

STATUTORY POWER TO SUSPEND VARSITIES' LICENCES: NUC AND THE HOUSE OF REPRESENTATIVES

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I have had the privilege of reading an article titled FROM WHENCE COMES NUC POWER TO SUSPEND VARSITIES' LICENCES? which appeared at page 32 of THISDAY newspaper edition of Wednesday 29th August 2012. I consider it pertinent to make this contribution as a rejoinder especially in respect of the real legal issues involved which I believe the writer failed to address and which have some serious implications on the matter.

The facts in brief

In July this year the National Universities Commission (NUC) pursuant to its mandate under its enabling statutes suspended the licenses of six universities and withdrew one of them for various reasons, ranging from failure to comply with NUC's regulatory directives, to outright running of illegal and unapproved programmes. Each of the institutions was given reasons for the suspension and withdrawal respectively. Only one out of the six affected universities (Lead City University, Ibadan) filed a public petition at the House of Representatives. The others, upon receiving their respective letters from the NUC suspending their Licences, each went to the NUC to find ways and means of fulfilling the requirements for restoration of their respective licences. Following its Committee on Public Petitions' recommendation, the House of Representatives by a resolution declared that the NUC had no power to suspend the licences and the suspension was ultra vires, null and void and of no effect. It is contended that this resolution was ill-advised.

The House Committee's Findings and Recommendations

On a critical analysis, the Committee's recommendation to the House was premised on interpretation of statutes and the doctrine of judicial precedent. The Committee had invited the House to declare the action of the NUC in suspending the operating licences "**null and void, ultra vires and of no effect.**" The honourable House did. However, the term "null and void, ultra vires and of no effect" employed by the House is, with due respect, clearly the language of the courts, not that of the legislature. The use of these terms would appear to be an attempt at a naked usurpation of the judicial powers vested in the courts. Accordingly, the resolution of the honourable House may be interpreted as an unlawful exercise of judicial power. Consequently, the resolution is liable to be impinged as a contravention of the hallowed doctrine of separation of powers entrenched in the 1999 Constitution which could lead one to the conclusion that it is itself unconstitutional, null, void and of no effect whatsoever.

On interpretation of statutes

The honourable House has oversight functions under the 1999 Constitution as amended; that is not in doubt. However, when it comes to purely legal issues involving interpretation of Laws or the Constitution, the House should be cautious and avoid unwittingly dancing to the gallery and getting enmeshed in a legal quagmire. The House ought not to allow itself to be involved in the

interpretation of statutes which under the Constitution is within the exclusive domain of the courts. The 1999 Constitution as amended clearly enacts the doctrine of Separation of Powers. Section 4 vests the legislative powers of the Federal Republic of Nigeria in the National Assembly consisting of the Senate and the House of Representatives, section 5 vests the executive powers of the Federation in the President (the Executive) while section 6 vests the judicial powers of the Federation in the courts (the Judiciary). Accordingly, the Nigerian Judiciary has on many occasions sounded a note of warning in no uncertain terms that the judiciary will not allow any other arm of Government to usurp the judicial powers vested in the courts under any guise whatsoever.

In its recommendation to the House based on its first finding the Committee on Public Petitions concluded that the NUC was not empowered by the **NUC Act cap.N81, Laws of the Federation of Nigeria 2004** to suspend or withdraw licences of universities. Very unfortunately, the Committee did not advert its mind to the **Education (National Minimum Standards and Establishment of Institutions) Act cap. E3 Laws of the Federation of Nigeria 2004** which so empowers the NUC as a regulatory agency. This crucial omission by the Committee probably misled the House into passing the said resolution. Reliance of the House on the Committee's recommendation was therefore misinformed and precarious. This is regrettable. It is submitted that since the recommendation was anaemic, the resolution based on it must be feeble. In the language of Lord Denning in *UAC v. Mcfoy* "you cannot put something on nothing and expect it to stand". This is the unfortunate consequence of the Committee assuming the responsibility of interpreting laws for which it was ill-prepared, being outside its constitutional mandate.

On the issue of licensing, suspension and withdrawal of the licences of Private Universities in Nigeria the **Education (National Minimum Standards of Establishment of Institutions) Act** has vested in the NUC as a regulatory body very wide and enormous powers with respect to the supervision and regulation of University education in Nigeria. Under section 10 of the Act, the power to lay down minimum standards for all universities and other institutions of higher learning in the Federation and the accreditation of their degrees and other academic awards is vested in the NUC. Accordingly, section 25 designates the NUC as the appropriate authority for the administration and enforcement of the provisions of the Act in respect of university education. By virtue of section 21(1) application for the establishment of an higher institution, a private university, shall be made to the Minister through the NUC. Under section 15 the NUC is empowered to appoint inspectors to the universities who would report on the sufficiency or otherwise of the instruction given and the examinations as a result of which approved qualifications are attained and appropriate certificates are awarded and any other matter relating to the institutions or examinations as the NUC may direct. By section 16, the NUC may, following adverse Report from the inspectors to the effect that the institution has infringed the provisions of the Act or any subsidiary legislation, after due process, **withdraw recognition for any academic or other awards thereafter issued by the institution**. Section 22 empowers the NUC, after due process, to **close down any institution** established contrary to the provisions of section 19, 20 or 21 of the Act. Section 24 also empowers the NUC to issue guidelines to universities on a number of issues relating to university education. These provisions which are backed by appropriate sanctions, are all-embracing and encompassing regulatory machinery for the NUC under this Act despite its inelegant drafting.

It is amazing that some argue that because the Act does not contain express provision on suspension of licences, the NUC cannot exercise that power. With due respect, that cannot be the correct interpretation on a community reading of the provisions of this Act. For instance, the Act does not use the word “**Licence**” at all but this does not mean that a Licence cannot be granted under the Act or that a Licence granted under the Act is illegal. However, Section 21(3) used the word “**approval**” as follows: “No person shall be granted **approval** to establish an institution of higher education unless the criteria set out in the Schedule to this Act have been satisfied.” But we can glean from this word, in the absence of any express provision, that it means Licence since a licence by its dictionary definition means an official approval or permit to do something. Secondly, nobody was expressly designated under the Act to issue or approve or grant Licence. However, in the absence of any specific express provision to this effect, from a proper interpretation of the Act, we can glean from the provisions of section 21(1) that the Minister is the appropriate person to do so since application for the establishment of a private university is to be made to him. Thirdly, there is no express provision for revocation or withdrawal of the licence issued or granted under this Act. But this does not mean that such licence cannot be revoked or withdrawn upon breach of the terms and conditions for granting the licence. Indeed, by its very nature, a licence can be suspended, revoked or withdrawn for cause provided the licensee is given fair-hearing, that is, opportunity to make representations before doing so.

One noticeable feature of many statutes is that they hardly provide expressly for suspension even where they contain express provisions for granting and revocation of licence. Examples are the **Banks and Other Financial Institutions Act cap. B3 Laws of the Federation of Nigeria 2004** and the **Oil Pipelines Act cap.07 Laws of the Federation of Nigeria 2004** to mention but a few. This is apparently because the lawmakers treat suspension, being a temporary measure, as mere administrative action and does not require express provision. And so it is. Also, recently the Director-General of the Securities and Exchange Commission was suspended (but now restored). The **Investments and Securities Act cap I24 LFN 2004** (s.10) only provides for her appointment, tenure and conditions of service. There is no express provision for suspension. That did not mean that the President could not suspend her as he did. Accordingly, there need not be an express power of suspension in a statute. That is also the position with the **Education (National Minimum Standards of Establishment of Institutions Act** and the NUC’s power to suspend licences under the Act which is administrative.

As a matter of practice, as a regulator and the appropriate authority for the administration and enforcement of the Act in respect of university education in Nigeria, two methods or strategies are available to the NUC namely, **compliance strategy** involving making of guidelines and enforcing compliance and, **sanctions strategy**, a “penal style”, used to deal with hardened deviants and compel obedience to laid down guidelines or face the ultimate which is revocation of licence. Suspension is part of this latter strategy which may or may not lead to revocation. Accordingly, a number of verification teams, had visited Lead City University and other universities in 2008 and 2010 respectively. The reports of these teams disclosed various regulatory infractions following which the NUC drew their respective attention as required by the Act and requesting them to remedy these infractions. Their failure to comply led to the suspension of the licences.

Specifically, the identified regulatory infractions against Lead City University were clear and unambiguous and included among others, establishment of the Postgraduate School in the First Phase as opposed to the Third Phase; overbearing interference of the promoter in the day to day running of the University contrary to the academic traditions and global best practices; violation of admission procedures and criteria; and failure to close down unapproved programmes after written directives to do so. NUC's suspension order was therefore necessary so as to create a conducive atmosphere for a thorough discharge of its cardinal responsibility to minimize the negative impact of these continuous infractions. This is with a view to upholding and maintaining the quality assurance of degrees of Nigerian universities as enacted under section 10 of the Act. The NUC therefore in a letter dated 12 July informed the House Committee that it was in the process of conducting a forensic audit to the affected universities to ascertain the level of their compliance with the relevant rules, regulations and statutory guidelines. This kind of audit is comprehensive and may lead to recommendation for withdrawal of licence should the licensee fail to remedy identified infractions.

The issue of judicial precedent

The House Committee also purported to rely on the doctrine of judicial precedent for its invitation to the House to declare the suspension of Lead City University licence void. This is to all intents and purposes misinformed. The Committee or indeed, the House is not a court or in the hierarchy of courts in Nigeria which operate the common law doctrine of judicial precedents. Furthermore, the case of CETEP v. NUC, being a decision of a Lower Court and not that of a final Court like the Supreme Court of Nigeria is not a reliable precedent as the decision can be overruled even by the Court of Appeal. Moreover, the decision is not even binding on any other High Court, State or Federal, in Nigeria, being Courts of coordinate jurisdiction. It is not a binding precedent and reliance on it is precarious. The NUC did not appeal against the decision because at the time of the case CETEP was already a dying institution and shortly after the decision, it became extinct. In my opinion, having read through the case, I think the decision is liable to be overruled by the Court of Appeal at the earliest opportunity for improper consideration of the weighty provisions of the **Education (National Minimum Standards of Establishment of Institutions) Act** in favour of the NUC in that case.