

THE LACUNA IN THE LAW ON THE TENURE OF PRINCIPAL OFFICERS OF FEDERAL UNIVERSITIES IN NIGERIA

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Introduction

A number of recent advertisements in the dailies by some Federal Universities for the position of Registrar or Bursar or Librarian and stipulating a fixed tenure of five years for the office purportedly relied on the provisions of the Universities (Miscellaneous Provisions) Decree No. 11, 1993 (hereinafter referred to as **Decree No.11 of 1993**). This is unfortunate as the provisions of Decree No. 11 of 1993 on fixed tenure for these principal officers are no more in existence having been deleted from our statute book since August 1993 by virtue of the Universities (Miscellaneous Provisions) (Amendment) Decree No. 55 of 1993 (hereinafter referred to as **Decree No. 55 of 1993**) which came into force on 23rd August 1993. The recent advertisements would appear therefore to be based on ignorance of the extant law on this position.

To allow for a better appreciation of the true legal position on this subject-matter the decrees are hereby discussed in chronological and logical order.

Decree No. 11 of 1993

It is pertinent to note first, that before the promulgation of Decree No. 11, 1993, appointment to the office of Registrar, Bursar or Librarian in Federal Universities was generally a pensionable appointment that is, the officeholder held the position until retirement age he/she retired.

However, with effect from 1st January 1993, without expressly repealing the existing law on pensionable appointment of these officers, sections 5 and 6 of Decree No.11 of 1993, introduced a uniform fixed tenure of five years which may be renewed for another period of five years for any of these positions, namely Registrar, Bursar or the Librarian. This Decree applied to all Federal Universities in Nigeria notwithstanding anything to the contrary contained in any law and prevailed over the provision of any other law which was inconsistent with the provisions of the Decree. This meant in effect, that without any express repeal, the existing law on pensionable appointment for affected principal officers had been displaced and replaced with a fixed tenure by virtue of Decree No. 11, 1993. Any of these officers appointed from 1st January 1993 would enjoy a fixed tenure of five years as prescribed by the Decree. But this legal position was short-lived as would soon be demonstrated.

Decree No. 55 of 1993

With effect from 23rd August, 1993, Decree No. 55, 1993 amended Decree No. 11, 1993. By virtue of sections 1 and 2 thereof, Decree No. 55, 1993 deleted (repealed) the provisions of sections 5 (3) and (4) and 6 (4) and (5) of Decree No. 11, 1993 which introduced a fixed tenure of five years for the Registrar, Bursar and Librarian. However, Decree No. 55 did not provide alternative tenure after deleting the above provisions of Decree No. 11, 1993. Properly interpreted, this would mean a reversion, by operation of

law, to the existing law on pensionable appointment which had earlier been displaced but not repealed by Decree No.11, 1993.

This is so because Decree No 11, 1993 did not expressly repeal the existing Law on pensionable appointment for these officers before introducing the fixed tenure of five years. Rather, it adopted the supremacy rule by the combined effect of sections 1 and 10 thereof, whereby the Decree would be applicable “**notwithstanding anything to the contrary in any other Law**” and would prevail over the provisions of any other law which were inconsistent with it. In this situation, when Decree No 55, 1993 deleted sections 5(3) and (4) and 6(4) and (5) of Decree No 11, 1993, the existing law on pensionable appointment which had not been repealed became operative and applicable again with effect from 23rd August, 1993.

Accordingly, the five years fixed tenure for these officers had ended with the promulgation of Decree No.55, on 23rd August 1993 except for those already appointed under Decree No. 11, 1993 between 1st January and August 22nd 1993. There is no other law known to this writer which has prescribed any uniform fixed tenure for these officers up till now.

Furthermore, the enabling laws of the various Federal Universities have been updated to reflect the amendment by Decree No. 55 of 1993 and, it is inexcusable for any Federal University to ignore this amendment contained in its own enabling law by erroneous reliance on the provisions of Decree No. 11, 1993 which had since been deleted from the statute book by virtue of the amendment effected by Decree No 55, 1993. For instance, in implementing this amendment, paragraphs 5 and 6 of the **First Schedule to the University of Benin Law, Cap U4, Laws of the Federation 2004** omitted any reference to fixed tenure for these officers. The Law simply provides that these officers “**shall hold office for such period and on such terms as to the emoluments of their offices and otherwise as may be specified.**” Similar provisions are contained in the enabling laws of other Federal Universities. It is surprising that references are still being made to Decree No. 11, 1993 to justify fixed tenure for these officers.

Decree No 25, 1996

The Universities (Miscellaneous Provisions) (Amendment) Decree No. 25, 1996 (hereinafter referred to as **Decree No. 25 of 1996**) came into force on 21st August 1996. Section 5 of the Decree expressly repealed Decree No. 55 of 1993 which had earlier amended Decree No. 11 of 1993 by deleting the provisions of sections 5(3) and (4) and 6(4) and (5) thereof which related to fixed tenure of five years for the Registrar, Bursar and Librarian of each University.

Curiously, some have argued that the implication of the repeal of Decree No. 55 of 1993 by Decree No. 25 of 1996 was to revive retrospectively the provisions of sections 5(3) and (4) and 6(4) and (5) of Decree No 11, 1993 which had earlier been deleted by Decree No. 55 of 1993 with effect from 23rd August 1993. It is submitted that this argument cannot stand as there is no implied revival of the provisions of a statute which had already been deleted by an amendment. The only legally recognized and

valid method by which such provisions may be reinstated is by a subsequent express amendment by legislation.

It is trite that the effect of repealing a statute is to erase the repealed statute from the statute book. When a statute is repealed, it ceases to exist and no longer forms part of the laws of the land. A repeal renders the repealed statute dead and non-existent in law. Like a dead person, it cannot be revived. Accordingly, in **Onagoruwa V. I.G.P.** (1991) 75 NWLR. (pt.193) 593) it was held that in law, a non-existent statute is dead and cannot be saved or salvaged by the court. Also, in **Madumere v. Onuoha**, (1999) 8 NWLR (pt.615) 422) it was held that the effect of repealing a statute is to obliterate it completely from the records of the Parliament as if it had never been passed. Such a law is to be regarded legally as a law that never existed except for the purpose of actions, if any, which were commenced, prosecuted and concluded while it was existing law. This means, in effect, that when a statute is repealed it ceases to be an existing law under the Constitution of the Federal Republic of Nigeria.

This submission is supported by a decision of the Federal High Court in the recent case of **Idehen v. University of Benin** (unreported, Suit No. FHC/B/CS/120/2001, delivered on 19th December, 2001). In that case, Mrs. M.N.N. Idehen was appointed Registrar of the University of Benin. Her contract of service with the University was contained in her letter of appointment dated 29th December 1995 with the Memorandum of Appointment attached thereto. Clause 8 of the Memorandum of Appointment stated that the appointment was pensionable and that the plaintiff was entitled to retirement benefits in accordance with the University of Benin Regulations in that behalf. She assumed duty on 1st January 1996 based on these terms. These Regulations were made pursuant to the University of Benin Law which did not specify any fixed tenure for the Registrar. There was no reference to Decrees Nos. 11 and 55, 1993 in her letter of appointment.

However, in November, 2000 she received a letter from the Vice-Chancellor of the University with Reference No. REG/SSA/P. 719 dated 27th November 2000 stating *inter alia* that her first term of 5 years shall expire on December 31st, 2000 under the Universities (Miscellaneous Provisions) Decree No. 11, 1993 as amended by the Universities (Miscellaneous Provisions)(Amendment) Decree No. 55, 1993 and the Universities (Miscellaneous Provisions)(Amendment) Decree No. 25, 1996. The Registrar contended that she was on a pensionable appointment and that her appointment was not a termed tenure. She took out an Originating Summons at the Federal High Court, Benin to this effect.

The major plank of the argument by the Counsel to the University was that the provisions of Decree No. 11, 1993 specifying a fixed term of 5 years for the Registrar (which may be renewed for another 5 years term) though deleted by Decree No. 55 of 1993, were revived and became operative by virtue of Decree No. 25 of 1996 which repealed Decree No.55 of 1993. The University contended that by repealing Decree No. 55 of 1993, the provisions of Decree No. 11, 1993 concerning the fixed tenure of the Registrar earlier deleted by Decree No. 55, 1993 had revived to determine the tenure of the plaintiff Registrar. In other words, it was argued that the effect of the repeal by Decree No. 25 of 1996 was to revive the provisions of Section 5(3) and (4) of

the Decree No. 11, of 1993, which were earlier deleted by Decree No. 55, 1993. Such interpretation is strange, curious and innocuous as it does not enjoy the support of any known or existing principle or canon of statutory interpretation. It is not surprising therefore, that Counsel to the University could not cite any authority for his submission in this regard.

The court had no difficulty in rejecting this contention of the University, and granted the reliefs sought by the plaintiff.

It is submitted that this decision of the Federal High Court is impeccable and sound in law and there was no basis for the University's action in the first place except that the authorities may have been misled by some erroneous interpretation of these Decrees.

Indeed, it is clear that by deleting section 5(3) and (4) of Decree No. 11, 1993 relating to the fixed tenure of the Registrar Decree No.55 of 1993 had rendered those provisions dead and non-existent by erasing them from the statute book completely. The true effect of the amendment by Decree No. 55, 1993 therefore, was to erase or remove the fixed tenure of 5 years from Decree No. 11, 1993 for good. Following this amendment, section 5(3) and (4) and 6(4) and (5) of Decree No. 11, 1993 became ineffectual, ceased to be in existence or in force having been deleted. Accordingly, by the time Decree No. 25 of 1996 repealed Decree No. 55 of 1993 the provisions of section 5(3) and (4) of Decree No. 11, 1993 were no longer in existence or in force and there was therefore nothing to be revived as argued by the University of Benin. This interpretation accords with the provisions of Section 6(1) of the Interpretation Act, Cap. I23 Laws of the Federation 2004 to the effect that the repeal of an enactment does not revive anything not in force or existing at the time when the repeal takes effect. Indeed, the provisions of section 5(3) and (4) of Decree No. 11, 1993 having ceased to exist, there was nothing to revert to as argued by the University of Benin. Accordingly, the repeal of Decree No. 55, 1993 could not revive the provisions of section 5(3) and (4) of Decree No. 11, 1993 which were not in existence or in force when the latter repeal took effect.

For the avoidance of any doubts, there cannot be any implied resurrection of a dead law through the repeal of a repealing statute. A repealed law does not enjoy the miracle of resurrection. The only way to bring the provisions of a repealed statute into existence is to do so expressly through the provisions of a subsequent enactment. Accordingly, it is submitted that the repeal of a repealing enactment does not have the effect of reviving the enactment originally repealed. The latter enactment is dead in law and given a decent burial.

The Need for a Uniform Tenure for Principal Officers

The implication of the erroneous interpretation of the true effect of the amendments by Decree No. 55 of 1993 and Decree No. 25 of 1996 highlighted above could have led to the anomalous situation whereby these Principal Officers enjoy different tenures in Federal Universities with some having a fixed tenure of five years and no more, while others enjoy a renewable term of five years. This is because, at present, there is no specific law on uniform fixed tenure for these officers and each Governing Council appears to be exercising a discretion on the choice of tenure for

them. The extant law on the appointment of these officers, properly interpreted, would seem to grant this discretion to the Governing Council. This provision which is contained in the First Schedule to the enabling Law of each University in the Laws of the Federation 2004 enacts that these officers “**shall hold office for such period and on such terms as to the emoluments of their offices and otherwise as may be specified.**” It is submitted that the appropriate authority in the University which may specify these terms is the Governing Council. Accordingly, a definite legislative intervention is desirable for a uniform tenure for these officers in all Federal Universities. Unfortunately, this cannot be achieved by leaving the issue to the different Governing Councils of the Universities for that will be susceptible to abuse.

However, it is salutary to note in this connection that Decree No. 25 of 1996 has already achieved a uniform single tenure of five years for all Vice-Chancellors of Federal Universities and this has already been reflected in the enabling Law of each University contained in the extant Laws of the Federation 2004. It is strongly recommended that like that of the Vice-Chancellors, a single term of five years should also be adopted for these Principal Officers. Accordingly, it is recommended that the supervisory Federal Ministry of Education in conjunction with the National Universities Commission should sponsor an amendment to serve as enabling law for a uniform tenure for these Principal Officers. The present fixed tenure for these principal officers in practice in the Universities of the moment is not backed by any law in Nigeria.