vacate his seat in the House of which he is a member if:

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period

for which that House was elected. Similar provision is made with respect to section 109 (1) (g) of the 1999 Constitution (as amended) with respect to membership of the State House of Assembly. Though no similar provision is made in respect of a Governor or Deputy, such lacuna is not to be celebrated or even mischievously flaunted as failure of remedy for a situation of such nature. It is not an assurance that anybody who occupied an elected office would defect from the political party that puts him on the seat to a party that did not win the election, and nothing would happen. It would be a constitutional wrong for a person who was sponsored by one political party, to defect and become a member of another political party, before the expiration of the period he was elected and then continue with the voters' mandate given to his former party. This is the situation here.

The learned judge went further to answer Question 7 and 10 in the positive and further held as follows:

I find that the case of the plaintiff has succeeded on merit, and entered judgement on term as follows:

“10. A declaration is hereby made that by defecting from Peoples' Democratic Party (PDP) on which platform they were sponsored and elected as Governors and Deputy Governor to the 2nd Defendant, All Progressive Congress (APC), a Political Party that did not win the Governorship Election in Ebonyi State, the 3rd and 4th Defendants have resigned or are deemed to have resigned from the office of the Governor or Deputy Governor of Ebonyi State, by virtue

of which the Plaintiff as winner of the governorship of election of Ebonyi State on March ,2019 is entitled to submit the names of its candidates to occupy the offices of the Governor and Deputy Governor for the Remainder of the term secured by virtue of the Plaintiff's victory.”

It was from the basis of the above ratio that, the Federal High Court removed Governor Dave Umahi.

3.0. Examination of the legality of the judgment of the Federal High Court in the case of PDP (Supra) on defections

This aspect of the paper seeks to answer these questions; (a) are there any legal justifications for the Federal high Court to sack the Governor of Ebonyi State and His Deputy? In responding to this question, this paper does not agree with the decisions of the FHC sacking the Governor Dave Umahi and his deputy for defection. Thus, in the course of buttressing the reasons for these positions, this work seeks to examine the non-justification of the sacking of Governors and deputies for defection. The details of these expositions are examined at the subsequent part of this paper. In doing so, this paper framed two questions as follows: (a) is there any legal justification for the sacking of members of State Houses of Assembly who defected to another party? and (2) is there any legal justification for sacking the President, Governor and Vice President and Deputy Governor for defecting to another political party? The response to this question is in the negative. And a further riposte as to why there is no constitutional justification for the sacking of governors is an interesting argument in the subsequent part of this paper.

3.1. WHY THE DECISION OF THE FEDERAL HIGH COURT ABUJA IN SACKING GOVERNOR DAVE UMUAHI AND HIS DEPUTY BECAUSE OF DEFECTION SEEMS UNJUSTIFIABLE BY NIGERIAN LAWS

The current position of law regarding the defections of governors from one political party to another is not prohibited by the Nigerian constitution. Prior to the emergence of the 1999 Constitution, the legal tenure of the 1979 Constitution clearly contemplates that a governor who defected from a political party that sponsored him without a justifiable reason can be disqualified from contesting a re-election. The first case in Nigeria that addressed the defection of governor from one political party to another is the case of *FEDECO v Mohammed Goni*.¹⁵ In this case, Governor Mohammed Goni of Borno became elected Governor under the Platform of Great Nigeria People's Party. During his time, there was a crisis that led to the splintering of the party into two factions. The first faction joined the National Party of Nigeria (NPN) and the second faction joined the United Progressives of Nigeria (UPN).

As a result of the above division, Mohammed Goni joined the UPN to contest re-election. Thus, the FEDECO challenged his re-election stating that he was disqualified by virtue of section 64(1) (g) of the Constitution. The court held that since there was a faction in GNPP that led to defections of members from NPN and UPN, Governor Mohammed Goni is saved by the provision of section 64(1) (g) of the 1979 Constitution.¹⁶

14. (1983) NSCC Vol. 14

15. This section is *in pari materia* with section 68(1) (g) of the 1999 CFRN.

It is important to note that the Supreme Court ruled in favour of Mohammed Goni because of the faction in GNPP that has a national outlook. Equally, under the 1979 Constitution, political defections of governor will lead to his disqualification under section 166 (1) (a) which states that:

A person shall not be qualified for election to the office of Governor if-

- (a) He does any act, acquires any status or suffers any disability which, if he were a member of Senate, would have disqualified him from membership of the Senate;*

The import of the above provision is that if a governor acquires any status that is similar to the grounds of disqualifications of Senator, such as defection he will be disqualified by the law under the 1979 Constitution, unless there is a division in the party or defection. That is why in Goni's case (supra) Bello J.S.C held at page 492 P.5 that:

Now for the purpose of disqualifications of a candidate to the office of Governor, the provisions of section 166(1) (a) of the Constitution incorporates the provisions of section 64(1) (9) in the former subsection. The combined effect of the two sub-sections is that an incumbent Governor whose election to the office of the Governor was sponsored by a political party is disqualified for re-election to the office if he changes his political party which sponsored him and seeks re-election on the sponsorship of his new party unless the circumstances for the change are covered by the provisions of section 64 (1) (g) from seeking re-election.

From the above provision, it is clear that while the 1979 Constitution sanctioned cross- carpeting of the executive, the 1999 constitution is silent

about that. The provision of cross-carpeting only applies to the case of the executives such as the President, Vice President, Governor and Deputy Governors. The illustration of the fact that the 1999 CFRN does not sanction defections by the executives is the case of *Abubakar v AGF*.¹⁷ In this case, Atiku Abubakar decamped from PDP to ACN following a feud between him and President Olusegun Obasanjo. The Attorney General of the Federation then instituted an action against the Vice President Atiku Abubakar. One of the issues for determination before the court was whether the Plaintiff (Atiku Abubakar) is deemed to have vacated his office because he defected to a rival party. The court held Per Abdullahi P.C.A that:

*It is not the intention of the makers of the Constitution that if the President or Vice President resigns from the political party which puts him in office and embraces rival political party his office is declared vacant. Firstly, if that was the intentions of the makers of the Constitution it would have so stated expressly. I agree with the submission of Chief Olanipekun, the learned Senior Counsel for Plaintiff that when the makers of the Constitution so wished it for members of the National and State Houses of Assemblies they unequivocally so provided under sections 68(1) (g) and 109 (1) (g) respectively of the Constitution. Sections 68(1) (g) and 109 (1) (g) are similarly worded. Section 68(1) (g) and 109(1) (g) is hereby set down immediately hereunder:
“68 (1) (g) A member of the Senate or of House of Representatives shall vacate his seat in the House of Representatives shall vacate his seat in the House of which he is a member if:*

16..(2007) LCN/2306(CA See also the citation in the case of AG F& 2ORS V Abubakar (2007) NWLR Pt.1041

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.”

The proviso thereto is not relevant to the point presently under consideration. The defendants failed or neglected or refused to proffer a reasonable or satisfactory explanation for the omission of corresponding provision to sections 68(1) (g) and 109 (1) (g) for the President and Vice President in event of the of their leaving the party on whose platform they were elected for another party in section 142.

The above dictum of the Court of Appeal clearly means that defection by the President, Vice President, Governor and Deputy Governor from one political party to another, cannot be a ground for defection. This decision of the Court further distinguishes the fact that while cross- carpeting by legislature is sanctionable, defection by the executive is not. Therefore, based on this legal position it could be safe to conclude that defection of a governor or his deputy cannot qualify as a justifiable ground for him to vacate his seat. This position of the Court of Appeal was further upheld by the Supreme Court to the effect that there is no express provision in the constitution prohibiting the Vice President from defecting to another political party.¹⁸

Another reason why the decision of the Federal High Court in Abuja is not justified in law is because it negates the provision of section 287 (1) of the 1999 Constitution, which states that the decision of the Supreme Court shall

17.(2007) LCN/2306(CA)

be binding on all courts and enforceable.¹⁹ This position is known as doctrine of judicial precedent. As a lower court, the Federal High court is bound by the law to follow the judicial precedents in the cases of *FEDECO v Goni*²⁰ and that of *Abubakar v AGF*²¹. This is because it is a settled law that the decisions of superior courts such as the Supreme Court or Court of Appeal are to be followed by the lower courts (as in the instant case, Federal High Court). A failure by the Lower court to follow and abide by the decision of the Supreme Court is reprehensible in law. This position is captured by the Supreme Court in the case of *Chidi v Agbo*²² where the Apex Court held @ P.223 Para.H that:

The case of Ude v Nwara (1993) 2 NWLR (PT.278) 638 is binding on Court of Appeal and Trial Court. It amounts to judicial impertinence for the learned trial Chief Judge to have closed his eyes and refuse to be bound by that decision based on the principles of stare decisis

Also, the courts are enjoined to apply the doctrine of judicial precedents without relying on their discretion. This position is made clear in the case of *OGWE v IGP*²³ where it was held that:

...judges are enjoined to stand by their decisions and the decisions of their predecessors. The doctrine does NOT ALLOW FOR EXERCISE OF DISCRETION IN AN ISSUE the Court previously decided on when the same issue subsequently surfaces before the court for determination”

18. Okorochoa V P.D. P.(2014) 7 N.W.L.R PT.1406.

²⁰ Supra

²¹ Supra

19.(2018) 2NWLR PT.1603

20.(2015)7NWLRPT.1459

Furthermore, by holding that a governor can vacate his seat on the ground of defection against the *stare decisis* in *FEDECO v Goni* and *Abubakar v AGF*, the Federal High court has appeared to reverse the decision in the above cases. Then the question, does the Federal High Court has the power to review or depart from the decision the Supreme Court? The answer is no. For it is only the Supreme Court that can review or departs from its own decision based on certain circumstances.²⁴ Thus, the Federal High Court acted in judicial *ultra vires* in holding that a governor can vacate his seat on the ground of defection.

4.0. AN APPRAISAL OF THE RATIO OF THE CASE OF PDP V INEC & 3 ORS SUIT NO: FHC/ABJ/CS/920/2021 WITH RESPECT TO DEFECTION OF GOVERNORS

This section of the paper is aimed at analyzing the reasoning of the trial court related to this judgment. Here, attention is given to the analysis of the relevant section of the Constitution that bothers on defection which the Federal High Court relied on. Thus, the sections under the 1999 Constitution that will be examined here are (a) 179 (2), 180 (c) and (d) and 221. After appraising the sections, the judicial precedents in Amaechi's case (supra) and that of the Falake (supra) will be analyzed to see how they did not align with the case at hand.

21. In the cases of *A.P.G.A V Almakura* (2016) 5 NWLR Pt.1505 SC and *Aregbesola V Oyinlola* (2011) 9 NWLR(383) , the Supreme Court held that all courts are duty bound to follow the decisions of the Apex Court of the land. Similarly, it is trite that that only the Supreme Court can depart from its previous decisions when its judgment is given *Per In curium* or that relying on such decisions will lead to injustice.

Section 179 (2) of the Constitution provides that: A candidate for an election to the office of a Governor of a State shall be deemed to have been fully elected where, their being two candidates-

- (a) He has the highest number of votes cast at the election: and
- (b) He has not less than one-quarter of all the votes cast in each of at least two-thirds of all local government areas in the state.

The above provision is titled in the body of the Constitution as “Election: single candidate and two or more candidates.” It is a continuation of the wordings of section 178 titled “election of the Governor; General”. Thus, this section deals squarely with election. It envisages a situation that states the qualification of a person before he can be declared a Governor. It is a qualification for the purpose of assuming the office of Governor, and not a qualification for the sustainability of the office of Governor. Therefore, it cannot be deployed as a ground for the disqualification of the tenure of a Governor while his office subsists.²⁵

Furthermore, section 180 (c) and (d) of the Constitution is another provision that the Federal High Court relied on to sack Engineer Dave Umahi. The said section provides that;

- 180 (1) subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until-*
- (a).....*
 - (b).....*
 - (c) the date when his resignation from office takes effect; or*

22.AbubakarV AGF(2007)10 NWLRPT.1041

(d) he otherwise ceases to hold office in accordance with the provision of this Constitution.

The above provision implies that resignation by a governor is an outright indication of the termination of his tenure. The clear wordings of the above provision in section 180 (c) is that resignation qualifies as a ground to end the tenure of the Governor. Thus, the court in this case referred to this position thus,

A DECLARATION that by defecting from Peoples' Democratic Party (PDP) on which platform they were sponsored and elected as Governor and Deputy Governor of Ebonyi State to the 2nd Defendant, All Progressive Congress (APC), a political party that did not win governorship election of Ebonyi State, the 3rd and 4th Defendants have resigned or are deemed to have resigned from the office of Governor and Deputy Governor of Ebonyi State

The question that would flow from a curious mind is that, does defection equally means resignation? Are there any circumstances under which defection could amount to resignation? The response to this question can be done by exploring the dictionary on the meaning of 'resignation'. The Black's Law dictionary defines resignation as follows: "1. The act or an instance of surrendering or relinquishing an office, right or claim 2. A formal notification of relinquishing an office or position." From these definitions there is no reference to defection as one of the words that is

synonymous with resignation. Reliance on dictionary definitions are relevant in legal interpretation and accorded probative value by court.²⁶

Also, by the imports of the phrase ‘he otherwise ceases to hold office’, it means that the governor can leave his office if he ceases to hold office through any other means. Equally important is the fact that any other means must accord with, and must be subject to the constitution. This follows the wordings of section 180 (1) which states that “subject to the provision of this section, a person shall hold office as Governor of a state until...” The next question to ask is what part of the Constitution, does subsection (1) (c) and (d) are subjected to in determining the disqualification of a governor to hold office? Also, is the phrase “otherwise ceases to hold offices in accordance with the constitution” a disqualifying ground” contemplated by the Constitution? The responses to these posers are in the negative. This is because one of the provisions that section 180 (1) (c) and (d) are subject to the provisions dealing with disqualifications of governors in the constitution. The disqualification grounds provided in section 180 (1) (c) and (d) are:

- (c) He dies while holding office, and
- (d) He otherwise ceases to be Governor in accordance
with the provision of this Constitution

A cursory reading of the Constitution reveals that defection is not a basis for disqualification of governor. Thus, by community reading of sections 180 (1) (c) and (d) and other provisions of the Constitutions relating to defections, clearly show that a Governor is not a culprit for defecting to another political party other than his original party that sponsored him.

23. AGF V AG Lagos, State (2013) PT.1380

Also, defection is not an otherwise way of ceasing to be a governor in accordance with the Constitution. The ‘otherwise’ referred to within the contemplation of section 180 (1) (c) and (d) of the Constitution, does not preclude defection.

Furthermore, section 221 is another provision that the trial court resorted to in delivering its judgement. Section 221 prohibits assuming political power without recourse to an established political system. It is one of the provisions that seek to prevent military take-over or extra-judicial take-over of power. Thus, it prohibits any association to function as a political party, unless:

- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission
- (b) national membership devoid of discrimination on any ground
- (c) the copy of the Constitution is registered with INEC
- (d) Registration of altered Constitution with INEC 30 days after such alteration.
- (e) The symbols or logo of the association is devoid of ethnic, religious or regional politics.
- (f) The Headquarter of the association must be registered in Abuja.

The above provision did not qualify as a ground for termination of the tenure or the ground of disqualification of the governor to complete his tenure in office. It squarely deals with qualification for the registration of a political party. Similar provisions like section 221 are reflected in the provisions of Electoral (Amended) Act, 2022.²⁷

24. For example, sections 75,77 and 79 which deals with power of the Independent Electoral Commission to register political parties, status of political parties as body corporate and symbol of political parties.

However, the Court of Appeal (Enugu Division) held in the case of *Umahi V INEC PDP*²⁸ that a governor can defect to a political party without been sanctioned. The court held that defection by a governor and his deputy is an expression of their rights to freedom of association as guaranteed by section 40 of the 1999 Constitution. Thus, by this position, the Court of Appeal has added to the line of judicial authorities that political defections of governors to another party different from the one that sponsored him cannot terminate his tenure.

4.1. DISTINGUISHING THE CASE OF AMAECHI V INEC (2008) 5 NWLR (PT.1080) 227 AND FALAKE V INEC (2016) 18 NWLR (1543) 61 WITH THE CASE AT HAND

In distinguishing a case, certain factors are considered. These include:²⁹

- (a) The parties- are the parties in the previous case and the present case the same? Are they artificial or natural persons?
- (b) The subject-matter: this means that, are the subject-matters in the previous case the same with the case at hand?
- (c) The facts in issue: this means that are the facts in issue the same with the case at hand?
- (d) The legal principle in question: this means that are the legal principle the same with the case at hand?

²⁸ Adam Rogoni, "Legal Theory: Common-Law: judicial reasoning and Analogy", Pp.150-15@<https://journalss.cambridge.org/LEG><accessenApril 22, 2022>See also Halima Doma Kutigi, 'RatioDecidendi and Judicial Precedent', being "a Paper presented at The NationalWorkshop for Legaland Research Assistants by. and at the NAtaional Judicial Institute on Monday, 15 July 2015"@<https://nij.gov.ng>>2020/03<accessed on April 22,2022>

²⁸.Ibid.

- (e) The part of judgement seeking to be distinguished. This means that there is the need to examine whether the part of judgement is ratio, dissenting judgments or Notable Pronouncements.³⁰

Where any or more of the above factors are exhausted, it can be said that there is a genuine ground for distinguishing a case. Thus, it is from these parameters that this work seeks to distinguish the cases of Amaechi (supra) and Faleke (supra). Before doing so it is pertinent to state briefly the facts in the case sought to be distinguished.

(a) The Facts in The Case of Amaechi v INEC (2008) 5 NWLR (Pt. 1080) 227

In this case, the Appellant participated in PDP primaries and emerged winners. Celestine Omehia did not contest at the primaries. However, it was the name of the Appellant that was forwarded to INEC. Then PDP substituted the name of the Appellant with Celestine Omehia who participated in the election and won under PDP. The ground for the substitution is that the name for substitution was done in error. One of the issues was whether the PDP and INEC can disqualify a candidate who won primaries. The court held in the negative and reinstated the Appellant Amaechi as Governor of River State.

(b) Distinguishing the Case of Amaechi (Supra) With The Case at Hand

In distinguishing the case at hand with the one of Amaechi (supra), this work shall first start by looking at the distinguishing factors between Amaechi's case and the case of PDP V INEC. Firstly, Amaechi's case deals

²⁷.Ibid

with primaries- where a candidate who did not participate in primaries became a governor, however the present case deals with governor who participated in the primaries and won the Governorship seat as sponsored by the party.³¹ Thus, while Amaechi's case deals with pre-election matters, the present case deals with post-election matter. The Amaechi case was a product of imposition of Governorship by the Supreme Court, while that of PDP's case is removal of Governor and his deputy by Federal High Court because of defection. Thus, in Amaechi's case non-conduct of primaries was the bone of contention, while in the Umahi's case, defection was the main issue.

(c) The Facts in the Case of *Faleke v INEC (2016) 18 NWLR (1543) 61*

In this case the late Prince Audu contested for the PDP primaries and won while Yahaya Bello became second. In the conduct of the general election, Prince Audu picked James Abiodun Faleke as his running mate, and they won the election. However, before the swearing of the Prince Audu as Governor of Kogi State, he died. A supplementary election was conducted and the Yahaya Bello was returned by INEC as the Governor. Faleke challenged the outcome of the election. The court gave judgement in favour of Yahaya Bello.

(d) Distinguishing the Case of *Faleke V INEC (2016) AND The Case at Hand*

Again, the case in *Faleke V INEC* deals with a situation where a governor has not taken an oath of office. That is both Faleke and Yahaya Bello never took the oath of office. Also, while the case of *Faleke V INEC* deals with

28. Therefore, there is no basis for importing the argument votes belongs to political parties in a situation like this case where the bone of contention is determination of tenure of governor.

qualification to the assumption of the office of Governor, the case of PDP V INEC deals with the termination of tenure due to defection. Again, the case of Faleke V INEC deals with the ownership of votes as assets of political party, the case of PDP V INEC deals with the status of the Governor as an agent of a political party that sponsored him. Lastly, while Faleke's case deals with supplementary election, the PDP V INEC's case deals with tenure of governor.

5.1. CHALLENGES ASSOCIATED WITH LEGAL APPROACHES IN COMBATING DEFECTION

The lack of adequate legal frameworks sanctioning political defections of Governor and President is a major challenge. This is seen in the fact that even the constitution is silent about the effects of political defections. Similarly, there is no any legislation sanctioning such defections by governors or President, rather endorsing it, while defection by legislators is sanctionable. This is no doubt a discriminatory practice- which against the spirit of the 1999 Constitution.³²

Equally, the condition that division must be of national character should be liberalized. Defection does not need to be nationwide in the case of State Houses of Assembly. This is because the Houses of Assembly deal squarely with the state structures of the party, in accordance with the federal structure of Nigeria. Therefore, where there is a division at the State branch of the party, members of the State Houses of Assembly shall be allowed to defect to another party. While for those in Senate and House of Representatives, their defections can only be justified

29. Section 42 of the 1999 Constitution prohibits discrimination on whatever ground.

whenever there is division at the National level of the party, because there are Federal legislators.

Absence of political fidelity is another challenge associated with defections. Politicians are not faithful and committed to the ideals of politics. They are after their personal interest that is why there are inter and intra- party conflicts. This trend usually heats up the polity and thus serves as incentives/inducement for defections.

Lack of political enlightenment as well as the lack of proper understanding of the operation of Nigerian constitution is another challenge. Many Nigerians do not appreciate how Nigerian constitutions operate with respect to political defections. Thus, there is the need for them to be enlightened.

5.2. WAY FORWARD

Firstly, there is need for sensitization and enlightenment to politicians, lawyers and public commentators. On March 8th, 2022, when the Federal High Court Abuja, sacked Governor David Umahi, many sentiments from lettered and unlettered men appears to favour the position of the court. However, it is until the Court of Appeal held on the contrary, that people became enlightened.

Again, there is need to amend the constitution to outrightly prohibit defection by the President, Vice President and Governors and the Deputy Governors. Defections should be sanctioned as a ground for impeachment

of the President, Vice President, Governor and Deputy Governor.³³ This will address and reduce the spate of indiscriminate defection among the parties.

Also, the use of waiver for admitting members from another political party should be discouraged. Political parties in Nigeria have provided for waiver to allow non-original members to join their parties. This in turn served as incentives for politician to rationalize defections. So once waiver clause in constitutions of political parties is discouraged, it will serve as a way forward.

Judges should abide by the doctrine of judicial precedents. In the present case the Federal High Court ought to have stuck by the settled law in *FEDECO v Goni and Abubakar v AGF*, and reinstate that defections of Governors is not prohibited by the Constitution.

30. The 1979 Constitution appears to deal with the penalty for defection in section 166 (1) (a) earlier examined in the body of this work. However, is unfortunate that at recent Constitutional Amendment in 2022, the National Assembly rejected sanctioning political defections by governors. Equally, the Electoral Amended Act, 2022 is silent on defection by political office holders. See, Queen Esther Iroanusi, "How National Assembly voted on Constitution Amendment Bills", March 2, 2022, Premium Times@<https://www.premiumtimesng.com>.,<accessed on April 22, 2022>