

RE-APPOINTMENT OF FORMER VICE-CHANCELLORS FOR THE NEW FEDERAL UNIVERSITIES IS ILLEGAL

By

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INTRODUCTION

On Wednesday, 9th of February 2011, the Minister of Education announced the appointment by the Federal Government of nine Vice-Chancellors for the new Federal Universities. In her speech, the Minister asserted with some air of confidence that

“Care was taken to ensure that the Vice-Chancellors were carefully chosen from the ranks of former Vice-Chancellors, Deputy Vice-Chancellors, Provosts of Colleges of Medicine as well as Nigeria Professors in the Diaspora.”

This statement, which apparently is meant to legitimize the appointment of the Vice-Chancellors, is, unfortunately, ironic. The Irony is that if “care was taken to ensure that the Vice-Chancellors were carefully chosen” Government would have avoided the re-appointment of former Vice-Chancellors (at least five of them) in this exercise. This is because, the first careful consideration in this kind of exercise ought to be, to all intent and purposes, a most painstaking scrutiny of the legal framework for the appointment. It seems that Government was apparently in such a rush to make the appointment that it failed to advert to this and this is very fatal to the exercise. It is submitted that the re-appointment of the former Vice-Chancellors is irregular, illegal, illogical, ill-judged and illegitimate and, should be set aside for the reasons to be given presently.

ILLEGALITY OF THE APPOINTMENT

Under Section 3 (6) of the **Universities (Miscellaneous Provisions) Act No. 11 of 1993**, applicable to all Federal Universities in Nigeria, as amended by Section 3 (d) & (e) of the **Universities ((Miscellaneous Provisions) (Amendment) Act No. 25 of 1996**

“(6) 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.”

This is the extant Law on this subject in Nigeria. This provision is clear and unambiguous. Given its literal meaning, no individual shall hold office as Vice-Chancellor for more than one term of five years only. It does not leave room for any subtle or unscrupulous manipulation for tenure elongation directly or indirectly by way of re-appointment either in the same University or another Federal University. The re-appointment of the former Vice-Chancellors who had already served their respective terms therefore is patently illegal being contrary to the express provisions of this Act and cannot be saved.

A consideration of the history of this provision is educative to further elucidate the intendment of the provision. The Principal Act of 1993 had prescribed a term of four years which may be renewed for another term of four years only for a Vice-Chancellor. However, because of the cut-throat competition for post, the period was reduced to a single term of five years perhaps, in the wisdom of the legislature, to afford many other qualified applicants opportunities to be considered for appointment to serve. Hence, the clear intendment and purpose of this new provision

is to limit the term of any individual to five years and no more. This is the purposive approach to the interpretation of this provision which is also fortified by a literal meaning of the wordings. This interpretation thus accords not only with the letter but also with the spirit of the Law. Accordingly, by the letter and spirit of this law an individual should not spend more than 5 years as Vice-Chancellor in the Federal University System whether consecutively or cumulatively in one or more Federal Universities for whatever reason and by whatever means, directly or indirectly.

Indeed, nothing makes this intention of the legislature clearer than the provision of subsection 7 of the Act which is to the effect that a Vice-Chancellor already serving his first term of four years under the old law had no automatic right under this amended law to the renewal of his appointment for a further term of four years as follows:

“(7) For the avoidance of doubt, the provisions of subsection (6) of this section shall (b) not confer on a person serving a first term of office as Vice Chancellor before the commencement of this Act, any right to the renewal of the appointment for a further term of four years.”

It is thus clear that this law enacts the sacred principle of **‘one man, one term’** or **one Vice-Chancellor, one term’** and this should be inviolably preserved. Even former Vice-Chancellors themselves are aware and conscious of this fact. That is why since the enactment of this Law, no former Vice-Chancellor has ever applied in response to any advertisement by any Council for re-appointment either in his University or any other Federal University. Indeed, it would be unthinkable for any former Vice-Chancellor to do so and no Council would be obliged even to shortlist such applicant if he did. Government seems to be committing the grave error of contradicting itself and this is not interesting to serious-minded stakeholders in the University system. After reducing by an amendment the term of a Vice-Chancellor from two to one and the period from a total of 8 years to 5 years only, it is re-appointing a Vice-Chancellor for a total period of 10 years! And this, without first amending the enabling Law! Government, it is submitted, is not entitled to approbate and reprobate simultaneously like a lawless leviathan.

By this appointment, Government is unwittingly creating a cult of **‘Career Vice-Chancellors, Senior Vice-Chancellors, Super Vice-Chancellors or Vice-Chancellors for life’** contrary to the enabling Law. The University system should be spared this unwholesome phenomenon. What about membership of the Committee of Vice-Chancellors of Nigerian Universities and the relationship of **‘Super Vice-Chancellors’** who seem to enjoy special Government patronage with the other **‘ordinary Vice-Chancellors?’**

It is amazing how this illegality would have escaped the notice of Government specially the trio of the Minister of Education, the Secretary to the Government of the Federation who have been advocating for strict compliance with the dictates of the Rule of Law in University Governance and, of course, the Attorney-General of the Federation and Minister of Justice. Indeed, at a recent Retreat for Chairmen/Members of Universities Governing Councils and Vice-Chancellors, Government had condemned in no uncertain terms the action of some Councils in taking into consideration extraneous factors instead of adhering strictly to the provisions of the enabling Law especially in the appointment of Vice-Chancellors and Acting Vice-Chancellors. In her speech which she delivered personally, the Minister of Education declared unequivocally:

“A major challenge to University Governing Councils is the appointment of Vice Chancellors. The procedures ... are unambiguously detailed in the enabling laws. If the letter and the spirit of the law are followed and respected, the kinds of incidents witnessed very recently in some key Federal Universities will be avoided... Respected members of Councils present here today are aware of the sad incidents in the appointments of VCs in some of our universities. We have begun to allow ethnic, regional and, in some cases, religious differences to disrupt the harmonious environments in

which our universities previously appointed Vice-Chancellors. Again, we hope you will be able to courageously stem this unsavoury trend in our respective institutions.”

On his part, the Secretary to the Government of the Federation decried the abuse of the power of autonomy by some Councils in the appointment of Vice-Chancellors and Acting Vice-Chancellors the following scathing criticism:

“At the moment, this power is now not only being abused by the demand across many Universities that only indigenes of the towns or ethnic groups where the Universities are located can be appointed as Vice-Chancellor but also by the action of many Councils in acceding to these parochial, and unpatriotic interest. If the University is to maintain its universal character, and therefore remain a University, it is of the utmost importance that these kinds of interests must be subjugated to the ‘universal character’ of the Universities.”

“Another related matter has been the controversy over the tenure of Acting Vice-Chancellors. In one University, the Council and University Management successfully manipulated the law to enable an Acting Vice-Chancellor remain in office beyond the period clearly provided by the law. The law on this matter is not ambiguous as provided by Section 5(14) of the Universities Autonomy Act No. 1, 2007. The Act provides that “An Acting Vice-Chancellor **in all circumstances** shall not be in office for more than six months.” The clause ‘in all circumstance’ contains a limitation, a prohibition and a command that mandatorily limits in absolute terms the tenure of an Acting Vice-Chancellor to a single period of 6 months in office.”

Having regard to this position of Government, it is rather disheartening to observe that the same government would fall into this grave error of illegality which it had so persistently criticized on the part of Governing Councils of some Universities. Regrettably, is it not arguable that for a Governing Council to appoint a Vice-Chancellor on ethnic consideration is, perhaps, a lesser evil than the Government to impose a Vice-Chancellor on the system to serve for a total of 10 years contrary to the provisions of the enabling Law? This is clearly the implication of this wholesale violation of the enabling Law by Government in the re-appointment of these former Vice-Chancellors. For instance, if the speeches cited above are anything to go by, it seems that Government would be prepared to intervene for correction assuming an Acting Vice-Chancellor after exhausting his mandatory 6 months in office were to move to another Federal University for another term of 6 months in breach of the enabling Law. Sadly, this is what Government has unwittingly done in re-appointing former Vice-Chancellors!

ILLOGICALITY OF THE APPOINTMENT

Two misconceptions may have led Government into approving this illegal appointment. First, it has been opined that Government was persuaded to appoint the former Vice-Chancellors based on their previous experience as Vice-Chancellors. With due respect, this seems to me to be a logical illogicality. It would be ridiculous for Government to require a candidate for the post of Vice-Chancellor to first possess experience as Vice-Chancellor for five years in order to qualify for the appointment. No advertisement by any Governing Council has ever contained such requirement since the enactment of this enabling law in 1993 because it is not within the contemplation of the law. This is unfair to other well-qualified Nigerians who were thus deprived of the opportunity to be considered as a result of this narrow criterion. It is like insisting that for a successful marriage, an intending couple must first have been married elsewhere or that to be eligible for the post of a Director-General, the applicant must have had experience as a Director-General. If the position were to be advertised, would the Government have legitimately felt comfortable to insist on such requirement? Accordingly, it seems to me that no argument would be tenable to legitimize this

action, especially as we have a sea of qualified candidates in the University system that may perform the duty even better.

It is submitted that the appointment is ill-conceived and ill-timed. This is coming at a time when a bill to reduce the tenure of other Principal Officers of the University, namely, Registrar, Bursar and the University Librarian to a single term of five years only like that of the Vice-Chancellor is at the Committee stage at the National Assembly. Indeed, on Thursday, 10th February, the House of Representatives during debate on the executive bill to this effect, was informed that the Committee had concluded its work and report on a similar bill earlier sponsored by a member last year. The House agreed to expedite action to enable it pass the bill into law before the end of its present term. Indeed, the only rationale for the bill was to harmonize the term of other Principal Officers with that of the Vice-Chancellor which is already a single term of 5 years only. It is regrettable that the same executive which had sponsored the bill could contemplate awarding a second term for a former Vice-Chancellor in the name of compensatory appointment contrary to the extant enabling law. This is certainly confusing; it is irreconcilable and a contradiction in terms which cannot be justified. It is unconscionable.

Secondly, it is said that these former Vice-Chancellors are being compensated with this appointment because of their measure of success in their former position as Vice-Chancellor. This unfortunately, appears to be unwise. First, it is a great misconception on the part of Government to think that these former Vice-Chancellors are the only and the very best that Nigeria can produce to undertake this assignment in the present circumstance. Moreover, the appointment is patently contrary to the enabling Law. It is submitted that breach of the law is too costly a price to pay for this self-imposed voluntary obligation and unsolicited generosity. The enabling law does not empower our government to volunteer a gift of Vice-Chancellorship at the expense of the law, for that would lead to a prostitution of the position which is surely against public policy. Using a constitutional law analogy, would Government legitimately reward a State Governor with a third term in office in his State or in another State on the ground that he had performed well during his 8-years two terms as Governor? I think not. Accordingly, this case of the former Vice-Chancellors should not be treated differently.

Furthermore, there are other better ways open to Government to reward them, if it must, than a blatant violation of the law. Government could have done this quietly and neatly by giving them some other appointment, including even Pro-Chancellor, but certainly not as Vice-Chancellors. At any rate, do they need further compensation for having done the job for which they were earlier adequately remunerated? After all, we have been told that the remuneration of a Vice-Chancellor is now comparable to those of other political office-holders of equivalent status.

THE WAY FORWARD

This appointment is legally flawed. It is also logically anaemic. It cannot be defended either in law or logic. It is unjustifiable and unacceptable. Therefore, Government should act decisively before it creates more problems for the University system which is already overcharged with a multiplicity of variegated and seeming intractable problems. The best way to save the system from the imminent trouble which this appointment is likely to occasion is to withdraw the appointment in keeping with the letter and spirit of the law. This is the most honourable way out of this quagmire especially for a regime that claims absolute respect for the Rule of Law. Government should not wait for a Court Order or even a militant ASUU intervention before such withdrawal. It should do this gently, calmly and quietly.