THE RIVERS STATE LEGISLATIVE ACROBATICS: DEMOCRACY ON TRIAL

JOHNMARY CHUKWUKASI JIDEOBI, Esq.
“The constitution of our great country, Nigeria is observed more by payment of lip service to its contents than in upholding same. The breach of the constitution by all and sundry more especially by our leaders is appalling, and this has led to lack of good governance. Our leaders have abandoned the sacred duty of upholding the constitution of Nigeria, 1999, which they swore to uphold and instead have subjected the constitution to ridicule. It is this ridiculing of our laws and the constitution in particular that led to this unwholesome spate of litigation, impeachment, corruption and indeed dangerous politicking that has rendered the society into traumatic convulsions. The whole Nigerian society, instead of enjoying that which the constitution in its opening declared for Nigerians, now live in fear...... indeed for the politicians, the rule of law is non-existing until it suits their purpose, and it is only then it is observed to the letter. Without a strict adherence to the rule of law our nascent democracy and indeed our constitution will only be worth the paper on which it is written. What makes a great country is adherence to the rule of law. Even in hell, there is order and discipline.”

Per Denton-West,, Justice of Court Of Appeal in the case of BALONWU V. OBI (2007) 5. N.W.L.R (PT.1028) page 488 particularly @ pgs 560 to 563.

It is a mere statement of the obvious that the above condemnation of the Nigerian Court of Appeal (Enugu Division) prompted, as it were, by the illegal removal of Governor Peter Obi of Anambra state, by a minority faction of Anambra state House of Assembly under Mr. Mike Balonwu’s Speakership, is still apt and best depicts the “bottom of obscenity’’ (apologies to Wole Soyinka) into which the Aristocratic arm of the government in Rivers state fell on Tuesday, 9th July, 2013.

Let me state from the very beginning, that it is only safe and prudent for me to highlight the parameters of this discussion which only attempts to circumscribe the issues of law essentially touching on multiple constitutional infractions, gross abuse of power, unconscionable bastardization of the rule of law and the unprecedented ridiculing of democratic institutions and ethos which in their aggregate boggles the minds of the apostles of democracy. The statement I am struggling to make is that in my humble attempt to x-ray the legislative imbroglio that engulfed Rivers State of Nigeria, I shall restrain myself from brazenly entering into the miasma of the political cauldron (apologies to late Hon. Justice Pats-Acholonu, J.C.A. as he them was) but shall strive to maintain a steady focus on the events that have all conspired to undermine democratic ethos on which our constitution is supposedly founded. Let me make it abundantly clear, I have no sympathy for any of the warring factions for my only constituency is the law and the law alone.

It is on record that our Nigerian legislatures (both the National and State) have acquired a rich history of rascality in the conduct of legislative businesses. Indeed if an example is sought for a legislative conduct that epitomizes impunity and all that the legislature does not stand for, the event of Tuesday July 11th 2013 in Rivers State readily ranks first ahead of others. There is no gainsaying the fact that Nigerians may have finally lost count of legislative rascality across the
country, given their frequency. From Abuja to Bayelsa, from Oyo to Anambra, the story is one of shame and opprobrium. That of Rivers State House of Assembly has simply opened the most shameful page in the odious history of unlawful removal of elected officers in the country. It is the frequency and detestable manner in which the removals are either attempted or effected are what leaves sour taste in the mouth of democrats prompting the Nigerian supreme court (Per Tobi, J.S.C.) to sadly observe in the case of INAKOJU V. ADELEKE as follows;

“The plethora of removal proceedings in respect of governors is not only frightening but is capable of affecting the stability of Nigeria, it is almost like a child’s play as some state legislatures indulge in it with all the ease and comfort like the way the English man sips his coffee on his breakfast table. Unless the situation is arrested, Nigerians will wake up one morning and look for where their country is. That should worry every good Nigerian.”

Now it is apt at this juncture to invoke the relevant law which is section 96 of 1999 Constitution of The Federal Republic of Nigeria (CFRN) providing as follows;

96 (1) the quorum of a House of Assembly shall be one third of all the members of the House. Further to the above, section 92 (2) of the same Constitution provides thus;
92 (2) the speaker or Deputy Speaker of the House of Assembly shall vacate his office (c) If he is removed from office by a resolution of the House of Assembly by the votes of not less than two-thirds majority of the members of the House.

Flowing from the foregoing, it follows that it is a general provision of our Constitution that for the House of Assembly of a state (Rivers State in the instant case) to sit, it must form the required quorum of one – third of all the members of the House. However, it can be deduced from the language of the Constitution that the one- third prescription is the irreducible minimum. This means that there could be, (and indeed there are) some much more serious legislative functions calling for a greater quorum than one-third. In other words, every legislative function has its own “required quorum” which is a condition precedent for such function or exercise of power to enjoy the toga of validity without which same will be a nullity for all times regardless of how brilliantly conducted and excellently concluded as eloquently borne out by section 98 (1) which instructively provides thus;
(1) Except as otherwise provided by this constitution, any question proposed for decision in a House of Assembly Shall be determined by the “required majority” of the members present and voting; and the person presiding shall cast a vote whenever necessary to avoid an equality of vote but shall not vote in any other case. (italics supplied by me for emphasis)

The above lucid provision drives home the point and lends credence to the position being projected by this writer that for every exercise of the legislative power bestowed on any State House of Assembly, what is needed is the “required majority” of the members who must be present and voting and NOT just any majority of any number of members present and voting (or present but left midway before or came back after the voting took place).

Now, the question that naturally comes to mind is: what is the required majority for the removal of the Speaker of any House of Assembly. The answer is not far fetched. It is rather handy as it furnished by 92 (2) (c) of the constitution earlier cited providing thus (for clarity purpose, though
The Speaker or Deputy Speaker of the House of Assembly shall vacate office (c) if he is removed from office by a resolution of the House of Assembly by the votes of not less than two – third of the member of the House.

The above salient provision needs no further elucidation for it is clear and unambiguous. Put more correctly, it is self-explanatory. I have been talking law. I think we have talked enough law. Let us appraise the facts forming the center-piece of this discuss. On Tuesday, July 9th, 2013, one Hon. Evans Bapakaye Bipi, led other four members of Rivers State House of Assembly to purportedly “remove” the Hon. Speaker of Rivers State House of Assembly, Rt. Hon. Otelemaba Amachree. They did not stop at that, they took their impunity to a greater height by purportedly “suspending” 15 other Hon. Members of the House.

Now, the one million dollar question calling for determination is: whether in the field of arithmetic, the number 5 had ever or will ever qualify as the 2/3 of 32? I cannot lay claim to proficiency in the field of mathematics but even the untutored knows (as elementary knowledge) that the number 5 has never and will never amount to the 2/3 majority of 32 regardless of the arithmetic formula deployed.

Now in Rivers State House of Assembly, Hon. Evans Bapakaye Bipi has stood logic on its head. Otherwise, how else can one describe his mealy-mouthed attempt at convincing Nigerians that 5 is 2/3 majority of 32. It was William Shakespeare who in his work (MACBETH) aptly described it as “a tale told by an idiot, full of sound and fury, signifying nothing”. Such is the kind of fairy tales found in Alice in Wonderland. Mr. Bipi should go and tell it to the marines. I am now telling Bipi that democracy is all about the rule of the majority no matter the acclaimed “wisdom” of the minority. At most, the minority can only have their say and not their way.

Writing on the rules and procedures of the House, the learned American Authors of the book: Legislation: Cases and Materials (Charles B. Nutting and Reed Dickerson) had this to say:

Majority will is only to be secured by adequate debate conducted with freedom enough to permit every useful contribution of ideas and opinions and deliberation enough to exclude so far as practicable the untoward influence of precipitancy and passion. To this end there must be different stages of consideration and then the opportunity for reconsideration. There must be protection against surprise and against fraud. A conclusion must be reached, somebody must preside and the others must not be at the mercy of his caprice, due order must be followed in the transaction of business, decorum must be maintained, dignity must clothe the conduct of affairs if decisions are to command the respect of the people ......For these purpose rules are necessary.

Whatever shock in the marrows of democrats following the shenanigan that played out in the Rivers State House of Assembly on 11th July, 2013 may subside when one recalls the immortal words of Jeremy Bentham in his work “Constitutional Code”’ where he posited thus;

“Whatever evil it is possible for man to do for the advancement of his private and personal interest
That evil sooner or later he will do, unless by some means or other, intentional or otherwise, he be prevented from doing.”
It was our late literary icon, Professor Chinua Achebe, who once rightly averred that everything rises and falls on leadership. If one recounts the perfidious and scandalous abduction of Governor Ngige, the unlawful removal of governors Ladoja and Peter Obi and other kindred aberrations, the catalogue of impunity will be too obvious. Is it any surprise for one to now conclude that what Nigeria lacks is quality leadership? Professor Chinua Achebe of blessed memory will always be right on this score. Reinforcing this conclusion, the Court of Appeal, per Denton-West, sadly observed as follows:

We lack good leadership in our body politic. A good leader is one who is able to lead and has the ability to influence his people positively to attain and achieve greater heights for the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart. A leader’s action always has a rippling effect on the society. The leader’s wrong actins can destroy the society and bring it to naught, whilst the act of a good and seasoned leader could catapult our country Nigeria to the country we all dream about. See BALONWU’S CASE (supra)

Perhaps, it is pertinent to recall that the Constitution is an organic law, a system or body of fundamental principles according to which a nation, a state, body politic or organization is constituted and governed. See ADELEKE V. O.S.H.A (2006) 16 N.W.L.R. (pt.1006) 608 @ 695 per Chukwuma – Eneh, J.C.A. (as he then was). Of course, it is needless to reaffirm that the function of the constitution is to regulate the affairs of the nation, by setting out the functions and powers of the different component of government, namely the executive, the legislature and the judiciary. It also regulates the relationship between the citizens of the state. Furthermore, the various arms of government at all levels of government are bound by the constitution, and have a duty to ensure its enforcement. See ADELEKE V. O.S.H.A (supra) @ page 665 per Ojebe, J.C.A (as he then was).

The unfolding events in oil rich Rivers State have left no one in doubt as to the genesis of the crisis which is brazen bastardization of the constitution and ridiculing of the rule of law, supplanting same with the rule of renegade cabals. Consistent with the above view is the crisp observation of the court of Appeal in Balonwu’s case (supra) wherein Denton – West, J.C.A., aptly warned that: “without a strict adherence to the rule of law our nascent democracy and indeed our constitution will only worth the paper on which it is written.”

In summing up our discussion, it will be most desirable to remind ourselves of the genuine fears ably expressed by Hon. Justice Akaahs, J.C.A. (as he then was) wherein he warned that: “the spate of impeachments under the present democratic dispensation has assumed a frighting dimension which if not properly handled will throw this country into a state of anarchy”.

In the very words of Niki Tobi, J.S.C, in INAKOJU’S CASE (supra) “unless the situation is arrested, Nigerians will wake up one morning and look for where their country is. That should worry every good Nigerian. It does not only worry me, the idea frightens me so much.”

In finding a lasting solution to this seemingly undying conflagration, there is need for one to objectively apportion blame and culpability to deserving parties. On the part of the presidency, it was not enough for the President’s Spokesmen to distance their principal from the festering crises. The statement attributed to Doyin Okupe suggesting that the raging controversy in Rivers State is not one of the many worries of President Jonathan with the greatest respect, smacks of negligence and/or abdication of responsibility which should not be. To say the least, the statement is irresponsible. Okupe’s argument falls flat in the face of the oath taken by Mr. President to protect our dear Constitution from abuse and desecration. The presidency becomes
suspect when it looks the other way when undemocratic forces are rumpling our constitution and deploying bizarre tactics to pin Governor Amaechi to the wall. If the presidency fails, neglects or refuses to take positive step(s) to undo the impunity of five the members proclaiming themselves majority over 27, then we should all gird our loins for 2015 for there is a great war ahead. I choose to say no more on this!

On the Part of the legislators in Rivers State, their unbecoming conducts have brought into sharp focus the quality of men and women who our present infirm electoral system has allowed to make their way into the hallowed Chambers where the sacred and solemn business of law making for the overall well being of the citizens take place. Exactly this ugly state of affairs prompted the Nigerian Supreme Court, through Tobi, J.S.C., to advise the legislature in the very words which I would now most respectfully repeat;

“The Legislature is the custodian of a country’s constitution in the same way that Executive is the custodian of the policy of government and its execution, and also in the same way that the Judiciary is the custodian of the construction or interpretation of the constitution. One major role of a custodian is to keep under lock and key the property under him so it is not desecrated or abused. The legislature is expected to pet the provisions of the constitution like the way the mother pets her day old baby. The Legislature is expected to abide the provisions of the constitution like the way the clergyman abides by the Bible and the imam abides by the Koran. And so, when the legislature, the custodian, is responsible for the desecration and abuse of the provision of the constitution in terms of patent violation and breach, society and its people are the victims.’’

What more can one add to the above? The learned Justice of the Supreme Court has said it all. It is to be hoped that the message gets to the quarters it is meant for.

This work cannot be exhaustive if the attitude of the police in the entire saga is not visited. In any case, since the Nigerian police is directly answerable to and under the control of Mr. President who is their principal, all their questionable roles in the entire circumstances (warranting the passing of separate resolutions by the two Chambers of the National Assembly calling for the redeployment of the Commissioner of Police of Rivers State, which unfortunately has not been heeded) would be attributed to President Jonathan since it is a well settled principle of law that the act(s) of an agent binds the/his principal as between the principal and third parties. This case is no exception and President Jonathan should accept it as such unless Mr. President is saying that he has lost control over the police.

Against the background of the foregoing premises, it would be absolutely difficult if not preposterous, for one to accept an argument/proposition tending to suggest that those who instigated and still continue to fan the embers of mayhem and chaos in Rivers State are not doing so at the behest of the presidency. Such argument patently lacks just as it infantile. It is bogus and one cannot agree with Dr. Doyin Okupe on that. He is alone on that score. He should be left alone since he wants to be alone on that score.

All in all, our dear President Jonathan is urged to shun and rise above pettiness on the plane of statesmanship. This is one political pettiness that has been carried to a very unfortunate extreme thereby compromising the security and welfare of the citizens which (he swore to guarantee) and which our constitution rightly recognizes as the twin pillars on which every responsible
government of this country must rest. Pettiness must not be carried too far as to throw caution to the wind. The statement I have been struggling to make is that there must be an end to pettiness. Mr. President has the moral and constitutional burden to call the political storm troopers and attack dogs to order and this he must do timeously and decisively so as to bring to an end this whirlwind of impunity. For a bunch of criminals and dangerous scallywags to be imported into the hallowed citadel of lawmaking to disrupt legislative proceedings is a sad commentary on our democratic experiment. Above all, all the combatants in this raging war must lay down their arms, sheathe their swords, mend fences and embrace peace by recognizing the inviolability, sanctity and supremacy of our constitution (the fons et origo) for the enthronement of rule of law and endurance of most cherished robust democratic ideals. Happily this task is very much achievable, though challenging. Our democracy can only keep us if we keep our democracy!

55