LEGAL ISSUES IN UNIVERSITY GOVERNANCE IN NIGERIA

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Universities in Nigeria

Universities in Nigeria are creatures of Law. Each Federal or State University is established by an Act or a Law enacted by the Federal or State Legislature.[1] The Private Universities are incorporated as legal entities and thereafter licensed by the Federal Government to operate as Universities under the **Education (National Minimum Standards and Establishment of Institutions) Act (cap.E3 LFN 2004).** The enabling laws of all universities[2] specify the powers, functions and responsibilities of the various constituent bodies and functionaries of the universities. This contribution is an appraisal of some legal issues in university governance concerning the Governing Councils of Federal Universities under their enabling laws with references to State and Private Universities where applicable.

Legal Framework for University Governance

Two major statutes provide the legal framework for university governance of 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 are yet to be incorporated.

Members of the Governing Councils are enjoined to study and acquire a good working knowledge of these laws in order to perform their duties efficiently and effectively.

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:

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[1] Nigeria operates a Federal System of Government by virtue of the Constitution of the Federal Republic of Nigeria,1999. Education is on the Concurrent Legislative List – both Federal and State Governments have legislative competence on the subject of education.

[2] See for example, the University of Abuja Act cap. U2, Laws of the Federation of Nigeria, 2004 and the Obafemi Awolowo University (Transitional Provisions) Act cap. O2, Laws of the Fedration of Nigeria, 2004

"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.[3] However, these provisions have not been substantially tested. The first test of Section 2AA above appears to be a recent **CIRCULAR No. HCSF/O61/S.1/III/68 of August 26, 2009** issued by the Head of the Civil Service of the Federation entitled: "**TENURE OF OFFICE FOR PERMANENT SECRETARIES AND DIRECTORS."** The relevant part for our purpose reads as follows:

"2. Accordingly, Government has approved that Permanent Secretaries shall hold Office for a term of four years, renewable for a further term of four years, subject to satisfactory performance; and no more. In the case of Directors, they shall compulsorily retire upon serving eight years on post. This approval is without prejudice to the relevant provisions of the Public Service Rules which prescribe 60 years of age and/or 35 years of Service for mandatory retirement."

This was quickly followed by another **CIRCULAR No. HCSF/O61/S.1/III/68 of October 21, 2009** entitled: "**APPLICABILITY OF TENURE SYSTEM TO PARASTATALS, AGENCIES AND STATUTORY CORPORATIONS OF GOVERNMENT"** which attempted to clarify its applicability to Parastatals, Agencies and Statutory Corporations of Government as follows:

"2. While noting that these institutions are established by laws, with varied mandates, specialization, remunerations and other Conditions of Service that are regularly updated, they are all under the larger Public Service. It should also be noted that this amendment affects officers on G.L. 17 or its equivalent in the Departments and Agencies. Accordingly, they are to operate within the framework of the 2008 Public Service Rules (Official Gazette No. 57, Vol. 96 of 25th August, 2009).

4. Accordingly, the Governing Boards of all Parastatals, Agencies and Statutory Corporations of Government, which currently apply 60 years of age and/or 35 years of Service, for mandatory retirement, are hereby directed to realign their respective Conditions of Service with the recently approved tenure policy and to forward same for the ratification of the Head of the Civil Service of the Federation promptly, in view of the effective date of the policy which is January 1, 2010."

The question is whether these CIRCULARS are applicable to the Directors in the University System in view of the provisions of Section 2AA above. It is submitted, with due respect, that these CIRCULARS are inconsistent with the laws and statutes of the Universities within the meaning of Section 2AA of **The Universities (Miscellaneous Provisions) (Amendment) Act 2003**, otherwise called **The Universities Autonomy Act No. 1, 2007** and do not apply to the Universities. That this CIRCULAR is inconsistent with the laws and statutes of the universities is clearly demonstrated by the recent enactment of **The Universities (Miscellaneous Provisions) (Amendment) Act 2012** entitling Principal Officers of the

[3] However, Government, as proprietor, retains the **ultimate power of control** over the universities through dissolution of Council, Visitation, the final appeal to the Visitor by a removed Vice-Chancellor and the power of legislation.

Universities, namely, Registrar, Bursar and University Librarian to remain in the university system on completion of their terms. This is also the case with the Vice-Chancellors, Deans and Heads of Departments and academic Directors after serving their respective terms.

However, any Governing Council wishing to introduce a Tenure System for non-academic Directors is free to do so in accordance with the Laws and Statutes of the University and should not copy the provisions of these CIRCULARS hook, line and sinker! This would involve an amendment of the relevant statute of the university on non-academic Directors which should provide that such a Director should remain in the university after completion of his term and redeployed to other duties in the university like the case of the Principal Officers. It is suggested that the university should adopt a two-term tenure of 3 years in the first instance which may be renewed for another term of 2 years and no more for these Directors. This will clearly align them with the tenure system in the university which is clearly distinguishable from that of the Civil Service.

The Governing Council and University Governance

The enabling Law of each University established the Governing Council and vests the power and responsibility of governance on the Council. For example, Section 15 of the Obafemi Awolowo University (Transitional Provisions) Act established the Council as the governing authority of the University which shall have the custody, control and disposition of all the property and finances of the University, with its functions copiously spelt out under the Section. It provides:

(1) *"There is hereby established for the University a Council to be known as the Council of the Obafemi Awolowo University, the constitution and procedure of which shall, subject to the provisions of this Law, be in accordance with such provisions as may be made by statute in that behalf.*

(2) *The Council shall be the governing authority of the University and shall have the custody, control and disposition of all the property and finances of the University and, except as may otherwise be provided in this Law and the Statutes, shall manage and superintend generally the affairs of the University and, in any matter concerning the University not provided for by or under this Law, the Council may act in such manner as appears to it best calculated to promote the interests, objects and purposes of the University."*[4]

This provision vests the general and ultimate responsibility for all the affairs of the university on the Council subject to the powers of the Senate as the ultimate authority only in academic matters. This includes the custody, control and disposition of the university's property and finances and also setting the strategic direction of the university. The Council directs and controls the affairs of the university and is the legal custodian of the estates of the university. Thus, this responsibility for governance vested in the Council is clearly distinguishable from management in the university which involves the day-to-day administration of the University. The various enabling laws vest the latter on the "Management" team of Principal Officers headed by the Vice-Chancellor under the general control and superintendence of the Council.

[4] Similar provisions are contained in the enabling Laws of other universities.

Composition of Governing Councils[5]

The composition of each Governing Council of Federal Universities under the Autonomy Act, 2003 remains the same as in the Principal Act, No. 11 of 1993. Under both Acts the Governing Council of a Federal University shall consist of:

a) The Pro-Chancellor;
b) The Vice-Chancellor;
c) The Deputy Vice-Chancellors;
d) One person from the Federal Ministry responsible for Education;
e) Four persons representing a variety of interests and broadly representative of the whole Federation to be appointed by the National Council of Ministers;
f) Four persons appointed by the Senate from among its members;
g) Two persons appointed by the Congregation from among its members; and
h) One person appointed by Convocation from among its members

This membership may be classified in two different ways as follows:

(a) **Ex-officio members** and **non-ex-officio members**; and
(b) **External members** and **Internal members**.

The ex-officio members consist of the Vice-Chancellor, Deputy Vice-Chancellors and one person from the Federal Ministry of Education. These are all members of the Council by virtue of their offices. All other members are non-ex- officio members.

On the other hand, External members of Council consist of the Pro-Chancellor, the Representative of the Federal Ministry of Education and the four other members representing a variety of interests appointed by the National Council of Ministers. All other members of Council, including the Vice-Chancellor and Deputy Vice-Chancellors, are normally referred to as internal members of Council. These are members and representatives of the University Community in Council.

The Autonomy Act contains a new provision of subsection (2) which spells out the qualifications of Council members. The subsection provides:

"Persons to be appointed to the Council shall be of proven integrity, knowledgeable and familiar with the affairs and tradition of the University"

Thus, to qualify as a member of the Governing Council the person must:

(a) be of proven integrity and
(b) be knowledgeable and familiar with the affairs and tradition of the University.

Apart from the moral qualification in (a) above, the Act does not expressly specify any educational qualification for membership of the Council. However, the necessary implication to be gleaned from (b) above is that, for a person to be knowledgeable and familiar with the affairs and tradition of the University, he must at least have gone through the University system. In other words, it can safely be implied from this provision that a member of the Governing Council should be at least a first degree holder from any recognized University

[5] See generally Professor P.E. Oshio, "Composition and Tenure of Governing Councils of Federal Universities under Nigerian Laws" The Guardian Newspaper, Tuesday, December 1st, 2009, p.70.

Tenure of Governing Councils

Section 2A brought into the Principal Act by Section 2(3) of the Autonomy Act is a very significant new provision. It 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"

While the single fixed tenure of four years of the Council is not entirely new, the express provision for the ground for dissolution of any Council and the provision for immediate constitution of a new Council to replace the dissolved one have important legal implications for the University system. Both provisions are couched in the legal imperative *"shall"* Accordingly, it is submitted that:

- There is only one ground for dissolution of a Council under this Act, that is, where the Council is found to be incompetent and corrupt. The Visitor cannot dissolve any Council without this requirement being first fulfilled and, if he does, a suit may lie at the instance of aggrieved Council members to challenge the dissolution.

- 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, it is recommended 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 could be announced the same day. **This is the best meaningful way to fully enforce or implement the provision of Section 5(12) of this Act which is against Sole Administration in the Universities.**

Vacation of Seat in Council

External members of the Governing Council would normally vacate their seats upon dissolution of the Council or by effluxion of time after the expiration of their four years tenure. However, internal members of Council who are usually appointed by a body to represent it in Council (e.g. Senate, Congregation and Convocation) have their tenure regulated by virtue of the statute of the University concerned. This is normally a term of two years for such a representative subject to re-appointment for another further term of two years. Such a representative is usually selected through the process of election in Senate, Congregation or Convocation. They normally assume office as Council members from the date of their respective elections. Accordingly, where they are yet to complete their terms before dissolution of the Council, they would automatically become members of the reconstituted Council until they complete their terms as prescribed under the University statute.

However, a member of Council may vacate office as such a member, if, being a representative of one body in Council (e.g. Senate, Congregation or Convocation), he is appointed as Vice-Chancellor, Acting Vice-Chancellor or Deputy Vice-Chancellor. In any of these cases, the seat of that body being represented in Council becomes vacant automatically by operation of Law. This is because, by virtue of his office as Vice-Chancellor or Acting Vice-Chancellor or Deputy Vice-Chancellor, he becomes automatically an ex-officio member of the Council and the law does not permit him to maintain two seats in Council as ex-officio and non-ex-officio member at the same time. Neither is he eligible to cast two votes, one as ex-officio member and the other as non-ex-officio member in Council. Accordingly, the law has given the

body formerly being represented by such ex-officio member in Council power to appoint another representative for the unexpired residue of his term, otherwise such a body would have lost a voice and a vote in Council. The provision is contained in the University Statute. For instance, the Third Schedule of the University of Calabar Act, Statute No.1, Article 1 (4) provides:

"Where a member of the Council…vacates office before the expiration of the period aforesaid, the body or person by whom he was appointed may appoint a successor to hold office for the residue of the term of his predecessor"

A similar provision is contained in the enabling Laws of other Federal Universities.

It is submitted that this position is legally sound as there is no reservation of seat in Council for any member who has taken up appointment which is executive in nature. The duration of such appointment will not matter in law. Once the member has taken up appointment which is inconsistent with his right to effectively represent such body in Council either by voice or by vote, the law is that he must vacate that seat for good.

This case is similar to the position of a Legislator under the 1999 Constitution for which section 68(1)(d) provides:

"A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if he becomes President, Vice-President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser."

(see similar provision in section 109(1)(d) in respect of a State Legislator).

The duration of the appointment is immaterial and irrelevant for the operation of this provision. Such legislator who accepted appointment as aforesaid vacates his seat in the House for good. For instance, if he was appointed Minister and the Cabinet is later dissolved within a short time after vacating his seat, he cannot return to that seat since it was not reserved for him.

A member of Council other than an ex-officio member may also vacate his seat by resignation and also by operation of law upon death. These are generally not contentious cases.

Functions of the Governing Council

The enabling Laws of the universities often contain elaborate provisions on the functions of the Governing Council which end with an omnibus clause empowering it -

- to participate in the making, amendment or revocation of statutes pursuant to the provisions of the enabling Law
- to govern, manage and regulate the finances, accounts, investments, property, business and all other similar affairs whatsoever of the University, and for that purpose to appoint bankers, solicitors and any other persons or agents as the Council may deem expedient, and to cause proper books of accounts to be kept of all sums of money received and expended by the University and of the assets and liabilities of the University in such manner as shall give a true and fair view of the state of the University and explain its transactions from time to time;
- to borrow money on behalf of the University;
- to invest any moneys belonging or appertaining to the University and not for the time being required to be expended for any of its purposes;
- to sell, buy, exchange, lease or accept leases or otherwise dispose of any real or personal property on behalf of the University;
- to enter into, vary, perform and cancel contracts on behalf of the University;

- to establish, after considering the recommendation of the Senate in that behalf, faculties, institutes, schools, boards, departments, and other units of learning and research; to prescribe their organization, constitution and functions and to modify or revise the same;
- to authorize, after considering the recommendation of the Senate in that behalf, the establishments for the academic staff in the University, and, with the approval of the Senate, to suspend or abolish any academic post except a post created by this Law or the Statutes;
- to authorize the establishments for the administrative staff and other staff in the University and to suspend or abolish any such posts other than posts created by this Law or the Statutes;
- to make the appointments authorized by the enabling Law and the Statutes
- to exercise powers of removal from office and other disciplinary control over the academic staff, the administrative staff and all other staff in the University;
- to promote and to make provision for research within the University;
- to call for reports from the Senate on any matter relating to instruction or teaching or any other academic matter within the University;
- to award honorary degrees and other distinctions in accordance with such provisions as may be made by statute in that behalf;
- to supervise and control the residence and discipline of students of the University and to make arrangements for their health and general welfare
- to perform all such other functions as are or may be conferred or imposed on the Council by this Law; or by the Statutes, Ordinances and Regulations and to carry this Law, the Statutes, ordinances and Regulations into effect so far as they may concern the Council.[6]

What follows is a discussion of some of the important functions of the Governing Councils.

Appointment and Removal of Vice-Chancellor[7]

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 4 of the Autonomy Act 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. Similarly, the section 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.

Section 5 of the Autonomy Act contains a new provision of section 3(9)-(11) specifying the procedure for the removal of the Vice-Chancellor to ensure fair-hearing in the process. Upon

[6] See Section 15 of the Obafemi Awolowo University (Transitional Provisions) Act.

[7] See generally, P.E. Oshio, "Appointment of Vice-Chancellor, Fundamental Rights and the Jurisdiction of the Federal High Court", Nigeria Education Law Journal, University of Ibadan, (2002) Vol. 5 No. 1, p.122.

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.

Similarly, Section 6 of the Autonomy Act also empowers the Council on the recommendations of the Vice-Chancellor and Senate to remove a Deputy Vice-Chancellor on the same grounds as those of the Vice-Chancellor.

Appointment of Acting Vice-Chancellor[8]

Section 5 (13) of the Autonomy Act provides for the appointment of an Acting Vice-Chancellor as follows:

"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"

Under this provision which is not ambiguous, 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.

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: (*Awolowo v. Minister for Internal Affairs (1962) L. L. R. 117.)*

Vacation of Office

Section 5 (14) of the Act provides as follows:

"An Acting Vice-Chancellor <u>in all circumstances</u> 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 fixed term of 6 months only for an Acting Vice-Chancellor without providing for re-appointment or elongation of his

[8] See generally, Professor P.E. Oshio, "Appointment and Removal of Acting Vice-Chancellor under Nigerian Laws" The Nation Newspaper, Tuesday, October 20, 2009, p.C8 (Legal Opinion).

tenure howsoever. 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 is **mandatory.**

a) It expressly **limits** in absolute terms the tenure of the Acting Vice-Chancellor to a single term of six months only.
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. He is not eligible for re-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 this expression means –

1) Whatever happens the Acting Vice-Chancellor must vacate the office after six months.
2) Whatever happens he must not be in office as Acting Vice-Chancellor after six months.
3) Whatever happens he must vacate the 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) Under no circumstance should he continue in office as Acting Vice-Chancellor after six months.
6) 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.
7) Under no condition whatsoever shall the incumbent be in office as Acting Vice-Chancellor after six months.
8) After six months the incumbent cannot hold office as Acting Vice-Chancellor under any guise whatsoever.

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.**

Where Government Appoints an Acting Vice-Chancellor

Where a vacancy occurs in the office of Vice-Chancellor and there is no Governing Council in place perhaps, as a result of the dissolution of the Council or expiration of its tenure by effluxion of time, Government has a residual power to appoint an Acting Vice-Chancellor despite the provisions of Section 5(13) and (14) of the Universities Autonomy Act. Such appointment, which must be based on the recommendation of Senate, is valid; since such appointment cannot wait indefinitely for constitution or reconstitution of the Council.

However, when the Governing Council is constituted or reconstituted, the provisions of Section 5(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.

Tenure of other Principal Officers[9]

With effect from 1st January 1993, a Tenure System was introduced for these Officers which was also abolished within eight months on 23rd August, 1993. The legal chronology of statutory enactments is as follows:

- With effect from 1st January, 1993, Sections 5 and 6 of the Principal Act No.11 of 1993, introduced a uniform fixed tenure of five years which may be renewed for another period of five years for Principal Officers, namely the **Registrar, Bursar and the University Librarian**.
- With effect from 23rd August, 1993, Act No. 55, 1993 amended the Principal Act. By virtue of sections 1, 2 and 3 thereof, Act No. 55, 1993 deleted (repealed) the provisions of the Principal Act on fixed tenure for the Registrar, Bursar and Librarian.
- With effect from 21st August 1996, the Universities (Miscellaneous Provisions) (Amendment) Act No. 25, 1996 repealed Act No. 55 of 1993 which had earlier amended the Principal Act by deleting the provisions on fixed tenure.

Accordingly, by proper interpretation, the five years fixed tenure for these officers had ended with the enactment of Act No. 55, on 23rd August 1993 except for those already appointed under the Principal Act between 1st January and August 22nd 1993. The repeal of Act No. 55 of 1993 by Act No. 25 of 1996 had no effect whatsoever on the abolition of the tenure system in August, 1993.

The Federal High Court rightly adopted this interpretation in the case of ***Idehen v. University of Benin***[10]**.** In that case, Mrs. M.N.N. Idehen was appointed Registrar of the University of Benin and assumed duty on 1st January, 1996 on Pensionable Appointment to retire at 60 years of age without any reference to the **Universities (Miscellaneous Provisions) Act 1993** or its amendments. Clause 8 of the Memorandum of Appointment stated that the

[9] See Professor P.E. Oshio, "Lacuna in the Law on Tenure of Principal Officers of Federal Universities " The Guardian Newspaper, Tuesday, July 20, 2010, p.86.

[10] (Unreported) Suit No. FHC/B/CS/120/2001, delivered on 19th December, 2001). See P.E. Oshio, "Effect of Repeal of a Statute on Contract of Employment with Statutory Flavour: Idehen v. University of Benin" Journal of Commercial, Private and Property Law, (2001) Vol. 4, p.19; Prof. P. Ehi Oshio, "Towards a Law on Uniform Tenure for Principal Officers of Federal Universities in Nigeria" University of Benin Journal of Humanities, (2011) Vol. 1 No. 1, p.30-36. Onogoruwa v. I.G.P. (1991) 75 N.W.L.R. (pt. 193) 593; Madumere v. Onuoha (1999) 8 N.W.L.R. (pt 615) 422. See Professor P.E. Oshio, "Repealed Statutes cannot be Resurrected under any Guise" The Guardian Newspaper, Tuesday, July 27, 2010, p.80.

appointment was pensionable and that the plaintiff was entitled to retirement benefits in accordance with the University of Benin Regulations made pursuant to the University of Benin Law which did not specify any fixed tenure for the Registrar. In November, 2000, the Vice-Chancellor wrote to her stating *inter alia* that her first tenure of five years would expire on 31st December, 2000 under Act No. 11 of 1993 as amended. The Registrar contended that she was on a pensionable appointment and not a termed tenure governed by Act No. 11 of 1993 as amended and took out an Originating Summons at the Federal High Court, Benin Division to that effect.

However, the University argued that the repealed provisions of Act No. 11 of 1993 on fixed tenure were revived and became operative by virtue of Act No. 25 of 1996 which repealed Act No. 55 of 1993. The University contended that by repealing Act No. 55 of 1993, the repealed provisions of the Principal Act on the fixed tenure of the Registrar earlier deleted by Act 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 Act No. 25 of 1996 was to revive the provisions on fixed tenure in the Principal Act which were earlier deleted by Act No. 55 on 23rd August, 1993. Such strange and curious interpretation does not enjoy the support of any known or existing principle or cannon of statutory interpretation. It is not surprising that Counsel to the University could not cite any authority for his submission.

The court had no difficulty rejecting this erroneous argument of the University and delivering judgment in favour of Mrs. Idehen. The court rightly held that by deleting the provisions on fixed tenure in the Act No. 11 of 1993, Act No. 55 of 1993 had rendered those provisions dead and non-existent by removing and erasing them from the statute book completely for good. Following this amendment, those provisions became ineffectual, ceased to be in existence or in force having been deleted. Accordingly, by the time Act No. 25 of 1996 repealed Act No. 55 of 1993 on 21st August, 1996 those provisions were no longer in existence or in force and there was therefore nothing to be revived or revert to. It was the opinion of the court that the only legally recognized and valid method of reinstating the provisions of a repealed statute is by expressly reintroducing them through the provisions of a subsequent amendment or enactment.[11]

The enabling Laws of the various Federal Universities had been updated to reflect the amendment by Act No. 55 of 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 to be observed that no Law had expressly specified any fixed tenure for these Officers between 23rd August 1993 when the Tenure System was abolished and 11th May, 2012

[11] 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, those provisions in the Principal Act having ceased to exist, there was nothing to revert to as argued by the University of Benin. Accordingly, the repeal of Act No. 55, 1993 could not revive the provisions which were no longer in existence or in force in 1996 when Act No. 25 repealed Act No. 55. For the avoidance of any doubts, there cannot be any implied resurrection of a dead law through the repeal of a repealing statute. The only legally recognized and valid method of reinstating the provisions of a repealed statute is by express amendment through the provisions of a subsequent enactment.

when **The Universities (Miscellaneous Provisions)(Amendment) Act 2012** re-introduced the Tenure System for these officers in the university system. Unfortunately, some universities continued to operate the tenure system erroneously relying on the provisions of Act No. 11 of 1993 which had since been repealed. It is submitted that such appointments were not backed by any law. Some of these appointments are however, subsisting and their legal position under the new Act is discussed in the next subhead.

The Universities (Miscellaneous Provisions)(Amendment) Act 2012

This Act now prescribes a single term of 5 years for other Principal Officers namely, the Registrar, Bursar and the University Librarian. The Act is not retrospective but takes effect from 11th May, 2012, the date it was signed into Law by the President. Secondly, unlike the case of Vice-Chancellor, there is no transitional provision in the Act in respect of existing appointments which is a clear indication that the Act does not take cognizance of them. What then is the legal position of the two-term tenure appointments of these officers made before this Act which purported to have been made under sections 5 and 6 of the Principal Act No. 11 of 1993 which had since been deleted from our statute books with effect from 23rd August, 1993 by virtue of sections 1, 2 and 3 of Act No. 55 of 1993?

These appointments were made under the mistaken belief that the provisions of sections 5 and 6 of Act No. 11 of 1993 still subsisted whereas at the time of such appointments those provisions were no longer in existence having been repealed. Consequently, these appointments were adversely affected by a mistake of law and therefore unenforceable. Legally, they are not enforceable against the Council and the latter is therefore not bound by these appointments and may repudiate them at will.

However, where these officers are still in office on the basis of these appointments, Council may adopt any of the following options:

- It may repudiate the contract forthwith without regard to whatever term the officer is.
- It may allow the officer who is on the first term to finish that term only, relinquish the office and be redeployed to other duties in the university.
- It may allow the officer who is already on the second term to finish that term, relinquish the office and be redeployed to other duties in the university.

One major flaw of this Act however, is that unlike the case of the Vice-Chancellor and Deputy Vice-Chancellor, it failed to provide for the removal of these officers contrary to the expectation of a modern legislation on tenure. However, any Council may make provisions for this in its statute.

Control of University Finances.

Each enabling law of the universities contains copious provisions on the power of the Council over finances. These include power to manage the general fund of the University and the authority to cause audit of the accounts of the University. There is established by each Law a **Finance and General Purposes Committee of the Council** for the proper control of university expenditure. These provisions are reinforced by Section 2AAA (2) of the **Universities Autonomy Act 2003** which also enjoins the Council to ensure that the disbursement of funds of the University complies with the approved budgetary ratio of –

- Personnel cost;
- Overhead cost;

- Research and development;
- Library development; and
- the balance in expenditure between academic *vis-à-vis* non-academic activities.

Power to make Statutes

Section 25 to 27 of the Law empower the Council in conjunction with the Senate to make Statutes to regulate a variety of issues concerning the University (including admission of students, their discipline and welfare, staff appointments and conditions of service, constitutions , functions and procedure of the authorities and constituent bodies of the university, etc.) and to amend or revoke them where necessary. This is known as delegated legislation or subsidiary instruments. A very important requirement for the validity of such statute is that it must comply with the provisions of the enabling law failing which it will be declared *ultra vires* and void.

It is to be observed however, that quite a number of these statutes have not been updated for a long time in some universities and have become obsolete and incapable of regulating their subject-matter in a modern university. This is especially true of statutes of some universities on Staff Conditions of Service some of which have not been updated for upwards of twenty years or more!

Power to Discipline Staff and Students

Council has vested in it general powers in relation to appointments, discipline and removal of academic and non-academic staff of the university for various reasons including misconduct, and inability to perform the functions of his office or employment, after due process. The universities have each Staff Disciplinary Committee and Student Disciplinary Committee for this purpose. It is important to remind Council that these Committees in their proceedings must observe the now widely acclaimed principles of natural justice encapsulated in the two Latin maxims as follows:

- *Audi Alteram Patem* (Hear The Other Side); and
- *Nemo Judex In Causa Sua* (No One Shall Be A Judge In His Own Cause).

These principles which have since attracted a plethora of judicial authorities[12] have also received constitutional impetus by their entrenchment into the fair-hearing provisions of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999.

The enabling Law of each university enjoins Council to observe the fundamental principles of fair-hearing by providing that before such removal Council shall –

- give notice of these reasons to the person in question;
- afford him an opportunity of making representation in person on the matter to the Council; and
- if he or any three members of the Council so request with the period of one month beginning with the date of the notice, make arrangements – (i) for a joint committee of the Council and the Senate to investigate the matter and to report on it to the Council; and (ii) for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter.

[12] Garba & Ors. v. The University of Maiduguri (1986) 1 NWLR 550; R. v. Chancellor of University of Cambridge (1720) 1 str. 552; King v. Sussex Justices Exparte McCarthy (1924) 1 KB 256; Oke v. Nwaogbuiniya (2001) 1 SC (pt. 1) 22; LPDC v. Fawehinmi (1985) 2 NWLR (pt. 7) 300; Abiola v. FRN (1995) 1 NWLR (pt.405) 1; Federal Civil Service Commission v. Laoye (1992) 2NWLR (pt. 106) 652

The enabling laws also provide for students discipline for various reasons with the Vice-Chancellor conferred with power to take any of several disciplinary actions including expulsion from the university for misconduct. There is a provision for a student dissatisfied with the Vice-Chancellor's decision to appeal to the Council which may confirm, set aside or modify the decision as the Council may deem fit in the circumstance.

Another very important reminder to Council in this regard is that the contract of employment of senior staff of the university is not regulated by the common law principles of mere master and servant relationship. It is a contract of employment with statutory flavour which is required by law to comply strictly to the procedure prescribed for its determination under the enabling law. Failure to so comply would entitle the court to declare such determination of the appointment by removal, dismissal or otherwise as unlawful, null and void and order a reinstatement.[13]

Visitor and Visitation

Section 7AA of the Act provides for a Visitor for each University and empowers him to cause a visitation to each University when necessary, at least every five years. These provisions are not entirely new as they are also contained in the enabling Laws of the Universities. The President, Commander-in-Chief of the Armed Forces is the Visitor of each University.

However, the provision of subsection 3 of this section is new. It requires the Visitor to make the Report of the Visitations and White Paper thereon available to the Council and mandates the latter to implement the Report. This is commendable as a Visitation Report normally serves as a mirror of the past, a lesson for the present and a guide for the future. It is important for Council to implement the Report with dispatch before some of the recommendations become irrelevant or otiose!

Conclusion

Admittedly, the power and responsibility of the Governing Council of a university on governance under the enable Law are so enormous and broad that no discussion in a single contribution can attempt to comprehensively deal with them exhaustively. Members of the Council are however enjoined to use the foregoing discussion as a guide to further study the laws to assist them perform their duties creditably.

[13] Shitta Bay v. Federal Civil Service Commission (1981) 1 S.C. 40; Olaniyan & Ors. v. Uuniversity of Lagos (1985) 2 NWLR. 589; Eperokun & Ors. v. University of Lagos (1986) 4 NWLR (pt. 34) 162; Falomo v. Lagos State Public Service Commission (1977) NMLR. 102; Head, Federal Military Government v. Kubeinje (1974) 1 All NLR. 269.