

Four more years after a re-run election?

By Festus Keyamo

LET me paint a very mischievous picture for you as a prelude to my position on the above subject. Just supposing a governor, in the height of mischief, wants to perpetuate himself in office. He sponsors a fake opponent who drags him to the tribunal. The tribunal drags on for three years. His "victory" is overturned. They go for a re-run. The governor "wins" again. He takes a fresh oath. He starts another four-year term. The opponent heads for the tribunal again. It drags for another three years. The "victory" is again, annulled. They go for another re-run. The governor "wins" again. He takes a fresh oath. He then starts another four-year term. The opponent heads for the tribunal again.... and so on and so forth.

For those who are propounding the argument that the present governors of Adamawa, Kogi, Ekiti and Bayelsa states - all who took fresh oaths of office after re-runs - are entitled to fresh four-year terms, they should consider the above scenario.

However, I do also agree that the argument is also beyond mere logic and simple reasoning. The argument should also take into account the provisions of the constitution.

Now, the contentious provisions are Section 180 (1) and (2) of the 1999 Constitution, which states as follows:

Subject to the provisions of this Constitution, a person shall hold the office of governor of a state until;

- when his successor in office takes the oath of that office; or
- he dies whilst holding such office; or
- the date when his resignation from office takes effect;
- he otherwise ceases to hold office in accordance with the provisions of this constitution.

Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when -

- in the case of a person first elected as governor under this constitution, he took the oath of allegiance and oath of office; and
- the person last elected to that office took the Oath of Allegiance and oath of office or would, but for his death, have taken such oaths.

The only case in our legal history which has interpreted these provisions is the case of Peter Obi V. INEC (2007 11 NWLR (Part 1046) 565 where the Supreme Court (per Aderemi J.S.C) held as follows: "The appellant has argued that as a person first elected as Governor of Anambra State, he took his oath of allegiance and oath of office on the 17th of March 2006 and that his four-year term would continue to run from that date. By mathematical calculation, it will end on the 17th of March 2010, it was further argued. The submission was countered by his opponents who submitted that while conceding that he won his election case against Dr. Chris Ngige, the former Governor of Anambra State who was unlawfully sworn in as Governor of that State on the 29th of May 2003, his four-year term must start to run from the date Dr. Ngige was sworn in. The argument of the respondents here is very tenuous. When the verdict of the Court of Appeal (Enugu Division) declaring the present appellant as the rightful person to have been declared having won the gubernatorial election of April 2003, was handed down, the effect is that the return of Dr. Chris Ngige as the person who won the election was null and void and of no legal consequence. So, Ngige's oath-taking at that time cannot be a point of reference for calculating the four-year term of the appellant. Ngige was and cannot be a person first elected as governor under this constitution; his election having been declared null and void. It was after the judgment of the Court of Appeal on March 16, 2006, and by force of law, that the appellant (Peter obi) took his oath of allegiance and oath of office on the March 17, 2006. Applying the provisions of Section 180 (2) (a) of the Constitution to facts of this case, which are not in dispute, the four-year term of office of Peter Obi, as governor of Anambra State would start running from March 17, 2006, only to terminate on the March 17, 2010. To interpret the provisions of section 180 (2) (a) otherwise will be to read into that sub-section what the legislators never intended. The duty of a judge is to expound the law and not to expand it".

However, the facts of the case of Peter Obi v INEC are quite different from the pending cases of Adamawa, Kogi, Bayelsa and Ekiti states that are virtually waiting to go to court. The simple difference is that in the case of Peter Obi, it was not the same person that was re-taking the oath of office. But in all these other states, it was the same persons that re-took the oaths of office.

Why do I emphasise the issue of the same person? What difference does it make?

The law is that for you to get the true intention of the makers of the constitution, a particular section cannot be read in isolation of other sections. In fact, the constitution must be read as a whole to get the true intention of the makers of the constitution. See the case of Tukur v. Govt. of Gongola State (1989) 4 NWLR Pt 117 pg 517 particularly @ 579 where Nnaemeka Agu, J.S.C said as follows: "Before I can properly answer this question, I should consider what principles should guide me in the interpretation. I must remember that this court has said it several times that the provisions of the constitution ought to be read and interpreted as a whole in that related sections must be construed together".

Now, Section 182 (1) (b) of the 1999 Constitution states as follows:

- "No person shall be qualified for election to the office of governor of a state if he has been elected to such office at any two previous elections."

This section, read together with Section 180 reveals one thing: it was definitely not the intention of the makers of the constitution to allow a person perpetuate himself in office under any guise. In the first place, it requires that person to go back to the electorate after every four years to renew the mandate. In the second instance, it states that after two terms of four years each, he must compulsorily vacate the office. The obvious philosophy behind this is to make sure other persons are given a chance to govern the people, no matter how well a governor would have performed.

If this is accepted, then it should be noted that an obvious guide to interpreting the constitution is not to interpret it in such a way as to defeat the true intentions of the makers of the constitution or to interpret it in such a way as to lead to absurdity. As a result, any interpretation of the constitution that may allow one person to perpetuate himself in office will defeat the true intentment of the makers of the constitution.

My opening paragraph above has aptly described how an interpretation of the constitution that gives a fresh four-year term to a sitting governor that wins a re-run may lead to his being in power for even ten years or more. Surely, our Supreme Court must be wary not to fall into such a trap. Trust politicians, if the Supreme Court ever gives such an endorsement to tenure elongation, it will be a further endorsement of rigging and may sound the final death knell for democracy.

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