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ANALYTICAL PERSPECTIVES ON THE CONSTITUTIONAL PROVISIONS ON THE STATUS OF ABUJA (FEDERAL CAPITAL TERRITORY) IN PRESIDENTIAL ELECTIONS IN NIGERIA

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Abstract
The Constitution of the Federal Republic of Nigeria is the highest status in Nigeria. The Constitution is thus, supreme and above all other laws, customs and traditions in Nigeria. Consequently, any law that is contrary to the provisions of the Constitution is void, ab initio. Nonetheless, the citizens of Nigeria legitimately expect the contents of the Constitution to preserve unity, equity and justice for all. In the past few years, some of the provisions of the Constitution have become subjects of concern with regards to the variance in the courts' interpretations, particularly on the status of Abuja, the Federal Capital Territory with regards to its relevance in Presidential elections. It is against this complicated status of Abuja with its legal status thereof, that this article investigated and to add clarity to the legal debates.

Keywords: Presidential Elections, FCT, Constitutionalism, Nigeria.

1. Introduction

The Federal Capital Territory (FCT) of Nigeria is Abuja, also known as the capital city of Nigeria. The FCT was established by the Military Decree number 6 of 1976. The then, Military rulers of the country argued that, Lagos (the former, national capital city) was too congested and too far from the majority of the States thus, a more central location was needed.[1] The FCT was therefore carved from the territorial boundaries of the old Kaduna, Kwara, Niger, and Plateau states. Section 297(1) of the Constitution of the Federal Republic of Nigeria (CFRN) provides that: "There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitution." Furthermore, Section 298 of the same constitution provides as follows: "Federal Capital Territory, Abuja shall be the Capital of the Federation and seat of the Government of the Federation." It is the constitutional provisions of the legal and political status of the FCT in presidential elections that has generated ongoing concerns and debates. In order to fully understand the nature of the problem, it may be useful to first investigate some theoretical

[1] Elleh, Nnamdi. "Chapter 3". *Architecture and politics in Nigeria: the study of a late twentieth-century enlightenment-inspired modernism at Abuja, 1900-2016*. Milton Park, Abingdon, Oxon, 2015.

AFRICAN JOURNAL OF SOCIAL SCIENCES VOL. 14(1) 2024

foundations which has shaped legal discourse across the globe with regards to constitutional interpretations by various courts.

2. Theoretical Overview

The Constitution is the fundamental law of a country governing the organization and functioning of the relations between public authorities and citizens' rights and fundamental freedoms, and ways to guarantee them.[2] The Constitution is the supreme law of the country.[3] It is at the top of the pyramid and it is the source of all legal documents and legal regulations.[4] The supremacy of the Constitution is ensured through an effective mechanism resulted in a legal institution called constitutionality of laws controls, including all procedures through which achieve verification of low compliance with constitutional provisions.[5]

(a) Theory of Coordinate Interpretation

One of the best analysts of the theory of coordinate interpretation is Miller,[6] he commenced his discourse by emphasizing that, "constitutions, whether primarily written or unwritten, are products of political settlements, whether by formal agreement reduced to a written text, or by more informal usage and convention." In his view, "written constitutions, in particular, are intended to be difficult to amend; they establish institutions, confer authority and limit it, and set rules, standards, and norms to guide legislative and adjudicative decision making. These settlements are intentionally placed beyond the reach of ordinary politics in order to provide a stable and lasting legal framework for common life."[7]

Nevertheless, most constitutions are projected to provide directions on the elections and activities of the citizens with no exceptions of persons and regimes. Thus, the constitutions provide the basis for government and the parameters on that power. It should be noted that the courts are only call to interpret the constitution where and when some actions have occurred. Simply put, "judicial review of legislation or executive action only occurs in response to some primary act of another branch of government: an act of law making or law applying that was, paradigmatically, conceived to further the common good in some respect."[8]

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[2] I. Rusu, Critical analysis of provisions of the Constitutional Court, Law Universe Publishing, Bucharest, 2012

[3] L. Dragne Constitutional Law and Political Institutions, Volume I, 2nd edition revised and enlarged, Legal Publishing House, Bucharest, 2011

[4] D.C. Dănișor, Commented Constitution, Title I. General principles Legal Universe Publishing, Bucharest, 2009

[5] L. Dragne. Supremacy of the Constitution. (2013) (4) AGORA International Journal of Juridical Sciences, 38-41

[6] Bradley W Miller, Introduction, Constitutional Supremacy and Judicial Reasoning, 2020 45-2 Queen's Law Journal 353, 2020 CanLIIDocs 3873, <https://www.canlii.org/en/commentary/doc/2020CanLIIDocs3873#Introduction>, retrieved on 02 Feb 2025.

[7] [N. 6]

[8] [N. 6]

The core reasoning of the proponents of the theory of coordinate interpretation is that the highest courts such as the Supreme court of Nigeria can "take wrong turns"[9] by overturning their own precedents. Hence, "the nature of these wrong turns is not, usually, described as a matter of faulty legal reasoning or technique. Instead, these changes in direction are often explained as having been compelled or at least invited by more recent developments in the law, or the exigencies of new factual situations, including social change."[10] The core legal argument of the theory of coordinate interpretation is that, when the highest court in the land overturn its prior decision, it does not imply that its earlier decision was wrong but that the current circumstances of similar facts have evolved by being prescriptively unproductive, in view of changes in the polity. Perhaps, a look at the normative constitutional theory will offer clearer explanations.

(b) Normative Constitutional Theory

Normative constitutional theory seeks to provide explanations to two dissimilar queries: "How should judges and other officials approach constitutional decision-making? And what counts as a good reason—or "normative foundation"—for adopting a particular approach?"[11] Coan,[12] explained that:

> The two questions are obviously related, but the first has filled libraries while discussion of the second has been largely unsystematic and ad hoc. There is no well-recognized taxonomy of the types of reasons on which an approach to constitutional decision-making might be premised. Nor is it widely appreciated that competing approaches might rest on the same type of normative foundation or that multiple normative foundations might be invoked to support a single approach to constitutional decision-making.

Coan[13] proposed an arrangement shaping the normative practicalities of constitutional theory into four separate groups viz: "metaphysical, procedural, substantive, and positivist." Hence, "theoretical disagreement can concern the proper approach to constitutional decision-making, what counts as a good reason for adopting a particular approach, or both. It also permits analysis of the attractions and limitations common to each type of normative foundation, revealing significant points of overlap between apparently divergent approaches. Positivist originalism, for instance, may in some respects share more in common with positivist common-law constitutionalism than with metaphysical originalism."[14]

[9] [N. 6]
[10] Ibid, 8
[11] A. Coan. The Foundations of Constitutional Theory. (2017) (11) Wisconsin Law Review
[12] Ibid
[13] Ibid
[14] Ibid, also in David Strauss, Common Law Constitutional Interpretation, (1996) (63) University of Chicago Law Review, 877

It is argued in tandem with Coan,[15] that the metaphysical postulations is that the courts' decisions on constitutional matters should adopt the deductive approach by critically evaluating the "nature and concept of law or interpretation or some other important feature of constitutional decision-making assumed to require no justification."[16] Similarly, McConnell[17] and Coan,[18] explained that the procedural method of constitutional decision-making should flow from the ideals of procedural justice or rightfulness that requires particular constitutional decisions to be made by particular institutional actors.

Coan,[19] further elucidated that, the substantive method of constitutional interpretation should be able amend interpretational errors evaluating the moral validity of the possible outcome of the decision being made. On the other hand, the positivist perspective of normative constitutional theory emphasizes that, the accurate method to constitutional decision-making is based on the accuracy of the positive laws, "as defined by regularities of official behaviour in a particular jurisdiction at a particular moment in time."[20]

With regards to constitutional normative interpretations, the Nigerian Supreme Court in *Kassim v. Sadiku*,[21] and in *Inakoju v. Adeleke*,[22] held that: "where a statute of the Constitution or subsidiary legislation … prescribes a procedure for seeking remedy or the doing if anything or act, and the language used is clear and unambiguous, that is the only procedure open to the parties concerned, and any departure therefrom will be an exercise in futility." Consequently, in *Abacha v. FRN*,[23] and in other similar cases,[24] the court held that, no court should ever go on an expedition of unearthing when words are clear in Statute. Thus, it is settled that, where a provision of a statute is clear and unambiguous, only its natural meaning, and not any other, is to be given to its interpretation.[25]

[15] [N. 11] 835
[16] [N. 11] 835
[17] M.W. McConnell, *Textualism and the Dead Hand of the Past*, (1998) (66) GEOrge Washington Law Review 110–59.
[18] Coan, *supra. 836*
[19] Coan, *supra. 836*
[20] Ibid
[21] (2021) 18 NWLR (pt. 1807) 123
[22] (2007) 4 NWLR (PT. 1025) 427; S.B.N LTD V. AJILO (1989) 1 NWLR (pt. 97) 305.
[23] (2014) 6 NWLR (PT. 1402) 43
[24] ARAKA V. EGBUE (2003) 17 NWLR (PT. 848)1;; KRAUS THOMPSON ORGANIZATION V. N.I.P.S.S (2004) 17 NWLR (pt. 901) 44.
[25] A-G., ABIA STATE V. A-G., FEDERATION (2002) 17 WRN 1; (2002) 6 NWLR (PT. 763) 264 AT 485 – 486, TEXACO PANAMA INC. V. SHELL P.D.C.N. LTD. (2002) 14 WRN 121; (2002) 5 NWLR (PT. 759) 209 AT 227 – 228, TASHA V. U.B.N. PLC. (2003) 36 WRN 64; (2002) 3 NWLR (PT. 753) PAGE 99 AT 106, O.A.U. ILE-IFE V. R. A. OLIYIDE AND SONS LTD. (2001) 7 NWLR (PT. 712) PAGE 456 AT 473, AKPAN V. UMALI (2002) 23 WRN 52; (2002) 7 NWLR (Pt.767).

It is therefore argued as in *Ugwu v. Ararume*;[26] that, the normative constitutional theory of interpretation forbids the use of the "Mischief Rule"[27] in that, it should only be used where the old law did not provide for a matter and an interpretation is to cure or remedy that mischief.[28] The "Mischief Rule"[29] is only employed where the old law did not provide for a matter and an interpretation is to cure or remedy that mischief.[30]

3. An Analysis of the legal status of Abuja in Nigeria's Presidential Election

There are concerns among lawyers as to whether, Abuja should be regarded as the 37th state of Nigeria for the purpose of determining the outcome of Presidential election and whether it should be regarded a having a special status. In order to fully comprehend the current discourse, it is important to first evaluate the constitutional provisions. Section 2(2) of the Constitution provides that: "Nigeria shall be a Federation consisting of States and a Federal Capital Territory." This section omitted the word "state" with regards to Abuja. It went on to use the word, "And" the Federal Capital Territory". Similarly, section 3(1) and section (4) of the Constitution expressly states that:

> There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.

Consequently, Section 297(1) of the Constitution provides as follows: "There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitution." In the same light, section 297(2) provides that: "The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria." The foregoing section 297 appears to have

[26] (2007) 12 NWLR (PT. 1048) 365

[27] WILSON V. A.G. BENDEL STATE (1985) 1 NWLR (PT. 4) 572; GLOBAL EXCELLENCE COMMUNICATIONS LTD. V. DUKE (2007) 16 NWLR (PT. 1059) 22, 47-48; AGBAJE V. FASHOLA (SUPRA) @ 1338 C-E; A.G. LAGOS STATE V. A.G. FEDERATION (2003) 12 NWLR (Pt. 833) 1.

[28] G. Burda, Manuel de droit constitutionnel, R. Pichon et R. Durand-Anzias, Paris, 1947

[29] WILSON V. A.G. BENDEL STATE (1985) 1 NWLR (PT. 4) 572; GLOBAL EXCELLENCE COMMUNICATIONS LTD. V. DUKE (2007) 16 NWLR (PT. 1059) 22, 47-48; AGBAJE V. FASHOLA (SUPRA) @ 1338 C-E; A.G. LAGOS STATE V. A.G. FEDERATION (2003) 12 NWLR (Pt. 833) 1.

[30] M. Lepădăescu, General theory of constitutional review of laws, Didactic and Pedagogic Publishing House, Bucharest, 1974; G. Iancu, Constitutional law and political institutions, treaties, Lumina Lex Publishing House, Bucharest, 2008.; I. Muraru, Constitutional Law and Political Institutions, Actami Publishing House, Bucharest, 1997; I. Deleanu, Constitutional Law and Political Institutions - Treaty - Europa Nova Publishing, Bucharest, 1996; A. Iorgovan, Constitutional Law and Political Institutions. General Theory, Publishing House "J. L. Galleries Calderon ", Bucharest, 1994

clearly differentiated Abuja (FCT) from the other 36 States of Nigeria. Several scholars including but particularly, Ozekhome,[31] have argued that, by virtue of the provisions of Section 298 of the Constitution has apportioned the FCT, Abuja, special status as "the Capital of the Federation and the seat of the Government of the Federation".in that it provided *inter alia*: "The Federal Capital Territory, Abuja shall be the Capital of the Federation and seat of the Government of the Federation." However, section 299 of the Constitution seems to contradict prior provisions on the special status of the FCT, Abuja thus: "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;
(b) All the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and
(c) The provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section."

In the case of *Fawehinmi v. Babangida*,[32] the Supreme Court recognised the status of Federal Capital Territory as a "State" of the Federation. It follows inevitably to the conclusion that the only relationship existing between the Federal Government and the Federal Capital Territory is that its executive and legislative powers and duties are exercised for it by the President through the Minister of the Federal Capital Territory and the National Assembly respectively. By the same token, in *Bakari v. Ogundipe,*[33] the court reiterated that, the FCT, Abuja, like any state in the Federation, has its own courts, a distinct Chief Judge, a Senator; executive powers exercised by the President for it, similar to Governors of states, legislative powers vested on the NASS, instead of states with Houses of Assembly; with a Minister as its administrative Head rather than a Governor.

4. Complexities of Constitutional Interpretation of the Status of Abuja

Previously, in *Awolowo v. Shagari* & 2 ORS,[34] the Court held that: "A candidate for an election to the office of President shall be deemed to have been duly elected to such office where … There being more than two candidates: He has the highest number of votes cast at the election; and. he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation." Similarly, in *Baba-Panya v. President*,

[31] M. Ozekhome, The 25% Of FCT, Abuja as a Legal Conundrum https://lawpavilion.com/blog/the-25-of-fct-abuja-as-a-legal-conundrum/ Accessed 16 Feb 2025
[32] (2003) 12 WRN 1, (2003) 3 NWLR (Pt. 808) page 604
[33] (2020) LPELR – 4957 (SC), (PER BODE RHODES-VIVOR, JSC, rtd).
[34] (1979) FNLR Vol. 2

FRN,[35] it was held that the FCT is to be treated like a State and that it is not superior or inferior to any State in the Federation. In *Bakari v. Ogundipe*,[36] the Supreme Court held as follows:

> By virtue of section 299(a), (b), of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the provisions of the Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly all the Legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the provisions are courts established for the Federal Capital Territory, Abuja; all the powers referred to in paragraph of the section shall be exercised in accordance with the provisions of the Constitution, and the provisions of the Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of the section.

The above Supreme Court decisions go to buttress the argument that, if Abuja, FCT does not have a special status but regarded as the 37th State of Nigeria, then the winner of the presidential election must secure at least two-thirds of the votes in Abuja.

5. Conclusions

The conclusions reached in this article is consistent with Ozekhome,[37] which emphatically stated that, "the argument of those who have misconstrued section 134(2)(b) of the Constitution is to the effect that the use of the word "ALL" in the first limb of the said provision treats the Federal Capital Territory, Abuja, as one of the component states of the Federation" The advocates of the opinion mistakenly accept as true that, since the FCT is preserved as a State of the Federation, it therefore implies that , "there is no additional requirement to meet the 25% constitutional requirement therein."[38] The misinterpretation of

[35] (2018) 15 NWLR (Pt 1643), 423)

[36] (2021) 5 NWLR (Pt. 1768) 1; NEPA vs. ENDEGERO (2002) LPELR-1957(SC). BABA-PANYA vs. PRESIDENT, FRN (2018) 15 NWLR (pt. 1643)395; (2018) LPELR-44573(CA), IBORI V. OGBORU (2005) 6 NWLR (Pt. 920) 102; A.G, ABIA STATE V. A.G FEDERATION (2022) 16 NWLR (PT. 1856) 205. SEE ALSO N.P.A PLC V. LOTUS PLASTIC LTD. (2005) 19 NWLR (PT. 959)158; GANA V. S.D.P (2019) 11 NWLR (PT. 1684) 510; A.G, LAGOS STATE V. A.G, ABIA STATE V. A-G FED. (2018) 17 NWLR (PT. 1648) 299 AT 412; MARWA & ORS V. NYAKO & ORS (2012) LPELR-7837(SC).

[37] M. Ozekhome, The 25% Of FCT, Abuja as a Legal Conundrum https://lawpavilion.com/blog/the-25-of-fct-abuja-as-a-legal-conundrum/ Accessed 16 Feb 2025

[38] Ibid

the Constitutional provisions lead to several complicated court decisions such as the case of *Okoyode v. FCDA*.[39]

6. The Way Forward

In light of the above discourse, this article is of the firm view that Abuja, the FCT should sustain its special status rather than being considered as the 37th State of Nigeria. Alternatively, there should be an amendment of the relevant sections of the Constitution to create certainty.

[39] (2005) LPELR-41123(CA) (PP. 7-13 PARAS. A-A).