

SCOPE OF THE PRESIDENT'S POWER TO REMOVE A CENTRAL BANK GOVERNOR UNDER NIGERIAN LAW: A CRITICAL ANALYSIS

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I. INTRODUCTION

Constitutional Law deals with the role and powers of institutions within the State, as well as the relationship between the State and its citizens.¹ One such institution is the Office of the President under a democratic set-up, where, as the nation's Chief Executive, he embodies the executive branch and encapsulates the pinnacle of authority, exercising a broad range of powers. These powers, generally referred to as 'executive powers', remain one of the most important subjects of contemporary constitutional law. They are defined in the Constitution, which operates as a country's fundamental law², as well as being a document carrying an inherent quality of sovereignty.³

The nature of executive powers in Nigeria's constitutional democratic governance cannot be appreciably understood without deep insights into a dimension of this power, referred to in this article as 'Presidential Removal Powers'. In liberal democratic systems that operate a presidential system of government, presidential removal power operates as a legitimate constitutional tool to keep the wheels of government running, in which appointees of the President are kept on their toes to deliver on their duties, so that the people whose mandate the President holds in trust, get good value for electing him. It also ensures that appointees of the President remain cooperative as well as level-headed and do not see themselves as bigger than the appointing power. It can therefore be considered a shield to ensure that government offices are not captured, and that the business of the state remains a going concern.

The Nigerian President wields enormous removal powers; powers granted him by the Constitution to ensure a smooth running of his government. Whilst a broad spectrum of this power can be exercised unilaterally, a marginal aspect is designed by law to only be exercisable by him acting together with the legislative arm of government, and in this case, the Senate. Since the promulgation of the 1999 Constitution,⁴ the exercise of removal powers by different Presidents has been ubiquitous. At regular intervals, its operation has found its

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¹ Hilaire Barnett, *Constitutional & Administrative Law* 4 (Routledge, 10th edn., 2013).

² The Constitution creates a national government and divides powers among the three branches. It is the framework of rules which dictate the way in which power is divided between the various parts of the State and the relationship between the State and the Individual. It indicates the form of government, and division of powers amongst the various institutions of the government and sets a limit of government authority. See generally, Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 3 (Wolters Kluwer Law and Business, 2011); Chris Taylor, *Constitutional and Administrative Law* 3 (Pearson Education Ltd., 2008); A.O. Okon, "Nigeria and a People's Constitution: The Imperative of Democracy and Change" 4(1) *The Constitution* 12 (2004).

³ Olusola B. Adegbite, "Constitutional Sovereignty and Domestic Implementation of International Law: Balancing Constitutionalism with Human Rights Treaties in Nigeria" 5(1) *ABUAD Journal of Public and International Law* 4 (2019).

⁴ Constitution of the Federal Republic of Nigeria 1999.

way to the front row of the country's constitutional practice, yet the extent, scope, and necessity of this power within the country's constitutional democratic setup have remained unsettled.

The intense debate about distinct but interrelated aspects of this power peaked when, on June 09, 2023, the news broke that the new President, Bola Ahmed Tinubu, had suspended the then-Governor of the Central Bank, Mr. Godwin Emefiele, and asked that he hand over leadership of the bank to the Deputy-Governor, Operations.⁵ Mr. Emefiele was later arrested in Nigeria's commercial capital, Lagos, and flown to the Federal Capital City (FCT) Abuja by operatives of the Department of State Services (DSS) for interrogation.⁶ For some time, the DSS had been investigating Mr. Emefiele for alleged criminal infractions related to the multi-billion-dollar lending programme initiated by him.⁷

Six weeks after his arrest and detention, he was charged before the Federal High Court in Lagos, not for economic crimes, but for illegal possession of firearms, *i.e.*, a shotgun and hundreds of cartridges.⁸ The case was later withdrawn, and he was released by the DSS, only to be subsequently arrested by the Economic and Financial Crimes Commission (EFCC) for further interrogation.⁹ However, a key point relevant to this article is that Mr. Emefiele's removal by the President was done without the necessary recourse to the Senate for a concurrent approval as required under section 11 (2) (f) of the Central Bank of Nigeria (CBN) Act.¹⁰

This unilateral exercise of presidential removal power triggered a national debate. Commentators who weigh in on the side of the CBN stand on the normative premise that such unilateral exercise of removal power is reckless, arbitrary, illegitimate, and undesirable for the notion of checks and balances, and that it makes the independence of the bank vulnerable to the pathologies of political interference. This is more so, as the CBN sits at the top of a list of several federal agencies legally construed as enjoying a degree of independence, based on which their heads can only be removed by the President with the approval of the Senate. Others, who disagree, do not take the point this far. They simply highlight the fact that there is a need to balance the President's removal powers and the independence of the bank.

A general understanding of the nature of the Office of the President is that this office is constrained by the doctrine of separation of powers and by the general weakness of the

⁵ Felix Onuah, "Nigeria's President Tinubu Suspends Central Bank Governor" *Reuters*, June 09, 2023, *available at*: <https://www.reuters.com/world/africa/nigerias-president-tinubu-suspends-central-bank-governor-2023-06-09/> (last visited on May 22, 2024).

⁶ Oluyemi Ogunseyin, "DSS Confirms Emefiele's Arrest" *The Guardian*, June 10, 2023, *available at*: <https://guardian.ng/news/dss-confirms-emefieles-arrest/> (last visited on May 22, 2024).

⁷ William Clowes, Emele Onu, *et.al.*, "Nigeria's Suspended Central Bank Governor Taken into Custody" *Bloomberg UK*, June 09, 2023, *available at*: <https://www.bloomberg.com/news/articles/2023-06-09/nigeria-s-central-bank-governor-suspended-by-nation-s-president?embedded-checkout=true> (last visited on May 22, 2024).

⁸ Nduka Orjinmo, "Godwin Emefiele's Arrest: How Central Bank of Nigeria (CBN) Boss ended up in Court" *BBC News*, July 26, 2023, *available at*: <https://www.bbc.co.uk/news/world-africa-66273223> (last visited on May 22, 2024).

⁹ Abiodun Sanusi, "EFCC Detains Emefiele After DSS Frees Ex-CBN Governor" *The Punch*, Oct. 27, 2023, *available at*: <https://punchng.com/breaking-efcc-detains-emefiele-after-dss-frees-ex-cbn-gov/> (last visited on May 24, 2024).

¹⁰ Central Bank of Nigeria Act No. 7 of 2007 (Federal Republic of Nigeria Official Gazette No. 55, vol. 94 of June 01, 2007).

Chief Executive's formal powers.¹¹ However, provisionally thinking of removal power by the Nigerian President as the exercise of constitutional power towards ensuring the smooth running of government, leaves open the question of whether such power ought to be constrained, limited, or left to be exercised in absolute terms. More fundamentally, it raises underexplored questions for constitutional practice in Nigeria. At its most striking, it implicates the question of whether and to what extent the Nigerian President can exercise removal power over officers of the state, including those of so-called 'independent agencies' such as the Central Bank, without legislative oversight, such as Senate approval. The fact that this power has so far been unilaterally exercised to remove two Central Bank Governors and the seeming fragility of democratic norms in Nigeria's constitutional practice raise the stakes for understanding this power as well as answering these questions.

In light of the above, this Article undertakes the comprehensive examination of the exact nature and limits of the powers of the Nigerian President to remove the head of a specialised agency such as the Central Bank. It examines the extraordinary presence of this power within the country's contemporary politics, problematizing the law governing the removal of a Central Bank Governor and how it has been interpreted so far by the Courts, *i.e.*, whether it vindicates or indicts the exercise of removal power by the President. Also, the Article examines the constitutional understanding behind presidential control over statutory federal agencies, such as heads of Central Banks. It conducts this analysis, engaging key provisions in Nigeria's CBN Act as well as the Constitution of the Federal Republic of Nigeria 1999.

The central argument in this Article is that the President lacks the power to unilaterally remove the Central Bank Governor. It notes that the office is guaranteed a security of tenure and, more importantly, that the requirement of Senate approval as part of the removal process is designed to insulate this office from unnecessary political interference, and ultimately strengthen the doctrine of separation of powers. To realise the above, this Article is organised as follows: Part II examines the context of presidential removal powers in Nigeria, while Part III looks at the law governing the removal of a Central Bank Governor. Part IV provides concluding thoughts.

II. PRESIDENTIAL REMOVAL POWERS IN NIGERIA: BACKGROUND AND CONTEXT

The exercise of presidential removal powers by President Tinubu in removing the erstwhile Central Bank Governor, Mr. Emefiele, raises cogent issues on the scope of constitutional powers in the country. This is hinged on the far-reaching implications of the use of this power, both for the protection of the institution in question as well as the country's constitutional law jurisprudence. As Ndulo correctly notes, "this is a very important power because power over peoples' means of livelihood operates to render them amenable to the will of the person wielding the power".¹² This is more so as often, politicians may sometimes strategically manipulate vacuums in the President's constitutional authority to achieve predetermined partisan objectives.¹³ In contemporary times, nation-states have settled on the fact that how and to what extent constitutional power is curtailed is central to the survival of democratic governance. Therefore, a proper understanding of the legality and

¹¹ Kenneth R. Mayer, "Executive Orders and Presidential Powers" 61(2) *The Journal of Politics* 455 (1999).

¹² Muna Ndulo, "Presidentialism in the Southern African States and Constitutional Restraint on Presidential Power" 26 *Vermont Law Review* 783 (2006).

¹³ Jide Nzelibe, "Partisan Conflicts Over Presidential Authority" 53 *William & Mary Law Review* 392 (2011).

constitutionality of the Emefiele removal must derive from an understanding of the nature and significance of constitutional powers under the Nigerian constitution.

At the core of the apparatus of modern governments is the limitation of power. Whereas democracy has not always been the preferred form of government in human history, however, since the American Revolution and the adoption of the US Constitution, democracy has largely become synonymous with representative government, the very idea that those exercising constitutional powers do so in a delegated form.¹⁴ As such, in today's world, unlimited power is incompatible with the notion of democracy.¹⁵ One concept that encapsulates the constitutional objective of limiting power is the doctrine of separation of powers.

Under the doctrine of separation of powers, the power of a sovereign government is shared amongst the three arms of government, *i.e.*, the executive, legislature, and judiciary, to prevent the over-concentration of power in one arm.¹⁶ Foremost Nigerian Constitutional Law Professor, Ben Nwabueze, captured this eloquently when he noted that “concentration of government powers in the hands of one individual is the very definition of dictatorship, and absolute power is by its very nature arbitrary, capricious, and despotic”.¹⁷ The Nigerian Constitution defines these powers by vesting them in the three arms of government.

While section 4 provides for legislative power, sections 5 and 6 govern Executive and Judicial power, respectively. In terms of functions, these three arms differ. Whereas the executive arm is concerned with formulating and directing domestic and foreign policies of the State, the legislative arm is empowered to make laws, appropriate funds, and ratify treaties and appointments, and the functions of the judicial arm border generally on the correct interpretation of the Constitution as well as other laws, towards adjudicating controversies.¹⁸

Executive powers have varied meanings. While the concept is expressed in various ways, it is mostly reduced to the idea that an entity referred to as the executive branch, wields the powers to oversee the political and administrative functions of the State.¹⁹ In its simplest form, power in this regard is executive in nature, in the sense that the holder having been elected by the popular will of the people, through a democratically governed electoral process, is charged with the day-to-day running of the country.²⁰

Executive power is predicated on the notion that the head of a country, having been elected as the custodian of the collective mandate of the people, is empowered to maintain the

¹⁴ Sam Amadi, “Executive Orders and Presidential Power in Nigeria: Comparative Lessons from the United States of America” 2 *NILDS Journal of Law Review* 78 (2019).

¹⁵ *Ibid.*

¹⁶ A.O. Nwafor, “The Lesotho Constitution and Doctrine of Separation of Powers: Reflections on the Judicial Attitude” 6 *African Journal of Legal Studies* 51 (2013); Olusola B. Adegbite, Oreoluwa O. Oduniyi, *et.al.*, “Separation of Powers under the Nigerian 1999 Constitution: The Core Legal Dilemmas” 3(2) *Sriwijaya Law Review* 236 (2019); Charles M. Fombad, “The Separation of Powers and Constitutionalism in Africa The Case of Botswana” 25(2) *Boston College Third World Law Journal* 306 (2005).

¹⁷ Ben Nwabueze, *The Presidential Constitution of Nigeria* 32 (Sweet and Maxwell, 1981).

¹⁸ See Brian Duignan (ed.), *The Executive Branch of the Federal Government: Purpose, Process and People* 21 (Britannica Educ. Publishing, 2010).

¹⁹ Olusola B. Adegbite, “Constitutional Boundaries of Executive Powers and the Impasse Over the Appointment of an EFCC Chairman in Nigeria: Critical Comparative Perspectives from the United States Constitution” 4(1) *Bild Law Journal* 9 (2019).

²⁰ *Ibid.*

constitution and other laws validly made by the legislature. While executive power also means the power to execute laws or carry them into effect, in modern governments it extends to the administering of laws and the formulation of policies.²¹ Indeed, there is much to be said in explaining how executive power works. Most notably, perhaps, is Vattel, who explains the concept as follows:

*“The Executive power naturally belongs to the sovereign – to every conductor of a people he is supposed to be invested with it, in its fullest, when the fundamental law do not restrict it. When the laws are established, it is the prince’s province to have them put in execution. To support them with vigour, and to make a just application of them to all cases that present themselves is what we call rendering justice.”*²²

An examination of the universe of executive power shows that it can be vested in a single Chief Executive or in a plurality of executives exercising coordinate authority. While in a presidential system of government such power is vested in a single person called the ‘Executive President’, in a parliamentary system of government it is vested in a plurality of executives.²³ Presidential removal powers can ordinarily be considered as a product of the broader executive powers under the Constitution. However, in certain instances, the exercise of presidential removal powers straddles both the executive and the legislature, implicating the question of whether it can strictly be deemed an offshoot of executive powers. That the exercise of presidential removal powers over certain agencies of the state, deemed as independent, requires Senate approval to be valid may be considered a manifestation of the doctrine of checks and balances. Indeed, this class of power must be considered a derivative of executive powers, but whose exercise is expected to be checked by the legislature.

The Office of the President of Nigeria is the highest in the land and is also a creation of the Nigerian Constitution. In creating this office, the Constitution vests the executive powers of the federation in a single individual; in this case, anyone who occupies the office at any point in time.²⁴ The holder is also granted constitutional discretion to exercise this power as he may deem fit.²⁵ There is considerable evidence of the influence of the US presidential system of government over what obtains in Nigeria. To understand this, one must examine the text and structure of section 5 (1) (a) of Nigeria’s 1999 Constitution. This section, which grants the President broad executive powers, provides that:

*“Subject to the provisions of this Constitution, the executive powers of the shall be vested in the President, and may subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the federation or officers in the public service of the federation.”*²⁶

²¹ Josephine N. Egemonu, “Presidential Powers under the Constitution of the Federal Republic of Nigeria 1999 A Comparative Analysis” 25(6) *Journal of Legal, Ethical and Regulatory Issues* 1–10 (2022), available at: <https://www.abacademies.org/articles/presidential-powers-under-the-constitution-of-the-federal-republic-of-nigeria-1999-a-comparative-analysis-15458.html> (last visited on May 25, 2024).

²² Emer de Vattel, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, Bk. I, Ch. XIII, 187 (Liberty Fund, Indianapolis, 2008).

²³ *Supra* note 21.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Supra* note 4, s. 5 (1)(a).

Complementing the above, section 5 (1) (b) adds that, this power:

*“Shall extend to the execution and maintenance of the Constitution, all laws made by the National Assembly, and to all matters to which the National Assembly has, for the time being, power to make law.”*²⁷

This concentration of power in the President is designed to ensure the effective mobilisation of and management of natural and human resources, as well as the exigency of effective foreign representation.²⁸ One issue that has often trailed the provisions of section 5 of the Constitution, is the question of the exact scope of this power. From the definition in section 5 above, the power in view relates to three key matters, *i.e.*, the execution and maintenance of the Constitution, all laws made by the National Assembly, and all matters with respect to which the National Assembly has, for the time being, powers to make laws.

Aside from clear provisions of the Constitution which must be executed by the President, a perusal of the Exclusive Legislative List contained in the Second Schedule to the 1999 Constitution will reveal 66 important items over which the President can exercise full executive powers. For the most part, the execution of government and its functions is governed by specific powers granted by the Constitution.²⁹ Therefore, in a practical sense, the President symbolises the zenith of political power, and the grant of executive power under the Constitution is the vehicle for demonstrating this power.

In the exercise of the executive powers, the President’s actions are driven by his intentions, and he generally acts based on his deliberate judgment. By his position, he controls the executive arm of the government, while also exercising a degree of authority over the legislature, such as the power to proclaim their initial plenary as well as over the judiciary, *e.g.*, the power to appoint heads of the courts. He equally controls major institutions of the state, such as the Military, the Police, as well as Ministries, Departments, and Agencies. He is the Commander-in-Chief of the Armed Forces of the Federation, and he alone has the power to declare war on another nation.

The executive powers of the President are extended to the power to appoint persons as he deems fit into the various departments and agencies of the government, appointments which could be political or statutory.³⁰ The concentration of executive powers in a single individual President is to allow for a fluid running of the modern State, insofar as he holds the collective mandate of the people, something acquired through a free, fair, and legally sanctioned general election. Aside from the Vice President, who is elected on the same joint ticket as the President, every other officer of his cabinet and, in extension, the broader executive branch, except where clearly stated by the Constitution, holds their appointment at the pleasure of the President. Section 147 of the 1999 Constitution declares:

*“[T]here shall be such offices of Ministers of the Government of the Federation as may be established by the President; any appoint to the offices of Ministers of the Government of the Federation shall, if the nomination of any person that office is confirmed by the Senate, be made by the President.”*³¹

²⁷ *Id.*, s. 5(1)(b).

²⁸ *Supra* note 14 at 81.

²⁹ *Supra* note 21.

³⁰ Olusola B. Adegbite, “Limit of Presidential Power of Appointment under the 1999 Constitution (As Amended): An Appraisal of Section 154” 52 *Journal of Law, Policy, and Globalisation* 197 (2016).

³¹ *Supra* note 4, s. 147(1)(2).

The meaning is that the President can hire anyone he pleases. Alongside the President's appointment powers, are also concurrent removal powers, to the end that where he is dissatisfied with the performance or conduct of an appointee, he can remove such a person, as he pleases.

However, this does not apply in all situations. For certain offices and institutions deemed as enjoying a measure of independence, the President's removal powers are limited and otherwise tied to concurrent approval by the Senate. As Amadi notes, in designing the country's constitutional framework, the drafters of the constitution, drawing inspiration from the American framework, limited the Powers of the President such that "he or she can do all the good he or she can and none of the evil he or she could".³² This power, which is similar to that under article 2 of the US Constitution,³³ is personally and singularly donated to the President.

As it is argued, this provision puts the President in a position whereby he can behave as an "elected monarch" as well as act as a "delegated representative of the people".³⁴ Within the constitutional language of executive powers, the President is deemed to operate in three offices. First, is his power as the Chief Executive of the Federation, with full oversight over the administration of the States, with related powers to hire, fire, and coordinate the national economy.³⁵ Second, is his office as Commander-in-Chief of the Armed Forces of the Federation, which grants him wide war powers to deploy the Armed Forces against external aggression and to protect the State's territorial integrity.³⁶ Third, is his power to act as the Sole organ of the State, representing it in foreign affairs.³⁷

Executive power under Nigeria's constitutional framework is patterned after that of the US framework by limiting the power of the single individual President, such that he or she can do all the good he/she can and none of the evil he/she could.³⁸ Scholars are in one accord that executive power is subordinated to legislative power. As noted by Mortensen:

*"The implementary essence of executive power was most often expressed in terms of Locke's vision of law as an interlocking tripartite phenomenon: First the law must be legislated, then in at least some cases it must be adjudicated, and then its requirements must be executed. The definition of executive power necessarily entailed both its subsequence and its subordination to the legislative power."*³⁹

It must be borne in mind that whereas section 5 of Nigeria's 1999 Constitution provides for wide powers, it does at the same time circumscribe these powers by stating that the exercise thereof is subject to "the provision of this Constitution" as well as subject to "the

³² Sam Amadi, "Executive Orders and Presidential Powers in the Nigerian Constitutional Democracy" *The Guardian*, Oct. 17, 2018, available at: <https://guardian.ng/features/executive-order-and-presidential-power-in-the-nigerian-constitutional-democracy/> (last visited on May 25, 2024).

³³ Article II of the US Constitution vests executive powers in the President, who has a duty to "take care that the laws are faithfully executed".

³⁴ *Supra* note 32.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Supra* note 14 at 81.

³⁹ Julian D. Mortensen, "Article II Vests the Executive Power, Not the Royal Prerogative" 119(5) *Columbia Law Review* 1238, 1239 (2019).

provision of any law made by the National Assembly”.⁴⁰ The meaning is that the President can only exercise his very expansive powers in accordance with the Constitution, or any law validly made by the National Assembly”.⁴¹ One such law is the CBN Act, which governs the appointments deemed to enjoy statutory flavour, i.e., backed by law. The next section in this Article will examine how the exercise of presidential removal powers is defined under this Act, as well as the judicial response to the removal of officers whose appointments enjoy statutory flavour.

III. STATUTORY FRAMEWORK GOVERNING REMOVAL OF A CENTRAL BANK GOVERNOR IN NIGERIA

Under the principles of interpretation, the golden rule states that in the interpretation of statutes, “the grammatical or ordinary sense of words is to be adhered to unless it would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument...”⁴² In *Ishola v. Ajiboye*,⁴³ the Supreme Court of Nigeria, per Ogundare, JSC, provided a useful understanding in this regard, stating that a statute cannot be interpreted in a vacuum, but that all relevant provisions must be examined in order to arrive at a fit and proper conclusion. Accordingly, apprehending the correct intent of the drafters of the CBN Act, concerning how the process of removal of a Central Bank Governor is to be conducted, would require an examination of section 11(2) (f) of the CBN Act in the light of other relevant provisions. Section 1(3) of the Act provides that:

*“In order to facilitate the achievement of its mandate under this Act and the Banks and Other Financial Institutions Act, and in line with the objective of promoting stability and continuity in economic management, the bank shall be an independent body in the discharge of its functions.”*⁴⁴

Section 2 provides that:

*“The principal objects of the Bank shall be to - (a) ensure monetary and price stability; (b) issue legal tender currency in Nigeria; (c) maintain external reserves to safeguard the international value of the legal tender currency; (d) promote a sound financial system in Nigeria; and (e) act as Banker and provide economic and financial advice to the Federal Government.”*⁴⁵

Section 6 (1) provides for a board stating that:

*“There shall be for the Bank a Board of Directors (in this Act referred to as the Board) which shall be responsible for the policy and general administration of the affairs and business of the Bank”.*⁴⁶ Section 6 (s) states that *“the board shall consist of - (a) a Governor who shall be the Chairman; (b) four Deputy-Governors; (c) the Permanent Secretary, Federal Ministry of Finance (d) five Directors; and (e) Accountant General of the Federation.”*⁴⁷

⁴⁰ *Supra* note 4.

⁴¹ *Supra* note 32.

⁴² *Grey v. Pearson* (1857) 5.

⁴³ (1994) 6 NWLR [Pt. 352] 506.

⁴⁴ *Supra* note 10.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

The Act provides for a Governor to operate as the Chief Executive of the Bank. Section 7(1) states that:

*“The Governor, or in his absence one of the Deputy Governors nominated by him, shall be in charge of the day-to-day management of the Bank and shall be answerable to the Board for his acts and decisions.”*⁴⁸

Section 8 (1) states that:

*“The Governor and Deputy-Governors shall be persons of recognized financial experience and shall be appointed by the President subject to confirmation by the Senate on such terms and conditions as may be set out in their respective letters of appointment.”*⁴⁹

Section 8 (4) also provides that:

*“The CBN Governor shall appear before the National Assembly at semi-annual hearings as specified in sub-section (5) regarding - (a) efforts, activities, objectives, and plans of the Board with monetary policy and; (b) economic developments and prospects for the future described in the report required in sub-section 5) (b) of this section.”*⁵⁰

Section 8 (5) states that:

*“The Governor shall, from time to time - (a) keep the President, informed of the affairs of the Bank including a report on its budget; and (b) make a formal report and presentation in the activities of the Bank and the performance of the economy to the relevant Committees of the National Assembly.”*⁵¹

When read together, these provisions reveal an important intention of the drafters, i.e., that to prevent any form of abuse, the Office of the Central Bank Governor is designed to be under the oversight of the Board of Directors, the President, and the National Assembly.⁵² Section 9 states that:

*“The Governor and Deputy Governors shall devote the whole of their time to the service of the Bank and while holding office shall not engage in any full or part-time employment or vocation, whether remunerated or not except such personal or charitable causes as may be determined by the Board and which do not conflict with or detract from their fulltime duties; Provided that the Governor or any of the Deputy-Governors may, by virtue of his office, be appointed with the approval of the Board to - (a) act as member of any Commission established by the Federal Government to enquire into any matter affecting currency or banking in Nigeria; (b) become Governor, Director, or member of the Board, or by whatever name called, of any international bank or international monetary institution to which the Federal Government shall have an interest or give support or approval; and (c) become Director of any Corporation in Nigeria in which the Bank may participate under Section 31 of this Act.”*⁵³

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Supra* note 10, ss. 7(1), 8(4) and 8(5).

⁵³ *Supra* note 10.

The Act provides for two instances in which a person vacates Office as a Central Bank Governor. The first instance deals with disqualification. It states, according to section 11 (1) that “a person shall not remain a Governor, Deputy-Governor, or Director of the Bank of the is (a) a member of any federal or State legislative house; (b) a Director, Officer, or employee of any Bank licensed under the Banks and Other Financial Institutions Act”.⁵⁴ From one standpoint, given that the Act captions this aspect of the document ‘disqualification’ it would appear, from the use of this word, that the understanding to be drawn is that once a person is established as holding any of the above offices, such is disqualified from being considered for appointment as a Central Bank Governor, Deputy-Governor, or Director. However, on the flip side, the expression “a person shall not remain a Governor, Deputy-Governor, or Director of the Bank...” seems to suggest an appointment that has been made, only to be vacated upon the discovery that the person appointed is not qualified. This lack of clarity opens the Act to subjective interpretations, which reinforces the need for a reconsideration of this provision.

The second instance deals with the cessation of an appointment. In this regard, section 11(2) of the Act states that:

*“The Governor, Deputy Governor or Director shall cease to hold office in the Bank if he - (a) becomes of unsound mind or, owing to ill health, is incapable of carrying out his duties; (b) is convicted of any criminal offence by a court of competent jurisdiction except for traffic offences or contempt proceedings arising in connection with the execution or intended execution of any power or duty conferred under this Act or the Banks and Other Financial Institutions Act; (c) is guilty of a serious misconduct in relation to his duties under this Act; (d) is disqualified or suspended from practicing his profession in Nigeria by order of a competent authority made in respect of him personally; (e) becomes bankrupt; (f) is removed by the President: Provided that the removal of the Governor shall be supported by a two-thirds majority of the Senate praying that he be so removed.”*⁵⁵

The question may be asked, why the additional layer of approval, with respect to the removal of a Central Bank Governor? The answer can be traced to the Supreme Court’s decision in *Olaniyan v. University of Lagos*,⁵⁶ where the Court identified three forms of a contract of employment, namely those regarded as being one of master and servant; those where the employee holds office at the pleasure of the employer; and those protected by statute *i.e.*, with a statutory flavour.⁵⁷ In the case of the third, *i.e.*, where an appointment is regulated by statutory provision, such appointment is deemed to be of a statutory flavour.⁵⁸ Oftentimes, agencies of the State created under an enabling statute fall within this category. However, whether a contract of employment would be deemed as being of statutory flavour was clarified by the Supreme Court in *Power Holding Company PLC v. I.C. Offoelo*.⁵⁹ In this case, the court stated that “the mere fact that an employer is a creation of Statute, that it is a

⁵⁴ *Id.*, s. 11(1).

⁵⁵ *Id.*, s. 11(2).

⁵⁶ (1985) 2 NWLR (Pt. 9) 599.

⁵⁷ *Olanrewaju v. Afribank Plc* (2001) 7 NSCQR 22 at 31.

⁵⁸ *Shitta Bay v. Federal Civil Service Commission* (1981) 1 SC 40; *The West African Examinations Council v. Obisesan* (2008) LPELR-8500 (CA).

⁵⁹ LPELR (SC7/2006) Dec. 14, 2012.

statutory corporation, or that the government has shares in it does not elevate its employment to one with statutory flavour. Rather there must be a nexus between its employee's appointment with the statute creating the employer and corporation".⁶⁰ Also, in *Council of Enugu University of Science and Technology & Ors v. E.N. Ude*,⁶¹ the Court stated that "an employment is said to have statutory flavour when the appointment and termination of such employment is governed by statutory provision. In other words, where the contract of service is governed by the provision of statute or where the contract of service are contained in regulations derived from statute".⁶²

In cases where a public servant alleged that he was unjustly removed, the Courts have always maintained that the rules must be complied with.⁶³ Accordingly, in *Musibau Olatodoye Adeniyi v. Ejigbo Local Government*,⁶⁴ the Court noted that "where an employee is sought to be removed in a contract with statutory flavour of employment, wherein the procedures for employment and discipline including dismissal are spelt out, such a contract must be terminated in a way and manner prescribed by statute. Any other manner of termination is inconsistent with the relevant statute and is thus null, void, and of no effect".

This rule was reaffirmed by the Supreme Court in *Comptroller General of Customs & Ors v. Gusau*,⁶⁵ where it opined that "the law is settled that the only way to terminate a contract of service with statutory flavour is to adhere strictly to the procedure laid down in the statute".⁶⁶ The status of a public servant whose employment enjoys statutory flavour is different from that of the ordinary servant.⁶⁷ Such a contract of service vests the employee with a higher legal status than that of the ordinary master/servant relationship.

In this instance, while the employment of other staff of the CBN may not be of statutory flavour, due to the direct nexus between the appointment of the Central Bank Governor and the statute creating the CBN, it is clear that the appointment of the Central Bank Governor is one with a statutory flavour. This office is one created by Statute, with clear rules governing the procedure for removal. Where an employment enjoying statutory flavour is not terminated in line with well-stipulated procedures, such is considered a violation of the rule of law and an endangerment of the constitutional democratic framework. In *Federal Medical Centre Ido Ekiti v. Alabi*,⁶⁸ the Court of Appeal stated that "where an employee's contract is one with statutory flavour, the employee may not be disciplined, or his employment terminated and or dismissed except in accordance with the rules and regulations governing such employment".⁶⁹ Therefore, where an employee with a contract of service with statutory flavour is unlawfully dismissed, he would be entitled to reinstatement as well as damages for unlawful dismissal.⁷⁰

⁶⁰ *Ibid.*

⁶¹ (2014) (Court of Appeal, Enugu Judicial Division) LPELR-23013 (CA).

⁶² *Ibid.*

⁶³ Kayode O. Fayokun, "Removal of Public Officers from Office: Law and Justice in a Flux" 5 *Journal of Science and Sustainable Development* 93 (2012).

⁶⁴ (2013) LPELR-SC, 22017 (CA); *Obot v. Central Bank of Nigeria (CBN)* (1993) 2 SCNJ 90; *UBN v. Ugbon* (1995) 2 NWLR (Pt. 380) 647; *Jubril v. Milad Kwara State* (2007) 47 WRN 63 at 88.

⁶⁵ (2017) LPELR-SC, 42081 (SC); *Bamgboye v. University of Ilorin* (1999) 10 NWLR (Pt. 622) 290; *Olatunbosun v. N.I.S.E.R Council* (1988) 3 NWLR (Pt. 80) 25.

⁶⁶ *Ibid.*

⁶⁷ *Supra* note 63.

⁶⁸ (2012) 2 NWLR [Pt. 1285] 411 at 460.

⁶⁹ *Ibid.*

⁷⁰ *Musibau Olatodoye Adeniyi v. Ejigbo Local Government* (2013) LPELR-SC, 22017 (CA).

To be sure about what may indeed be the mind of the drafters on cessation of the appointment of a Central Bank Governor, a look at the first five grounds shows that the drafters intended that any Central Bank Governor to be removed from office must have had his guilt proved one way or the other. For example, section 11(2) (a)-(e) provides for grounds such as becoming of unsound mind or inability to carry out his duties, criminal conviction, suspension from practicing his profession, being found guilty of serious misconduct, and bankruptcy. The consequence of any intellectually serious interpretation of section 11(2) (a)-(e) is clear. It means all these grounds are indicative of a process of proving the guilt or otherwise of a Central Bank Governor, before his removal. In the same context, the clear requirement of approval of two-thirds majority of the Senate is suggestive of the fact that the drafters intended that the Senate would investigate these grounds on which the Central Bank Governor is to be removed, to determine whether it carries weight or not. It is also suggestive of the fact that with such a Senate investigation, the Central Bank Governor in question would be able to exercise his right to a fair hearing by defending himself either personally or through a legal representative.⁷¹ Section 11(2) (a)- (e) explains front and centre, how it would be unconstitutional to simply remove a Central Bank Governor, without first proving his guilt through a well-constituted body.

At this juncture, it would be important to examine the role of the Senate's approval in the exercise of presidential removal powers, the legal significance of the word 'removal', and how the court responded to an earlier removal of a Central Bank Governor, *i.e.*, the 2014 case of Lamido Sanusi Lamido. This is because, ordinarily, whoever has the power to appoint ought to have a corresponding power to remove. Indeed, Section 11 of the Interpretation Act⁷² provides that where a statute confers on a body the power to appoint a person to office, that power necessarily includes the power to suspend or remove him. But can this be a justification in the case of a Central Bank Governor, whose employment enjoys statutory flavour? Where an extant law has defined a particular process for exercising powers so granted, can that procedure be bypassed? This point was stressed in *Ude v. Uwara*,⁷³ where the Court noted that:

*"It is trite that once the law has prescribed a particular method of exercising a statutory power, any other method of exercise of it is excluded. Except where the law gives discretion to a public functionary, he can only act in accordance with the express provisions of the law, as to do otherwise would enthrone arbitrariness."*⁷⁴

A Central Bank Governor is expected to be appointed through a process in which the executive and legislative arms play separate but complementary roles, with neither having unfettered powers to act. The purpose of designing a framework in which more than one arm of government determines the appointment of public officials was clarified by the Supreme Court in *Elelu Habeeb v. Attorney General of the Federation*,⁷⁵ where the Court noted that:

"It is in the Spirit of the Constitution in ensuring checks and balances between the three arms of government that the role of the Governor in

⁷¹ *Supra* note 4, s. 36.

⁷² CAP 123, LFN 2004.

⁷³ (1993) 2 NWLR (pt. 278) 661, para. D, 664 para. E-F.

⁷⁴ *Ibid.*

⁷⁵ (2012) 13 NWLR (1318) 423.

appointing and exercising disciplinary control over the Chief Judge of his state is subjected to the participation of the National Judicial Council and the House of Assembly of the State in the exercise to ensure transparency and observance of the rule of law."⁷⁶

With respect to vacating the Office of the Central Bank Governor, the CBN Act only speaks of disqualification and cessation of appointment. Nowhere is the word 'suspension' mentioned. Yet, it has become the go-to approach in removing Central Bank Governors from office in Nigeria. Words are of an important gradient in legal interpretation, and so determining the legal effect of the word 'suspension' is important to the analysis in this article. What is the legal effect of this word, and does it have the same effect as 'removal'. In *Longe v. First Bank of Nigeria Plc*,⁷⁷ the Supreme Court said this concerning suspension "suspension is usually precluded to dismissal from employment. It is a state of affairs which exists while there is a contract in force between the employer and an employee, but while there is neither work being done in pursuance of it or remuneration being paid".⁷⁸

The above argument on the President lacks of powers to unilaterally remove a Central Bank Governor from office had been made by lawyers in 2014 when President Goodluck Jonathan sacked the then Central Bank Governor Sanusi Lamido Sanusi.⁷⁹ He was suspended from office on the allegation that over \$20 billion in crude oil revenue was not remitted to the federation account by the Nigerian National Petroleum Corporation (NNPC).⁸⁰ In separate suits, Mr. Sanusi approached the Federal High Court (FHC) Abuja to enforce his rights,⁸¹ while also asking the court for a correct interpretation of section 11(2) (f) of the CBN Act. Delivering judgement, Justice Gabriel Kolawole agreed with the Lawyers of the Federal government that the matter was a labour matter and ought to have been filed before the National Industrial Court (NIC) instead of the FHC, Abuja. He, therefore, triggered section 12 of the NIC Act 2012 and ordered that the case be transferred to the NIC. Furthermore, the Court held that according to sections 251 and 254 of the Constitution, the CBN is a creation of the National Assembly and that the Central Bank Governor is a Public Officer. Based on this, the Court held that whereas the President could not unilaterally remove the Central Bank Governor from office as provided under section 11(2) (f) of the CBN Act, however, it stated that the Central Bank Governor is a public officer, and that the President could exercise disciplinary control over him, including suspension. That judgement was never appealed by the then-suspended Governor Sanusi Lamido Sanusi, thereby depriving superior courts of an opportunity to indeed pronounce on the matter.

Given the highly sensitive nature of the case and the important office that the Central Bank Governor occupies both constitutionally and fiscally, the FHC Abuja ought to have

⁷⁶ *Ibid.*

⁷⁷ (2010) 6 NWLR (Pt. 1189) 1 at 60.

⁷⁸ *Ibid.*

⁷⁹ Jiti Ogunye, "Sorry, The President Cannot Suspend a CBN Governor" *Premium Times*, Feb. 24, 2014, available at: <https://www.premiumtimesng.com/opinion/155645-sorry-president-suspend-cbn-governor-jiti-ogunye.html> (last visited on May 28, 2024).

⁸⁰ Ben Ezeamalu, "Sanusi Floors Nigerian Govt; Court Awards Him 50 Million Damages" *Premium Times*, Apr. 03, 2014, available at: <https://www.premiumtimesng.com/news/157991-breaking-sanusi-floors-nigerian-govt-court-awards-him-n50million-damages.html> (last visited on May 29, 2024).

⁸¹ *Ibid.*

decided the matter one way or the other.⁸² However, as it would seem, the FHC Abuja did not pronounce on the merit of the matter and so did not directly state that the President had the power to unilaterally remove the Central Bank Governor from office.⁸³

IV. CONCLUDING THOUGHTS

This article has examined the exercise of presidential removal power in Nigeria, locating it in the context of the removal of the erstwhile Central Bank governor, Mr. Godwin Emefiele. It has examined the law governing the dismissal of a Central Bank Governor, exploring whether the framework relates to special institutions such as the CBN and employees enjoying statutory protection. What this Article has established is that the President lacks the power to unilaterally remove the Central Bank Governor from office. Even if he wants the Central Bank Governor gone at all costs, he can only do so with the assent of the Senate or by a valid order of the court.⁸⁴

Indeed, there are some drawbacks and genuine costs to the President unilaterally firing the head of a statutorily important body such as the Central Bank. For instance, section 2 of the CBN Act provides that the Bank's principal duties shall include ensuring monetary and price stability, issuing of legal tender currency in Nigeria, maintaining the country's external reserves to safeguard the international value of its currency, promoting a sound financial system, and acting as Banker and provide economic and financial advice to the Federal Government.⁸⁵ With such a very important mandate, which may in fact be considered a matter of national interest, it is clear the office cannot be left to the shenanigans of politics, or the whims and caprices of the President. Ensuring adequate guardrails must have informed the dual requirement on the procedure for removing the Central Bank Governor.

In closing, beyond lacking the power to unilaterally remove a Central Bank Governor, the President has an obligation to faithfully execute the provisions of the Constitution and every other law in the country. To this end, it is imperative that the current framework on the removal of the Central Bank Governor is not just respected, but importantly, it must be defended vigorously by all stakeholders in the constitutional system, with the President leading from the front. This is the only way to ensure the continuous development of the country's constitutional democratic framework.

⁸² Chukwuemeka O. Ginikanwa, "The President Cannot Remove the Governor of the Central Bank of Nigeria Alone" *Nigerian Lawyer*, June 14, 2023, available at: <https://thenigerialawyer.com/the-president-cannot-remove-the-governor-of-the-central-bank-of-nigeria-alone/> (last visited on May 29, 2024).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Supra* note 10.