

APPOINTMENT AND REMOVAL OF A VICE-CHANCELLOR UNDER THE NIGERIAN LAW

By

*Professor Ehi Oshio,
Professor of Law, Barrister, Solicitor and Legal Consultant,
Former Dean of Law, University of Benin, Benin City
email: pehioshio@yahoo.com.*

Introduction

A few days ago, on 12th February, 2016, the Minister of Education announced that President Buhari has approved the appointment of thirteen Vice-Chancellors for Federal Universities in replacement of those supposedly removed from office. This has attracted spontaneous ire and condemnation of some well-meaning Nigerians including Civil Society organizations as a gross violation of the Universities Autonomy Act 2003, and an unprovoked attack on University Autonomy, a naked usurpation of the powers of the Governing Council of these universities and a brazen affront on the rule of law and due process amongst others. This brief analysis is a juridical anatomy of the true legal prescription on the appointment and removal of Vice-Chancellors of Federal Universities under our extant laws.

Statutory Framework of Federal Universities in Nigeria

Federal Universities in Nigeria are creatures of Law. Each University is established by an Act enacted by the Federal Legislature. These enabling laws specify the powers, functions and responsibilities of the various constituent bodies and functionaries of the universities.

Two major statutes provide the legal framework for Federal Universities in Nigeria as follows:

- The enabling Law of each university which established it, and
- **The Universities (Miscellaneous Provisions) Act No. 11, 1993** as amended by **The Universities (Miscellaneous Provisions)(Amendment) Act No. 55 of 1993; The Universities (Miscellaneous Provisions)(Amendment) Act No. 25 of 1996; The Universities (Miscellaneous Provisions)(Amendment) Act 2003**, otherwise called **The Universities Autonomy Act No. 1, 2007** and **The Universities (Miscellaneous Provisions) (Amendment) Act 2012**.

It is to be observed that the provisions of **The Universities (Miscellaneous Provisions) Act No. 11, 1993** and the amendment No. 55 of 1993 as well as No. 25 of 1996 have been adapted and incorporated into the various enabling laws of the Federal Universities in the **Laws of the Federation of Nigeria, 2004**. However, the amendments of 2003 and 2012 not yet formally incorporated are to be read into the enabling laws under the principle of incorporation by reference. Thus, these laws whether formally incorporated or not, now form integral parts of the enabling laws of all Federal Universities.

Autonomy of Universities

Two new Sections introduced by **The Universities (Miscellaneous Provisions) Act 2003** clearly proclaim the autonomy or independence of the Universities as they provide as follows:

“S.2AA. The powers of the Council shall be exercised, as in the Law and Statutes of each University and to this extent establishment circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities.” and

“S.2AAA -The Governing Council of a University shall be free in the discharge of its functions and exercise of its responsibilities for the good management, growth and development of the university.”

The purpose of these provisions is to liberate the universities from the entanglement of the Civil Service and to enable the Council exercise its powers and perform its functions without undue external interference or influence.

Appointment of Vice-Chancellors

The relevant provision of the law on this subject is to be found in section 3 of the Universities (Miscellaneous Provisions) Act No. 11 of 1993 (hereinafter referred to as the Principal Act) as amended by the Universities (Miscellaneous Provisions)(Amendment) Act No. 25 of 1996 and the Universities (Miscellaneous Provisions)(Amendment) Act, 2003 (No. 1 2007) otherwise referred to as the “Universities Autonomy Act” which are now integral parts of the provisions of the enabling law of each Federal university. Section 3 of the Universities (Miscellaneous Provisions)(Amendment) Act No. 25 of 1996 had amended Section 3 of the Principal Act No. 11 of 1993 by prescribing a single term of five years for the Vice-Chancellor and the procedure for the appointment.

However, under section 3 of the Principal Act as amended, the power to appoint the Vice-Chancellor now vests in the Governing Council, provided that the latter informs the Visitor after the appointment has been made.

For the avoidance of any doubt section 3 of the Principal Act as amended provides:

“3. – (1) There shall be a Vice-Chancellor of a University (in this Act referred to a “the Vice-Chancellor”) who shall be appointed by the Governing Council.

*(2) Where a vacancy occurs in the post of a Vice-Chancellor, the Council shall –
advertise the vacancy in a reputable journal or widely read newspaper in Nigeria, specifying –
the qualities of the persons who may apply for the post, and*

*(ii) the terms and conditions of service applicable to the post,
and thereafter draw up a short list of suitable candidates for the post for consideration;
constitute a Search Team consisting of –*

*a member of the Council, who is not a member of the Senate, as chairman;
two members of the Senate who are not members of the Council, one of whom shall be a
Professor;*

*two members of Congregation who are not members of the Council, one of whom shall be a
Professor,*

*to identify and nominate for consideration, suitable persons who are not likely to apply for the
post on their own volition because they feel that it is not proper to do so.*

(3) A Joint Council and Senate Selection Board consisting of –

(a) the Pro-Chancellor, as chairman;

(b) two members of the Council, not being members of Senate;

*(c) two members of the Senate who are Professors, but who were not members of the
Search Team,*

*shall consider the candidates and persons on the short list drawn up under subsection
(3) of this section through an examination of their curriculum vitae and interaction with them,
and recommend to the Council three candidates for further consideration.*

(4) The Council shall select and appoint as the Vice-Chancellor one candidate from among the three candidates recommended to it under subsection (3) of this section and thereafter inform the Visitor.”

It is crystal clear from this provision that the appointment of a Vice-Chancellor is the statutory responsibility of the Governing Council of each University. Once the appointment has been made by the Council, it is legally binding and effective without any input from the President of the Federal Republic of Nigeria who is the Visitor of all Federal Universities. The latter has no direct role to play in such appointment. The law only requires the Governing Council to inform him of the appointment after the Council has made the appointment. It is for his information only. The law does not require him to do anything about the appointment. He is not empowered to approve, reject, disapprove, confirm or modify the appointment. The position of the Minister of Education is even more interesting. The law does not make any reference to the Minister of Education at all. Thus, the Minister has no role to play directly or indirectly in such appointment. In other words, the appointment of a Vice-Chancellor of a Federal University in Nigeria is not the concern of the Minister; it does not concern him; it is none of his business under the extant laws in Nigeria.

From the foregoing analysis, any appointment of a Vice-Chancellor made by the President/Visitor is a breach of the extant laws and therefore patently illegal, null and void.

Removal of Vice-Chancellor

Section 3(8)-(11) of the Principal Act as amended, vests in the Governing Council power to remove the Vice-Chancellor from office on grounds of gross misconduct or inability to discharge the functions of his office as a result of infirmity of body or mind after due process. It also specifies the procedure for the removal of the Vice-Chancellor to ensure fair-hearing in the process. Upon receipt of a proposal for the removal at the initiative of the Council, Senate or the Congregation, the Council shall constitute a Joint Committee of Council and Senate to investigate the allegations made against the Vice-Chancellor and to report its findings to the Council. Where the allegations are proved, the Council may remove the Vice-Chancellor or apply any other disciplinary action as it deems fit and notify the Visitor accordingly. However, the Vice-Chancellor who is removed has a right of appeal to the Visitor. The Section provides:

“3(8) The Vice-Chancellor may be removed from office by the Governing Council on grounds of gross misconduct or inability to discharge the functions of his office as a result of infirmity of the body or mind, at the initiative of the Council, Senate or the Congregation after due process.

(9) When the proposal for the removal of the Vice-Chancellor is made, the Council shall constitute a joint committee of Council and Senate consisting of—

(i) three members of the Council one of whom shall be the Chairman of the Committee, and

(ii) two members of the Senate, provided that where the ground for removal is infirmity of the body or mind, the Council shall seek appropriate medical opinion.

(10) The Committee shall conduct investigation into the allegations made against the Vice-Chancellor and shall report its findings to the Council.

(11) The Council may where the allegations are proved remove the Vice-Chancellor or apply any other disciplinary action it may deem fit and notify the Visitor accordingly provided that a Vice-Chancellor who is removed shall have right of appeal to the Visitor.”

Again, from the foregoing analysis, the President/Visitor has no power whatsoever to remove a Vice-Chancellor under the enabling laws of the Universities. Any such removal is also illegal, null and void.

Appointment of an Acting Vice-Chancellor

The President/Visitor has no power under the Universities Autonomy Act to appoint even an Acting Vice-Chancellor as a matter of pure law. This is because the Act empowers only the Governing Council to appoint an Acting Vice-Chancellor on the recommendation of the Senate.

Section 3(13) & (14) of the Principal Act as amended provides

“In any case of a vacancy in the office of the Vice-Chancellor, the Council shall appoint an Acting Vice-Chancellor on recommendation of the Senate”

“An Acting Vice-Chancellor in all circumstances shall not be in office for more than 6 months”.

Where There Is No Governing Council

Even in the absence of a Governing Council, for instance, where the term of the Council has expired or the Council has been dissolved and the position of the Vice-Chancellor becomes vacant, neither the President/Visitor nor the Minister is empowered to appoint a substantive Vice-Chancellor. Indeed, the provisions of the enabling laws on dissolution and reconstitution of the Governing Council lend credence to this interpretation. On this score, Section 2A of the Principal Act as amended provides:

“The Council so constituted shall have a tenure of four years from the date of its inauguration provided that where a Council is found to be incompetent and corrupt it shall be dissolved by the Visitor and a new Council shall be immediately constituted for the effective functioning of the University”

This express provision for immediate constitution of a new Council to replace the dissolved one has important legal implications for the University system. The provision is couched in the legal imperative “shall”. The phrase “shall be immediately constituted” leaves no room for delay; the law commands the government to reconstitute a dissolved Council within the shortest time possible. Indeed, this implies that Government should be ready with a list of members of the new Council before announcing the dissolution. In this way, the dissolution and reconstitution should be announced the same day.

Accordingly, if this provision is properly applied and enforced by the President/Visitor in the first place, the Governing Council will be available at all times to appoint a Vice-Chancellor. If the President/Visitor fails to constitute a new Governing Council **immediately** after dissolving the old one as required by the law, it becomes a breach of the law and he cannot legally rely on his own breach of the law to assume the power to appoint a Vice-Chancellor! The law will not allow him to benefit from his own wrongdoing by appointing a Vice-Chancellor on the excuse that there was no Governing Council in place.

Furthermore, it is impossible for the President/Visitor to comply with the procedure for the appointment of Vice-Chancellor which ended with the Governing Council under the enabling

laws. Any such appointment is tantamount to a naked usurpation of the powers of the Governing Council and therefore illegal.

However, in the very unlikely event that there is no Council in place when the position of Vice-Chancellor becomes vacant, the President/Visitor may only appoint an Acting Vice-Chancellor for a short period pending reconstitution of the Governing Council which would appoint a substantive Vice-Chancellor in accordance with the procedure laid down by the enabling law. In doing so however, the President/Visitor will not be exercising any powers under the Universities Autonomy Act, for there is no such powers as only the Council is empowered to appoint an Acting Vice-Chancellor under the Act as already explained. Accordingly, he may only act pursuant to a residual power, based on the doctrine of necessity, to appoint an Acting Vice-Chancellor for the effective functioning of the University pending the appointment of a substantive Vice-Chancellor by the Governing Council when reconstituted. The appointment cannot continue to wait indefinitely for constitution or reconstitution of the Council.

Such appointment, which must be based on the recommendation of Senate, is valid even though strictly speaking it is not based on the provisions of Section 3(13) and (14) of the Act.

However, when the Governing Council is constituted or reconstituted, the provisions of Section 3(13) and (14) of the Act would come into force by operation of law to regulate such appointment. Accordingly, with effect from the date the Council is inaugurated, such Acting Vice-Chancellor is deemed to be an appointee of Council and his six months tenure as prescribed under the Act will start to run from that date. **At the end of six months from that date his tenure expires and he must vacate the office in accordance with the provisions of Section 5(14) of the Act whether or not a substantive Vice-Chancellor has been appointed by Council.** The Council must then appoint another person as Acting Vice-Chancellor in accordance with the provisions of Section 5(13) of the Act if the position of the Vice-Chancellor is still vacant.

Power to Suspend the Vice-Chancellor

Where there are allegations of gross misconduct and inability to discharge the functions of his office against an incumbent Vice-Chancellor when there is no Governing Council in place, the President/Visitor has no power to remove the Vice-Chancellor. Clearly, it will be impossible for the President/Visitor to meet the requirements/procedure for such removal under the Act. However, he may only suspend the Vice-Chancellor pursuant to a residual power to do so pending the reconstitution of the Governing Council which would then investigate the allegations and act in accordance with the enabling law.

The Way Forward

It has been established from the foregoing analysis that the appointment of these Vice-Chancellors by the President/Visitor is illegal. But where there is a wrong, there must be a remedy. It is strongly recommended that the way out of this quagmire is the immediate revocation of these appointments by the President/Visitor. At best, the President/Visitor should give them Acting appointments which he has the residual power to do for now. Thereafter, the reconstituted Governing Councils should take over the responsibility of appointing substantive Vice-Chancellors in accordance with the provisions of the enabling laws while affording these Acting Vice-Chancellors equal opportunity to compete with other candidates for the appointment in a free and fair exercise.