

JUDICIAL ACTIVISM; NEW GARMENT FOR SECTION 16, COURT OF APPEAL ACT, 2004

By
Dr. A.R. Agom*.

1.1 INTRODUCTION.

Disputes are inherent in human interactions. They accompany changes in behavior compelled by changes in circumstances. In other words, disputes call for readjustment of relationships. This adjustment may be minimal radical, gradual or temporal. However, whatever the degree of change disputes engender, they are not in themselves bad. On the contrary, they can be veritable enhancers of human relationship. Disputes sometimes are desirable to effect change, generate new ideas, test existing ideas, establish and test boundaries between the possible and the impossible, reveal and exorcise fears, test group cohesion, build teams, reveal different needs and interest among individuals and among groups, explore personalities, bring feelings into the open and create mutual dependence. These positive effects of conflict can only be midwife by a dispute resolution mechanism that is flexible, time propelled, accessible and fair. According to Aeropagitica “for this is not liberty...that no grievance ever should arise...but when complaints are freely heard, deeply considered and speedily reformed then is the utmost bound of civil liberty that wise men look for”¹

Since the Act of Settlement, the process of governance has cascaded from theocracy to representative government in varying form. In these forms, the business of administration, dispute resolution and rules crafting now vest with different bodies of the people. While the legislature makes the laws the judiciary interprets and the executive administer the laws. The classical treaties of Adam Smith², A.V. Dicey³ and Montesquieu⁴ jurisprudentially set the tone for modern governance built on the tripod of division of labour, rule of law and separation of powers moderated by checks and balances.

Laws exist to ensure order in the society. It keeps in check extremes of mankind ranging from greed, recklessness and indiscretion. As an

*A.R. Agom, PhD, Senior Lecturer, Faculty of Law, Ahmadu Bello University, Zaria.
austinagom3000@yahoo.com

¹ Olagunju, J., Commercial Mediation (An Alternative Dispute Resolution {ADR} Mechanism) 1998, Multifirm Ltd, Kaduna) P.1.

² Smith, A., The wealth of Nations (2003, Bantam Dell, New York)

³ See Cosgrove, The Rule of Law; Albert Venn Dicey, Victorian Jurist (1985) PL 587

⁴ The Spirit of the Law Book XI (1949) chapter 6.

instrument for social change, law in every society operates to secure the rule of law as against the hunch rule of force. The human laws, however, are time and issues related. With passage of time and complexities in the societies, new circumstances are thrown up and the laws lag behind and bred systemic manipulation⁵. Of late our justice delivery system has been characterized by all manner of malaise. According to Goodluck⁶

The problems in our judicial process are multiple, ranging from the inordinate delays in the determination of case, congestion of the courts dockets, the cumbersome and inflexible procedural systems inherent in the adversarial process of litigation as well as the unbridled right of access by litigations to the Apex Court from the Courts of first instance on the flimsiest application which may not address the substantive case before the Court. In abiding by the hallowed principle of fair hearing, the Courts have helplessly condoned these legal gymnastics which have unduly protracted the lifespan of a case by years.

To get round this problem, justice reform has been on the front burner of stakeholders of justice administration in Nigeria for quite some time. This has led to the introduction of frontloading system in the litigation processes in Nigeria⁷. The positive effect of these reforms on speedy administration of justice is yet to be substantially felt.

The judiciary may proactively expound existing laws to provide for a nascent situation. This is to make a law relevant for its purpose. This has come to be understood as judicial activism. Judicial activism has become the soul of law and social engineering⁸. Judges are often charged to regard

⁵ Until the laws are amended. The amendment process may yet be tedious. In the meantime the courts grapple with the problem.

⁶ See Goodluck O.O., Abuja Multidoor Courthouse, Ogebe & the Law (2010, Tamaza, Zaria) P.111, 113

⁷ See High Court Civil Procedure Rules, Kaduna State, 2009; Federal High Court Civil Procedure Rules 2009; *Jabita v Onikoyi* (2004) All FWLR, Pt.233, P.1435.

⁸ *Abraham Adesanya v. NPN: High trees case; Stevenson V. Donogue; Hedley Byrne V. Hellers & Partnes.*

this as an article of faith. Recently, in ATTORNEY GENERAL FEDERATION & 2 ORS V. ALII. ATIKU ABUBAKAR & 2 ORS⁹, Aderemi, JSC advised judges.

No legal problem or issue must defy legal solution. Were this not to be so, the society, as usual will continue to move ahead, law, God forbid, will then remain stagnant and consequently become useless to mankind. With this unfortunate consequence at the back of his mind, a judge, whenever faced with a new situation which has not been considered before, by his ingenuity regulated by law, must say what the law is on that new situation, after all, law has a very wide tentacles and must find solution to all man-made problems. In so doing, let no judge regard himself as making law or even changing law. He (the judex) only declares it (law). He considers the new situation, on principle and then pronounces upon it ... that is, the practical form of the saying that the law lies in the breast of the judge.¹⁰

This paper demonstrates how courage and flexibility can navigate around the landmines of technicality and injustice and pull back a society from the precipice of anarchy. The objective of the discussion is to make a strong case for judicial activism in every sphere of dispute resolution. This will give judicial reform in Nigeria substance and direction. ‘Judicial’, ‘Activism’ are the main dictions driving this topic. A conceptual clarification of these is undertaken under the next succeeding heading.

1.2. Conceptual Clarification

According to Oxford’s Dictionary, Judicial is connected with court of law, a judge or or legal judgment. “Activism” from the noun activist, has to do with a person who works to achieve political or social change especially as a member of an organization with particular aim. It denotes creativity or display of ingenuity by a judge in making a law solve a practical problem in

⁹ (2007)10 NWLR.Pt1041

¹⁰ Ibid.P.171-172.

a pragmatic manner within the acceptable bounds of law. According to Obaseki, “Although judges do not claim to make law, there is no gainsaying the fact that the function of finding resolution to conflicts gives ample room for creativity as the choices open to them cannot be mechanically determined”¹¹. This must be differentiated from judicial indiscretion¹². The objective of this paper is to direct attention to the need for judicial activism as a key to solving practical societal problem. A pointer to this is the purposive interpretation of Section 24, Court of Appeal Act, 2004 in the Ladoja’s case. A replication of similar approach in justice dispensation in our courts can stem the tide of delay in our justice delivery system.

1.3. The Ladoja’s case.

One of the pacesetting judgments in Nigeria’s legal jurisprudence is the judgment in the case that arose from the removal of Chief Rashidi Ladoja as Governor of Oyo State. What it portends for Nigeria democracy, rule of law, separation of powers will for sometime engage the attention of legal scholars and the stakeholders of the Nigerian state. The courage displayed by Justice Ogebe in this case is indeed legendary. It is to this case that we turn. In HON. ABRAHAM ADEOLU ADELEKE (SPEAKER) & 2 ORS v. OYO STATE HOUSE OF ASSEMBLY & 18 ORS¹³ Senator Rashidi Ladoja was sworn in as Governor of Oyo State on the 29th may 2003 for a term of 4 years to terminate in May 2007. On the 13/12/2005, 18 out of 32 members of the Oyo State House of Assembly met in a hotel in Ibadan where they issued a notice of allegation of misconduct against the Governor. This notice of allegation that was neither served on the other members of the House of Assembly nor the Governor culminated in the impeachment of the latter. Dissatisfied, the Speaker and Deputy Speaker of the House of Assembly, by originating summons, applied to the High Court of Oyo State to set aside the actions of the 18 legislators. Instead of entering appearance and filing a counter affidavit to the originating summons, the Respondents filed a Notice of Preliminary Objection. They contended that pursuant to Section 188(10) of the Constitution of the Federal Republic of Nigeria, 1999, the impeachment of the Governor was a legislative act that

¹¹ “Obaseki, The art and Science of judging: Style and creativity’ Judicial Lectures. 1989. P.97,

¹² In Omoniyi V. Central Schools Board (1988) 4NWLR, Pt. 89, P.448.

¹³ (2006) 16, NWLR, Pt. 1006, P.608

subject to litigation nor justiciable. The High Court heard the y objection and ruled:

...by the combined effect of the above provisions therefore and having regard to the nature of the reliefs claimed by the plaintiffs, it is clear beyond argument that the jurisdiction of this Court is clearly ousted. Impeachment and related proceedings are purely political matters over which this Court cannot intervene. The action is not justiceable. See CHIEF ENYI ABARIBE v. THE SPEAKER, ABIA STATE HOUSE OF ASSEMBLY & ORS (2002) 14 NWLR, (Pt. 788) P.466 at P.492. It is not part of the duty of the Court to forage into areas that ought to vest either directly or impliedly in the legislature such as the issue of impeachment, which is a matter that comes within the purely internal affairs of the House of Assembly.

, the Applicants appealed to the Court of Appeal. Delivering the ent, Ogebe JCA (as he then was) stated:

It is my view that the trial Court had serious question to consider before hastily throwing out the suit. For example, it was alleged that 18 defendants met outside the chamber of the House of Assembly in a hotel to commence impeachment proceedings, the Court had a duty to determine whether proceedings before such a group amounted to proceedings of Oyo State House of Assembly. It was also alleged that the House of Assembly in Oyo State had 32 members and for the removal of the Governor which requires the resolution of two third majority of all members of the House, the Court had a duty to inquire whether a factional meeting of 18 members constituted the required two third majority of all members. The Court also had to consider whether impeachment proceedings in which the Speaker of the House of Assembly is excluded from his leading role as provided for in Section 188 of the Constitution can amount to proper proceedings of impeachment. For all I have said in this judgment, I have no hesitation in holding that the learned trial judge was wrong in declining jurisdiction. Indeed he had jurisdiction to examine the

claims in the light of Section 188 Subsection (1)-(9) of the 1999 Constitution and if he was not satisfied that the impeachment proceedings were instituted in compliance thereof, he has jurisdiction to intervene to ensure compliance. If on the other hand, there was compliance with the pre-impeachment process then what happened thereafter was the internal affairs of the House of Assembly and he would have no jurisdiction to intervene...¹⁴

Quite unprecedented, the Court went on:

Having held that the trial court has jurisdiction to hear the appellants Originating Summons it is now for me to determine whether I should send the case back to the Oyo State High Court for fresh trial... I have taken a look at the preliminary objection of the Defendants/Respondents in the court below and the grounds thereof... and I have also looked at the argument of counsel before the lower Court and the summary of the argument in the ruling of the lower court and it is my view that all that needs to be said on the merit of the claim has already been said in the record. Since the facts of the case are not disputed and what is to be decided is purely the interpretation of section 188 of the 1999 Constitution, this is an appropriate case for us to resolve the entire case in this Court under Section 16 of the Court of Appeal Act. It is necessary for us to do so in view of the fact that the *rem* (sic) of the dispute, that is, who is the rightful Governor of Oyo State before the tenure ends in May next year, should be determined without further delay¹⁵.

The Court of Appeal proceeded to examine the originating summons and the supporting affidavit and granted to the Appellants, eight out of the nine reliefs sought. In sum total, the impeachment was set aside and Senator Rashidi Ladoja was restored back to office as the Governor of Oyo State.

An application¹⁶ to the Supreme Court for stay of this judgment pending an appeal to the Supreme Court was refused basically on the reasoning,

¹⁴ Ibid,P.671

¹⁵ Ibid,P.672

¹⁶ Inakoju v.Adeleke(2006)18NWLR,Pt.1012,P.667

advanced in the lead judgment of the Court of Appeal. The substantive appeal to the Supreme Court was also dismissed.¹⁷

1.4 Analysis of the Case.

Some quick comments can be made on this decision. Firstly, this was the first time¹⁸ in Nigeria that the impeachment of a state chief executive was reversed by a court of law. This decision has so many lessons; to the legislators, a caveat against constitutional violation; to the court, an inspiration for judicial boldness; for Niki Tobi JSC, an opportunity to deliver his counsel of perfection on the topical issue of impeachment. An examination of the authorities on Section 16 Court of Appeal Act reveals that the Ladoja's case has advanced a new perspective on the interpretation of the section.

It is material at this point to situate the issues that arose in this case within the context of the broader polity at the time. Nigeria returned to democratic governance in May 1999 with the Constitution of the Federal Republic of Nigeria, 1999 as the *grund norm*. The Constitution clearly sets out the various organs of government based on the constitutional executive and the judiciary with in built checks and balances. One instrument of check and balance in the Constitution is the power to remove the holder of an executive office for reasons enumerated in the Constitution. For gross misconduct, the President, Vice-President, Governor and Deputy Governor can be removed from office¹⁹. This power notably called the power of impeachment soon became an instrument of terror in the hands of legislature in the Nigerian political landscape. Reacting to the arbitrary resort to this impeachment power, Akaahs JCA.²⁰, lamented.

In the eight years of Nigeria's return to democracy the country has recorded a far greater number of impeachment of state chief executives than those of the United States of America in her over 200 years of her existence in the practice of

¹⁷ Inakoju v. Adeleke (2007) 4 NWLR, Pt. 1025, 423

¹⁸ In the previous cases of Alhaji Balarabe Musa v. Auta Hamza & ors (1982) 3 NCLR, 229; Abaribe v. Speaker, Abia State House of Assembly (2002) 14 NWLR, Pt. 788, P. 466, the courts conceded that their Jurisdictions were ousted.

¹⁹ Constitution of the Federal Republic of Nigeria, 1999, Section 188.

²⁰ Dapialong v. Dariye (supra).

*the presidential system of Government from whence this country borrowed this form of Government. Under the 1979, Constitution when the presidential system of Government was first introduced only one state executive namely the Governor of Kaduna State out of the 19 State Governors was impeached. An attempt was made in 2002 to serve notice of impeachment on the President of the country but the move was aborted by well meaning Nigerians. The ugly spectre returned after the 2003 elections with Bayelsa, Oyo, Ekiti, Anambra and Plateau state chief executives falling under the hammer...*²¹

On the probable effect of indiscriminate impeachment on our democracy, the Court²² had warned that “the spate of impeachment the present democratic dispensation have assumed frightening dimensions which if not properly handled will throw this country into a anarchy”²³.

True to this statement, anarchy, lawlessness, weak and in leadership and bad governance began to find comfortable positions in states concerned and the larger Nigerian state. Vividly painting the emerging picture of this disturbing trend Tobi, JSC²⁴ said.

*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. It does not only worry me; the idea frightens me so much*²⁵.

²¹ Ibid,P.258.

²² Adeleke v.Oyo State House of Assembly(supra)

²³ Ibid,P

²⁴ Inakoju v.Adeleke(supra)

²⁵ Ibid,P.643

His Lordship's fear was profound as the ominous signposts all arrowed a precipice. It is at trying times like this that the efficacy of law is ascertained. If truly, the law is what the judges say it is, then those who operate our courts and interpret the laws must be proactive and utilitarian in approach to prevent society from sliding into anarchy. This way, law can be of value, society will grow and jurisprudence can flourish.

It is in this setting that the Court of Appeal courageously stepped out of the line to deliver the tide turning judgment in the Ladoja's case and gave a new perspective on Section 16, Court of Appeal Act. The venturing interpretation of Section 16 Court of Appeal Act caused some disquiet. Understandably so, as some salient aspects of the case as indicated below show:

1. Two main causes were before the trial High Court of Oyo State; the Originating Summons and Notice of Preliminary Objection.
2. The High Court had only heard and ruled on the Notice of Preliminary Objection.
3. The appeal to the Court of Appeal was on the ruling delivered on the preliminary objection
4. The High Court neither heard nor pronounced on the Originating Summons and thus no appeal on the same by Notice of Appeal was lodged at the Court of Appeal
5. The Court of Appeal is constitutionally vested with appellate jurisdiction and has original jurisdiction only in matters dealing with the election of the President or Vice- President of the Federal Republic of Nigeria.
6. Invoking Section 16, Court of Appeal Act the Court of Appeal heard the appeal on the preliminary objection and proceeded to consider the Originating Summons and to deliver judgment on the same as if the process was originally filed before it or brought on appeal before it.

Quite uncomfortable with this new breath of life to the said section Oguntade, JSC²⁶, in the dissenting judgment, stated.

²⁶ Inakoju v. Adedccke(supra)

"...the implication of this strange procedure is that this case was decided solely on Plaintiff's Originating Summons and Affidavit. The defendants were not afforded the opportunity of saying one word. This I must confess is one of the most bizarre occurrences in a court of law that I have ever seen"²⁷ (underlining mine for emphasis)

However, the ovation that greeted the Court of Appeal decision in this case and particularly Section 16, Court of Appeal Act is thunderous. In this respect, the effervescent Tobi JSC²⁸ conceded.

*...I lack the law substantive or adjectival to fault the...position ably taken by the Court of Appeal on their Section 16 power, which is the counterpart of Section 22 of the Supreme Court Act. Four out of the five Justices examined the Section thoroughly and I cannot see my way clear in disagreeing with them. They are correct, very correct indeed...*²⁹

The prolix Section 16, Court of Appeal Act³⁰, in question reads:

The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the Court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may rehear the

²⁷ Ibid,P.742.

²⁸ Ibid.

²⁹ Ibid,P.616

³⁰ CAP C36, Laws of the Federation of Nigeria, 2004.

case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directives as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or in the case of an appeal from the court below in that courts appellate jurisdiction, order the case to be reheard by a court of competent jurisdiction.

This provision made its debut in the Court of Appeal in 1976³¹. It was conceived principally to avoid multiplicity of proceedings and ultimately to facilitate speedy administration of justice. Here the Court of Appeal is entitled to evaluate the evidence and may reject conclusions of the trial judge from facts which do not flow from the evidence or may be regarded as perverse. The Court, in the determination of the appeal is empowered to exercise all the powers of a court of first instance. No doubt the wordiness of the section makes its drafting inelegant and understanding tedious. Notwithstanding the Court of Appeal approached the Ladoja's case proactively,

Two approaches can now be discerned in the interpretation of Section 16; the conservative approach and the pragmatic approach. The conservative interpretation envisages the totality of the Section as merely vesting powers (not jurisdiction) on the Court of Appeal with respect to the determination of appeals before it. 'Real question in controversy in the appeal' as contemplated by the section, is as posited in the Notice of Appeal and detailed out in the Grounds of Appeal and their particulars. The 'rehearing' in the provision contemplates hearing on printed records by re-examination of the whole evidence tendered before the trial court and forwarded to the Court of Appeal. Simply put, the power donated by the section is to enable the Court to be in complete charge of the appeal before it. It is not to be construed to vest jurisdiction on the Court to go beyond the immediate appeal before it. The power is essentially ancillary to the main issue in dispute arrow headed by the Notice of Appeal. The first part of this Section provides ample support for this approach.

³¹ See the Federal Court of Appeal Decree, No. 43, 1976. Section 16

"The Court of Appeal may, from time to time make any order necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal and may direct the court below to inquire into and certify its findings on any question which the court of appeal thinks fit to determine before final judgment in the appeal. (underlining for emphasis)

The constitutional place of the Court of Appeal as essentially an appellate court force fully supports this view.

The pragmatic approach broke out of its shell in the Court of Appeal judgment in the Ladoja's case. It is utilitarian in perspective. This interpretation relying on the disjunctive and conjunctive words in Section 16 employs the provision to vest jurisdiction on the Court of Appeal where all the facts are before it, to go beyond the limit of the immediate appeal and in one fell swoop decide the matter holistically. The latter part of Section 16 provides support for this approach.

...and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may rehear the case in whole or in part..."

The global shift from technical justice to the domain of substantial justice gives this approach a great appeal, *afortiori* where time is of the essence. This interpretation expedites proceedings and final determination of the entire case. According to Ogebe JCA

...this is an appropriate case for us to resolve the entire case in this Court under Section 16 of the Court of Appeal Act. It is necessary for us to do so in view of the fact that the rem (sic) of the dispute, that is, who is the rightful Governor of Oyo State before the tenure ends in may next year, should be determined without further delay.³²

³² Adeleke v.Oyo State House of Assembly(supra),P.672.

In the concurring judgment, Chukwumah-Enc JCA expressed the same concern thus:

In conclusion, there is clearly an urgent need to dispose of this matter as time is of the essence. The office of Governor in this dispensation is bound to expire by efflux ion of time on 29th may 2007, that is a couple of months from now that to allow this case to run up and down the hierarchy of the courts will surely defeat the course of justice.³³

Throwing further light on the reasoning behind this approach, Tobi JSC³⁴ stated.

The appeal was argued in the Court of Appeal on 26th September 2006 and judgment was delivered on 1st November 2006. Ogebe, JCA, was conscious of the time element or time factor in the case and that was one reason why he correctly invoked Section 16 Court of Appeal Act and in the light of the evidence before the court... I commend the Court of Appeal for the speedy hearing of the appeal. The appeal was filed in that Court in February 2006 and despite the plethora of motions, the Court of Appeal was able to deliver judgment on 1st November, 2006. This is most commendable and I commend the Court³⁵.

Like a long sought solution, this case reverberated across the length and breadth of the country and became the alchemist cure for a cancerous problem. In the eastern part of the country, in the case of BALONWU v. OBI³⁶ the Court of Appeal, Enugu division relying on the Ladoja's case, declared the removal of Peter Obi as Governor of Anambra State, unconstitutional. The Court ordered his re-instatement.

In the North Central Zone of Plateau state, the Court of Appeal, Jos Division relying on the Ladoja's case, declared the removal of Chief

³³ Ibid.P.704

³⁴ Inakoju v. Adeleke(supra)

³⁵ Ibid,P.626

³⁶ (2007)5NWLR,Pt.1025,423.

Joshua Dariye, as Governor of Plateau State, unconstitutional. The Court ordered his re-instatement. The Court of Appeal clearly adopted the pragmatic approach. An examination of this case will show Section 16 Court of Appeal Act in its new garment. In DAPIALONG v DARIYE ³⁷, Chief Joshua Dariye was elected and sworn in as Governor of Plateau State for a term of four years from the 29th may 2003. In July 2006, 14 members of the 24 member State House of Assembly decamped from the Peoples Democratic Party, the platform on which they were elected to another political party, the Advanced Congress of Democrats. Consequently, their seats were declared vacant for a bye-election by the Independent National Electoral Commission. In November 2006, 8 out of the remaining legislators accused the Governor of corruption, corrupt practices and mismanagement and served on him a notice of impeachment. The House under its rule appointed a Speaker *Pro-tempore* who requested the Acting Chief Judge of Plateau State to set up a panel of seven to investigate the allegations against the Governor. The report of the Panel was adopted by the depleted House of Assembly which proceeded to remove Chief Joshua Dariye from office as Governor of Plateau State.

Dissatisfied, Chief Joshua Dariye commenced an action by Originating Summons to set aside the actions of the 8 legislators. The latter filed a Notice of Preliminary Objection against the jurisdiction of the High Court pursuant to Section 188(10), Constitution of the Federal Republic of Nigeria, 1999 and also filed a Counter Affidavit to the Originating Summons. The High Court fixed the matter for 15/12/2006 to hear argument on the preliminary objection. On the 15/12/2006, the preliminary objection was not taken and the Court adjourned the matter to the 19/12/2006 and directed thus:

Having considered the exigencies of the time and the fact that this is an Originating Summons, I order that both parties submit their written briefs in the suit with that of the P/Objection. If the P/Objection succeeds, it will be the end of the matter. If it does not succeed, the substantive matter will be hard (sic) and considered. I rely on

³⁷ (supra) P.239

*the procedure adopted in the case of Adeleke v.
Oyo State House of Assembly.*

The 8 legislators being dissatisfied with this order of the trial High Court appealed to the Court of Appeal alleging a violation of their right to fair hearing. The Court of Appeal dismissed the appeal but did not stop there. It invoked the provision of Section 16, Court of Appeal Act to consider the Notice of Preliminary Objection against the jurisdiction of the Court, which it dismissed. It proceeded to examine the Originating Summons, in which it found merit and declared the actions of the 8 legislators unconstitutional, set aside the purported impeachment and ordered the re-instatement of Chief Joshua Dariye as Governor of Plateau State.

For the sake of emphasis, the High Court in this case had made no decision on the Notice of Preliminary Objection and the Originating Summons, which the Court of Appeal now disposed of invoking Section 16, and relying on the Ladoja's case. The Supreme Court unanimously affirmed this decision.

Clearly, this pragmatic approach to Section 16 now has judicial seal of approval. The court has fashioned out conditions for its invocation. Regard must be had to:- availability of the necessary materials to consider and adjudicate upon, the length of time between the disposal of the action at the trial court and the hearing of the appeal, the interest of justice by eliminating further delay that would arise in the event of remitting the case to the trial court for hearing, and the hardship such order would cause on either side or both parties to the case³⁸. There is no gain saying the fact that the Court of Appeal in the Ladoja's case extended the frontiers of Section 16 Court of Appeal Act.

It is instructive to note that since the decision in the Ladoja's case, followed in the OBI and DARIYE's cases, shine has been taken off the rave for impeachment in Nigeria. This is a major victory for the justice system in Nigeria and vindication of law as instrument of social engineering in Nigeria. This decision occupies a pride of place in the annals of Nigeria's democratic march.

³⁸ Dapialong v. Dariye (supra) P.406

The lessons are many. Firstly, that law must bear direct relevance to solving societal problems and it is within the purview of the court to see law as such. No law is perfect as solving all human problems for all times. Where a law is capable of interpretation among so many, to address an arising society ill, the interpretation to address the arising situation is to be preferred even though such interpretation may be novel. Judex by the calling of office must be bold and courageous and not to be wary to chart a new course for the development of law. Such has been the history of the development of law and jurisprudence over the years.

1.5. Conclusion

Justice delayed is justice denied, yet justice rushed may be justice rushed. The balance between the two lies in the exposition of rules in justice administration to have direct bearing in the construct of society and the curing of particular ailment. Substantial justice is now the ideal and the preferred course. Judicial activism can attain this. Judges can draw great inspiration from the Ladoja's case. Courageous and purposeful approaches to justice dispensation are indelible milestones in our quest for a virile justice delivery system that answers to the needs of an economy desiring to be among the twenty largest economies in the world by the year 2020. Without mincing words, judicial activism holds the key.