

**APPOINTMENT AND REMOVAL OF
ACTING VICE – CHANCELLOR UNDER THE
UNIVERSITIES (MISCELLANEOUS PROVISIONS)
(AMENDMENT) ACT 2003 – AN APPRAISAL
BY PROFESSOR EHI OSHIO, DEAN, FACULTY OF LAW,
UNIVERSITY OF BENIN**

Introduction

The office of Vice-Chancellor of a Federal University in Nigeria has, no doubt, become very attractive. The remuneration and other perquisites of the office, we are told, are now comparable to those of political office holders of equivalent status. It is little wonder therefore, that from all indications, appointment to the post of Vice-Chancellor in recent times attracts cut-throat competition among the “egg-heads” of our academia throughout the country. Indeed, the battle for this position is also comparable to that for other political offices in our polity. Unfortunately, the competition for this position has assumed such proportion that often leads to bitterness amongst desperate contestants and, like politicians, academics now employ all sorts of “weapons” including blackmail, ethnicity or tribalism and even religion to get the position. Some sometimes end up in the courts!

Even more intriguing nowadays is the position of the Acting Vice-Chancellor which, like that of a substantive Vice-Chancellor, is also a hot seat. Those who are unable to pay the costly price for the competition for the post of substantive Vice-Chancellor often resort to the acting appointment which is normally meant for a short duration until the substantive Vice-Chancellor is appointed. Very regrettably too, despite the hotness of this seat, some incumbents would appear to be tempted to remain on this hot seat longer than necessary and even against the clear provisions of the existing law on the subject.

Accordingly, it is intended in this contribution to examine the provisions of the Universities (Miscellaneous Provisions)(Amendment) Act 2003 with respect to the appointment and removal of an Acting Vice-Chancellor of a Federal University.

Preliminary Observation

The Universities (Miscellaneous Provisions)(Amendment) Act 2003 (hereafter referred to as the “Act”) amends the Principal Act formerly Universities (Miscellaneous Provisions) Decree No.11 1993 which was later redesignated “Act” in conformity with a civilian democratic system of Government. The Principal Act was earlier amended twice by two Decrees, No. 55 of 1993 and No. 25 of 1996. The latest amendment which took effect from 10th July 2003 when President Obasanjo signed it into Law is the subject of this legal analysis.

A. APPOINTMENT

(i) Section 5 (13) of the Act 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 “

This provision is clear and devoid of any ambiguity whatsoever. Under this provision the Governing Council cannot appoint an Acting Vice-Chancellor unilaterally without the recommendation of Senate. The recommendation of Senate is thus a condition precedent for the appointment of an Acting Vice-Chancellor by the Council under this provision. In other words, the recommendation of Senate is the foundation upon which the Council can act lawfully, failing which, such appointment will collapse. This is because, in the immortal words of Lord Denning in Macfoy v. U. A. C. Limited (1961)3 ALL E. R. 1169@ 1172, “you cannot build something on nothing”

The effect of this provision was recently tested in the University of Benin. On February 10th 2009, Professor (Mrs) Uche Gbenedio assumed office as Acting Vice Chancellor of the University. The Minister of Education purportedly approved her appointment as the appropriate authority in the absence of a Governing Council, without recommendation of the University Senate. Upon protest by some members of Senate, Professor Gbenedio’s appointment was set aside and Professor Kubenyinje, who was subsequently recommended by Senate, was appointed as Acting Vice -Chancellor for six months by Council with effect from 6th April 2009.

However, for the person so recommended by Senate to be validly appointed by the Council, he must be fully qualified and must not be someone subject

to any legal disability whatsoever. The Council is not obliged to appoint such a person if he is subject to legal disability. For instance, if the Senate should recommend an incumbent Acting Vice-Chancellor for re-appointment for a second term of six months, the Council can lawfully decline to appoint such a person. This is because section 5 (14) does not make provision for re-appointment and a legally constituted Council cannot support such illegality: This principle was established by the Supreme Court in the case of *Awolowo v. Minister for Internal Affairs (1962) L. L. R. 117*. In that case, Chief Obafemi Awolowo accused of treasonable felony sought to engage the legal services of an English lawyer based in Britain to represent him in court. The lawyer was denied the right of entry into Nigeria by the Minister of Internal Affairs. Chief Awolowo instituted this action to set aside the Minister's order on the ground that it amounted to an infringement of his fundamental right to be defended by a legal practitioner of his choice as guaranteed under the 1960 Constitution of Nigeria as follows:

“Every person who is charged with a criminal offence shall be entitled to defend himself in person or by Legal Practitioner of his choice”

The Court held that the phrase “legal practitioner of his choice” in this provision means one who is under no legal disability, that is, a legal practitioner who is not only qualified but also available to defend him. The English lawyer chosen by Chief Awolowo was subject to disability in that he could not enter Nigeria as of right. It was the opinion of the court that the Constitution did not entitle the accused to choose a counsel, who could not enter Nigeria as of right even though he was qualified to practice law in Nigeria. In other words, in the particular circumstances of this case, the “*legal practitioner of his choice*” guaranteed by the Constitution should preferably be a citizen of Nigeria who could not be denied entry into the country because, as a citizen, he could leave and enter Nigeria as of right. (See also *Awolowo v. Sarki (1966) 1 All N.L.R. 178*)

(ii) Section 5 (14) of the Act provides

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

The History of this provision must be carefully considered in order to discover the mischief which the provision was introduced to remedy. The provision was introduced because of the damnable practice of some Acting

Vice Chancellors who through various unscrupulous and mischievous methods, try to elongate their tenure in office while enjoying the perquisites of office and exercising the powers of the office of a substantive Vice-Chancellor indefinitely.

Accordingly, this subsection makes express provision for a single termed tenure of 6 months only for an Acting Vice-Chancellor without providing for elongation of his tenure, howsoever or re-appointment. This is also the case with a substantive Vice-Chancellor with a single term of 5 years only. Section 3 of the Principal Act as amended by Section 3(6) of Decree No. 25 of 1996 provides:

“The Vice-Chancellor shall hold office for a single term of five years only on such terms and conditions as may be specified in his letter of appointment”

Indeed, if the Act was in favour of tenure elongation or re-appointment in whatever manner, it would have also stated so expressly. This is the *exclusio unius* rule which must apply to this case. For instance, appointment of a Deputy Vice-Chancellor is expressly subject to re-appointment under Section (4) of the Principal Act which provides:

“The Deputy Vice Chancellor shall hold office for a period of two years beginning from the effective date of his appointment and on such terms and conditions as may be specified in his letter of appointment and may be re-appointed for one further term of two years and no more”

However, in the case of a substantive Vice-Chancellor and an Acting Vice-Chancellor, it is only for a single term respectively, and no one is entitled to read into any of these provisions eligibility of the incumbents for a second term by whatever name called. The provision is clear and unambiguous and must be given its ordinary literal meaning under the Literal Rule of Interpretation.

The subsection contains a LIMITATION, a PROHIBITION and a COMMAND and therefore it's MANDATORY.

- a) It expressly limits in absolute terms the tenure of the Acting Vice-Chancellor to a single term of six months only. He is not eligible for reappointment.

- b) It expressly prohibits the incumbent Acting Vice-Chancellor from holding that office after six months from the date of his appointment. This prohibits any direct or indirect tenure elongation in favour of the incumbent by way of re-appointment, re-election or in any other manner howsoever.
- c) The subsection commands the incumbent to leave or vacate the office or “step aside” after six months from the date of his appointment.

The subsection even envisages a situation whereby a substantive Vice-Chancellor may not be appointed within 6 months and nevertheless commands the incumbent to mandatorily vacate the office even in such circumstances. The expression “*in all circumstances shall not be in office.....*” is particularly germane /relevant.

Properly interpreted the subsection means –

- 1) Whatever happens the Acting Vice-Chancellor must vacate the office after six months
- 2) Whatever happens he cannot be in office as Acting Vice-Chancellor after six months
- 3) In all circumstances, he shall cease to hold office as Acting Vice-Chancellor after 6 months
- 4) By all means, he must vacate the office and step aside after six months for another person whether or not a substantive Vice-Chancellor was appointed.
- 5) In all circumstances the incumbent shall be in office for 6 months and no more
- 6) After six months he should not be in office (hold office) as Acting Vice-Chancellor for whatever reason or whatever cause.
- 7) Under no circumstance should he hold (be in office) as Acting Vice-Chancellor after six months
- 8) After six months he shall by no means be in office as Acting Vice Chancellor either by re-appointment, elongation, direct or indirect method whatsoever.
- 9) Under no condition whatsoever shall the incumbent be in office as Acting Vice-Chancellor after six months
- 10) After six months the incumbent cannot hold office (be in office) as Acting Vice-Chancellor under any guise whatsoever
- 11) After six months the incumbent shall not be in office as Acting Vice-Chancellor by whatever method.

The provision is mandatory and its effect is far-reaching in consequence: the effect is to “expel” the Acting Vice-Chancellor from office after six months – he must vacate, leave office and step aside for another person after six months. He is not eligible for re-appointment.

B. REMOVAL

Where an Acting Vice-Chancellor was appointed by the Council or appropriate authority in the absence of a Council without due compliance with the provisions of Section 5 (13) and (14), such appointment would be null and void by virtue of these provisions and must be set aside. Accordingly, we have already noted (*supra*) that Professor (Mrs) Gbenedio’s appointment as Acting Vice Chancellor was set aside as it was not based on the recommendation of the Senate as required by Section 5 (13) of the Act.

The appointment of an Acting Vice-Chancellor may also be set aside where, though Senate had recommended his appointment, he was subject to a legal disability under the principle established by the Supreme Court in *Awolowo v. Minster for Internal Affairs (supra)*. For example, where Senate had recommended an incumbent Acting Vice-Chancellor for re-appointment in defiance of the provisions of section 5 (14) which prescribe a single term of six months only, such recommendation and the subsequent re-appointment will be null and void and should be set aside for illegality.

It is submitted that in such a situation, it would not matter how the recommendation in Senate was obtained. Even if he was elected at a Senate meeting, his election is also null and void. Since by virtue of section 5 (14) he was not eligible for re-appointment in the first instance, his election cannot serve as a basis for his recommendation and re-appointment. (*see Macfoy v. U.A.C Ltd, supra*) This is because, where the law prescribes a method by which an act could be validly done, and such method is not followed, it means that, that act could not be accomplished. This was the principle laid down by the Supreme Court of Nigeria in the recent case of *Amaechi v. INEC (2008)5 N. W. L. R (Pt.1080) 227* (popularly known as *Amaechi v.Omehia*). In that case, Hon. Amaechi who was elected at the Party primaries to contest the governorship election in Rivers State was later unlawfully replaced with Omehia by the Party. He instituted a suit challenging his replacement and while the action subsisted, Omehia was elected and sworn in as the Governor of Rivers State. The Supreme Court held that since Omehia was not the rightful candidate of the Party for the

election, he was not eligible to contest the election in the first place. In the eyes of the law, he was never a candidate in the election much less the winner. The court declared that Amaechi, who was the rightful candidate (though deprived by the Party of the opportunity to stand for the election), must be deemed to be that candidate that won the said election. The court removed Omehia and ordered Amaechi to be sworn in as Governor of Rivers State. Oguntade, J.S.C., who delivered the epoch-making lead judgment of the Court, emphasized the need to do substantial justice without fear or favour in an earth-shaking pronouncement when he declared:

“I must do justice even if the heavens fall. But the truth of course is that when justice has been done, the heavens stay in place.”

The above decision of the Supreme court should apply in any case where a candidate who is not eligible for an appointment went ahead in defiance of the law to get the appointment. He must vacate the office or be removed and replaced with one who is eligible under the law. This is in due deference to the hallowed principles of due process and substantial justice under the Rule of Law.

An Acting Vice-Chancellor may also be removed from office for gross misconduct after due process. This is an adaptation of the provision for the removal of a substantive Vice-Chancellor under Section 3(8) of the Principal Act as amended by Section 4 of this Act.