

The Rule of Law or the Rule of the Law-

Epoch Decisions of the Supreme Court of Nigeria under

Review

(Being the text of the Paper presented by Femi Falana at the 2008 Annual General Conference of the Nigerian Bar Association, International Conference Centre, Abuja, Wednesday, August 27,2008)

INTRODUCTION

The Rule of Law is one of the much said but little understood concepts in popular press and daily conversations in Nigeria today. Notwithstanding that the Umaru Musa Yaradua administration claims to operate under the rule of law it is not out of place for a gathering of lawyers to raise the following questions: What is rule of law? What is its significance? What are the institutional conditions of rule of law? How do we achieve rule of law? I intend to address some of these questions in the light of the several decisions of the Supreme Court in recent time.

DEFINITION OF THE CONCEPT OF THE RULE OF LAW

The English jurist, A.V. Dicey, once formulated a famous definition of the Rule of Law that included three principles: first, the law has absolute supremacy over arbitrary power, including the wide discretionary powers of government; second, all classes of people are equally subject to the ordinary law of the nation administered in the ordinary courts; and third, constitutional law is not the source but the consequence of the rights of individuals, as defined and enforced by the courts.

In 2004, former UN Secretary-General Kofi Annan provided an expansive definition of the rule of law. According to him, the rule of law is: "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

Simply put, the Rule of Law is the very foundation of human rights. In the Western legal tradition, law is applied equally to all; it is binding on the lawgiver and is meant to prevent arbitrary action by the ruler. Law guarantees a realm of freedom for the members of a political community that is essential to the protection of life and human dignity against tyrannical oppression and to the regulation of human relations within the community. The law should be of general application and consistent implementation. The Rule of Law is something different from the instrumentalist conception of "rule by law". The idea of the Rule of Law can be traced back to the Roman republics, which have been fully developed by the liberal constitutionalism. It is characterized, in the words of Max Weber, by "legal domination."

The difference between "rule by law" and "rule of law" is important. Under the rule "by" law, law is an instrument of the government, and the government is above the law. In contrast, under the rule "of" law, no one is above the law, not even the government. The core of "rule of law" is an autonomous legal order. Under rule of law, the authority of law does not depend so much on law's instrumental capabilities, but on its degree of autonomy, that is, the degree to which law is distinct and separate from other normative structures such as politics and religion.

Dicey's concept of the Rule of Law means in modern society that (1) no arbitrary exercise of governmental power in excess of its authorization is permitted; (2) both the government and private citizens are subject to the law, with all classes of people entitled to a fair and equal procedure in any court of law; and (3) the courts shall be strengthened to enforce constitutional rights; otherwise abstract constitutional statements are merely a bill of rights in a book. We will take up these meanings of rule of law one by one.

In the first instance, the rule of law is a power regulator. It limits government arbitrariness and power abuse, and it makes the government more rational and its policies more humane. The opposite of rule of law is rule of person. The common feature of rule of person is the ethos that "what pleases the ruler(s) is law." That is, under rule of person, there is no limit to what the rulers (the government) can do and how they do things. Some see democracy as the presence of justice and the rule of law. While democracy is preferred, without constitutional and legal limits, democracy will mean little.

Furthermore, if the government is to be restricted in its exercise of discretion, the government has to follow legal procedures that are pre-fixed and pre-announced. Rule of law means that a government in all its actions is bound by rules fixed and announced beforehand --rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge. Rule of Law forbids "ex post facto" laws, that is, no one should be punished for a crime not previously defined in law. In other words, the government cannot simply define a new crime and apply the new definition retrospectively. The rationale for this principle is that, first, the government should not be allowed to abuse its power by punishing individuals for political or other conveniences; second, it would be grossly unjust and oppressive for the government to punish someone for behaviour that was not known to be criminal at the time of commission; third, to so punish individuals would result in so many uncertainties that it would create great inefficiencies.

The second meaning of rule of law, according to Dicey, is equality before law. "[N]ot only that. ..no man is above the law, but that. ..every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. ...(Dicey, 1982, p. 114-115). To Dicey, even in 1915 this principle of rule of law was not universally true among the liberal democratic countries of Europe. In England the idea of legal equality had been "pushed to its utmost limit" by 1915, but in France the officials were "to some extent exempted from the ordinary law of the land, protected from the jurisdiction of the ordinary tribunals, and subject in certain respects only to official law administered by official bodies" (Dicey, 1982, p. 115). By now, however, equality before the law is a

universally recognized principle in all liberal democratic countries, although different countries might, at the margins, have different interpretations of what that equality entails.

The third meaning of rule of law is formal or procedural justice. What is formal or procedural justice? Before we answer this question, we need to answer a more preliminary question: what is formalism? Max Weber categorizes legal systems into four kinds: formally irrational, substantively irrational, formally rational, and substantively rational. Rationality refers to the generality and universality of law. Formality refers to the characteristic that the criteria of lawmaking and lawfinding are intrinsic to the legal system itself; that is, all rules, procedures and decisions can be deduced from the legal system itself. In contrast, a legal system that emphasizes substantive qualities of lawmaking and lawfinding uses factors outside law, such as ethical, emotional, religious or political factors, to evaluate cases. To Weber, only a formally rational legal system can achieve "legal domination" (rule of law) through consistent application of general rules, because only a formally rational legal system can maintain a "consistent system of abstract rules" that is necessary for rule of law.

A formally rational legal system also results in justice that we desire. This kind of justice is called formal or procedural justice, which connotes the method of achieving justice by consistently applying rules and procedures that shape the institutional order of a legal system. More specifically, formal or procedural justice consists of several principles. First, the legal system must have a complete set of decisional and procedural rules that are fair. Second, the fair rules of decision and procedure must also be pre-fixed and pre-announced. Third, these decisional and procedural rules must be transparently applied. Fourth, these decisional and procedural rules must be consistently applied. It is only when these conditions are satisfied, that we can genuinely say that we have achieved a certain kind of justice, which is called formal or procedural justice. Note that this notion of justice is more concerned with process and procedure than with the end result.

Does it make sense to emphasize procedural justice? The general answer is yes. In a system that sacrifices procedural justice for the sake of substantive justice, the danger of arbitrary government power and the threat to individual liberty will be too great. Eventually, that system will lead to substantive injustice as well. In contrast, in a system that emphasizes procedural justice, arbitrary government power will be checked, liberty will be protected, and substantive justice will be preserved in the long term (if we believe that truth is best obtained through contest and debate between equals).

More specifically, formal or procedural justice has at least three values. First, without fair and just procedure, there is no guarantee that the end result will be just (that is, substantive justice cannot be guaranteed). As such, procedural justice is seen as a necessary condition for substantive justice. Second, formal or procedural justice is a condition for constraining government arbitrariness and protecting individual rights. When the government is required to follow pre-fixed, transparent and fair procedures before it can deprive a person's life, liberty or property, the danger of government arbitrariness is substantially reduced and the prospect for wrongful deprivations of individual rights is also significantly diminished. Third, procedural justice results in consistency, predictability and calculability that are desirable aspects of economic and social life.

Nevertheless, while the focus on the form of law is well-justified, we should also pay particular attention to the content of law. In fact, without a constitutional state, we probably cannot guarantee anything: neither the content nor the form of law can be guaranteed to be just. In other words, without a constitutional state, neither substantive justice nor procedural justice, either in lawmaking or in the application of law, can be guaranteed.

Overall, the rule of law promises to move countries past the first, relatively easy phase of political and economic liberalization to a deeper level of reform. But that promise is proving difficult to fulfil in Nigeria. Rewriting the constitution, laws, and regulations is the easy part. Far-reaching institutional reform, also necessary, is arduous and slow. Judges, lawyers, and bureaucrats must be retrained, and fixtures like court systems, police forces, and prisons must be restructured. Citizens must be brought into the process if conceptions of law and justice are to be truly transformed.

The primary obstacles to such reform are not technical or financial, but political and human. Rule of Law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law. Respect for the law will not easily take root in our country that is rife with corruption, since entrenched elites cede their traditional impunity and vested interests only under great pressure. Even the new generation of politicians are reluctant to support reforms that create competing centres of authority beyond their control.

Democracy is an extraordinarily powerful instrument for promoting the rule of law, but this is most legitimate and most effective when the government submits itself to the rule of law. The government cannot operate free of legal constraint. In strict legal terms, this means that the government's powers are exercised subject to the Constitution.

The term rule of law encompasses democratic and tyrannical regimes. Hence, under a fascist military dictatorship the Supreme Court observed in the case of *Governor of Lagos State v. Ojukwu* (1986) 2 NWLR (PT 18) 621 that Nigeria operated under the rule of law. In 1991 when Nigeria was under a pseudo democratic regime Tobi JCA (as he then was) held:

"Nigeria is a democracy and by the grace of the almighty God, it will remain a democracy for all times. The foundation of any democracy is anchored on the Rule of Law both its conservative and contemporary meaning. Putting it naively, we are paid mainly and essentially to uphold the Rule of Law in the entire polity".

From the foregoing it our submission that the rule of law cannot operate under any form of dictatorship. Therefore what operates under undemocratic regime is a rule of the law. In other words the supremacy of the Constitution, equality before the law and observance of human rights which are components of the rule of law can only flourish in a democracy.

In a neo-colonial environment the judiciary is not independent while law enforcement agencies are at the beck and call of the government of the day. The human rights of the majority of citizens are not respected. Hence, judgments that are taken for granted in other climes are described as "epoch making"

or "watershed". We therefore set out to examine some of the epochal decisions of the Supreme Court and their implications for the consolidation of the democratic process.

PROOF OF ELECTION PETITIONS

In the case of **Nwobodo v. Onoh** (1984) All NLR 1 it was held that the petition could not be divorced from the criminality alleged in the pleadings and as such it had to be proved beyond reasonable doubt. The petition was dismissed by a split decision of 4-3 Justices. But in **Omoboriowo v. Ajasin** (1984) All NLR 105 it was held by the Supreme Court that **"the trial court was entitled to deal with election petition as a claim in civil action in accordance with the provisions of Section 129 (1) of the Electoral Act and to apply the standard of proof within the balance of probability in its determination of the petition."** The appeal was dismissed by a split decision 6-1 Justices.

In **Torti v. Ukpabi** (1984) All NLR 185 the Supreme Court revisited the issue of standard of proof required in election petitions. According to Eso JSC:-

"On the issue of the standard of proof required to established the petition, I find myself unable to accept the submission of the Counsel for the respondents that proof of all the allegations in the petition must be beyond reasonable doubt to establish the petition. In other words, unless the facts are proved beyond reasonable doubt the petition must fail. This statement of the law is clearly erroneous and it is unfortunate that the Federal Court of Appeal fell into the error. There is a clear distinction between the general issue of who had the majority of lawful votes which was the main issue for determination and the collateral issue of (the offence of) falsification "

In several cases thereafter once an allegation of falsification of results or inflation of figures allocated to candidates is mentioned, even, in passing, in a petition the Supreme Court has always insisted that such petition be proved beyond reasonable doubt. By refusing to sever the paragraphs which allege criminality from a petition the Supreme Court has unconsciously given election riggers a field day in an environment where the law enforcement and security agencies are run like the private estate of the ruling political parties.

Contrary to the spirit of electoral law the burden of proof of election fraud has been placed solely on the shoulders of petitioners. In the process the INEC and the declared winner of a disputed election combine to frustrate the petitioner from proving his/her case. In **Buhari v Obasanjo (supra)** Justice Pats-Acholonu alluded to the impossibility of proving an election petition before the end of a 4-year term of a President. According to his Lordship:

"As I stated earlier the evidence of manipulation is not clear in that no one is clearly shown to have been responsible for the nature of the rigging. The very big obstacle that anyone who seeks to have the election of the President or Governor upturned is the very large number of witnesses he must call, to the size of the respective constituency. In a country like our own, he may have to call about 250,000- 300,000 witnesses. By the time the court would have heard from all of them with the way our present law is couched, the incumbent would have long finished and left his office and even if the petitioner finally wins, it will be an empty victory benefit of any substance".

CORRUPTION AND FEDERALISM

Between 1985 and 1999 Nigeria was acknowledged as one of the most corrupt nations in the world. In order to attract foreign investment the Olusegun Obasanjo Administration enacted the Independent Corrupt Practices and Other Related Offences Commission Act 2000. However, in the case of **Attorney General, Ondo State and Attorney General of the Federation** (2002) 9 NWLR (PT 772) 145; (2002) 27 WRN 1 the 36 state governments challenged the constitutional validity of the ICPC Act.

While that case was pending in the Supreme Court corruption and other economic crimes reached an alarming proportion. The Supreme Court entertained no difficulty in dismissing the case.

Meanwhile, the United Nations Financial Action Task Force (FATF) blacklisted Nigeria while United States Financial Intelligence Unit issued a Financial Advisory on Nigeria. The embarrassing development led to the establishment of the Economic and Financial Crimes Commission.

Notwithstanding its shortcomings the anti-graft agency under its pioneer chairman, Mallam Nuhu Ribadu successfully got Nigeria de-Listed and concluded 250 criminal cases involving corruption and other economic and financial crimes.

As part of its contribution to the anti-corruption crusade the Supreme Court struck out the case of **Attorney-General of Abia State v. Attorney-General of the Federation** (2004) in which the powers of the Economic and Financial Crimes Commission, a federal agency, to arrest and investigate cases of corruption in Abia State was challenged. No doubt the decision of the Supreme Court in the case of **Inspector General of Police v. Fawehinmi** (2000) has enhanced the work of the anti-graft agencies. While upholding the immunity of the President and State governors from arrest and prosecution during their terms of office the Supreme Court held that such immunity cannot prevent the police from investigating such public officers. Uwaifo JSC explained the rationale for the decision when he said:

"That a person protected under section 308 of the 1999 Constitution, going by its provisions, can be investigated by the police for an alleged crime or offence is, in my view, beyond dispute. To hold otherwise is to create a monstrous situation whose manifestation may not be fully appreciated until illustrated".

Notwithstanding the exposition of the law by the Supreme Court on the vexed issue of immunity a Federal High Court recently granted a perpetual injunction restraining the Economic and Financial Crimes Commission from ever arresting, investigating and prosecuting an ex-governor. It is hoped that National Judicial Council will not hesitate to deal seriously with such judicial rascality.

LIBERALIZATION OF THE POLITICAL SPACE

The move by the INEC to constrict the political space was discountenanced by the Supreme Court in the case of **INEC V. Balarabe Musa** (2003). In interpreting Sections 40 and 222 of the Constitution the Court watered down the stringent conditionalities prescribed by INEC for the registration of new political parties. By that decision the political space was liberalized to promote multi party democracy as envisaged by the Constitution.

Notwithstanding the violations of the Constitution by legislators in the exercise of the power of impeachment the Courts were ever anxious to invoke the ouster of their jurisdiction contained in the Constitution. In the cases of **Balarabe Musa v. Kaduna State House of Assembly** and **Abaribe v Abia State House of Assembly** (2002) 14 NWLR (PT 788) 466 the Court of Appeal washed off its hands like Pontius Pilate on the ground that impeachment is a political matter which would be left exclusively for legislators to be handled. But in **Inakoju v. Adeleke** (2007) 4 NWLR (pt 1125) 423 the Supreme Court set aside the illegal impeachment of Governor Ladoja of Oyo State. See also the case of **Daplanlong v. Dariye** (2007) 27 WRN 1.

In **Action Congress v. INEC** (2007) 12 NWLR (PT 1048) 22 it was held by the Court of Appeal (Per Abdullahu PCA) that "**the Appellant (INEC) has the power and authority not only to screen candidates sent to it by political parties, but to also remove the name of any candidate that failed to meet the criteria set out by the Constitution**". But the Supreme Court completely disagreed with such interpretation. In the leading judgment of the Court read by Katsina Alu JSC it was emphatically stated that Section 137 of the Constitution is not self-executing. As such the power to disqualify candidates is vested in the court and not the INEC as was the case in the past. Having regard to the crisis which the exclusion of candidates has caused in some African countries the Supreme Court judgment can be said to have met the exigency of the moment.

But the judgment cannot be justified in view of the combined effect of sections 137 of the Constitution and section 32 of the 1999 Constitution. Assuming that a candidate has, within a period of less than 10 years before the election, been convicted and sentenced for an offence involving fraud or dishonesty does INEC need to go to Court again to have another pronouncement on the disqualification? Or take the case of a university which informs INEC that it never issued the certificate presented to it by a candidate why should INEC go to court in the circumstance when section 137 of the Constitution specifically provides that any candidate who presents a forged certificate to INEC shall stand disqualified?

In the case of **Ugwu v. Ararume** (2007) 12 NWLR (PT 1048) 367; (2007) 31 WRN 1 the Supreme Court overrule its earlier decisions in **Onuoha v. Okafor** (1983) 2SCNLR 244; **Dalhatu v. Turaki** (2003) FWLR (pt 174) 247, (2003) 15 NWLR (pt 873) 310 and **Oavies v. Mendes** (2007) All FWLR (pt 348) 883. By insisting that substitution of candidate be anchored on "cogent and verifiable reasons" the Supreme Court has put paid to the subversion of internal democracy in the parties by political god fathers on the need for political parties to internalize democratic practice Mohammed JSC said:

" ...I cannot see why a political party shall be permitted, once it has given its commitment or mandate to a candidate whom it had already nominated whether wrongly or rightly to bulldoze its way to rescind that mandate for no justifiable cause. Politics is not anarchy; it is not disorderliness. It must be punctuated by justice, fairness and orderliness".

In the case of **Amaechi v. INEC** (2008) 5 NWLR (PT 1080) 227 the Supreme Court equally set aside the illegal substitution of the name of the Appellant. In its consequential orders the Court directed Mr. Celestine Omehia to vacate the seat of the governor while the Appellant was to be sworn in as the

governor of Rivers State on the ground that he was deemed to have won the election. In justifying the curious position of the Court, Oguntade JSC had this to say:

"Having held as I did that the name of Amaechi was not substituted as provided by law, the consequence is that he was the candidate of the PDP for whom the party campaigned in the April 2007 elections not Omehia and since PDP was declared to have won the said elections, Amaechi must be deemed the candidate that won the election for the PDP. In the eyes of the law, Omehia was never a candidate in the election much less the winner. It is for this reason that I on 25/10/2007 allowed Amaechi's appeal and dismissed the cross-appeals. I accordingly declared Amaechi the person entitled to be the Governor of Rivers State".

Understandably, the judgment has been seriously criticized by lawyers and non-lawyers alike. As far as Chief Gani Fawehinmi (SAN) was concerned the Supreme Court acted **ultra vires** by ordering that the Appellant be sworn in as the governor of Rivers State when his name was never on the ballot. Since the election of Mr. Celestine Omehia was cancelled, as it were, the Supreme Court ought to have ordered a fresh election with the participation of Mr. Amaechi as the legitimate candidate of the Peoples Democratic Party.

TENURE OF ELECTED OFFICERS

By virtue of the Electoral Act 2001 the tenure of elected Chairmen and Councillors was extended from 3 to 4 years. The illegality was challenged in the case of **Attorney-General, Abia State & Ors. v. Attorney-General of the Federation** (2002) 6 NWLR (PT 763) 264; (2002) 17 WRN 1. In striking down the illegal extension the Supreme Court held that the National Assembly cannot validly enact any law to increase or otherwise alter the tenure of office of elected officers of local government councils except in relation to the Federal Capital Territory.

In **Attorney-General of the Federation v. Alhaji Atiku Abubakar** (2007) 20 WRN 1 the purported removal of the Respondent by President Olusegun Obasanjo on the ground that his tenure had expired by joining the Action Congress. The Supreme Court held that while the conduct of the Vice President in defecting to the Action Congress after he has won the ticket on the platform of the PDP may be said to be "morally reprehensible" the Constitution is very emphatic that the removal of the Vice President is a function of the Senate under section 143 of the 1999 Constitution. The intervention of the Supreme Court went a long way to checkmate the dictatorial tendencies of President Olusegun Obasanjo. The same approach was adopted by the Supreme Court in the case of **Attorney-General, Lagos State v. Attorney-General of the Federation** (2005) 2 WRN 1 where the Court berated the President for engaging in executive lawlessness by confiscating the funds belonging to the Lagos State Local Councils as a punishment meted to the Lagos State Government for creating new local governments.

The issue of the tenure of elected governors provided for under section 180(2) of the Constitution was examined in the case of **Peter Obi v. INEC** (2006) 45 WRN 1. Convinced that the claim of the Appellant was in the nature of an election petition both the Federal High Court and Court of Appeal struck out the matter for want of jurisdiction. But the Supreme Court held that the Federal High Court has the jurisdiction to entertain the matter. It was the unanimous view of their lordships that the case

concerned the interpretation of the Constitution in which is within the exclusive jurisdiction of the Federal High Court. Instead of sending the case back to the lower court the Supreme Court held that the 4-year term of office of a governor begins to run upon taking the oath of allegiance and the oath of office and therefore the tenure of Appellant would end on March 17, 2010.

However, in **Ladoja v. INEC** (2008) 40 WRN 1; (2008) 12 NWLR (PT 1047) 119 the Appellant urged the Supreme Court to discountenance the period of 11 months when he was illegally impeached in the computation of the 4-year tenure granted him under Section 180(2) of the Constitution. In rejecting the prayer it was held that:

"Subsection 2 of Section 180 provides that a Governor shall have a tenure of 4 years from the date he took the oath of allegiance and oath of office. There is however no provision covering the period of service denied a Governor through an illegal impeachment as happened in this case".

Some governors whose elections were recently annulled on grounds of fraud and other forms of electoral malfeasance were curiously allowed to re-contest the fresh elections ordered by the election petition tribunals and the Court of Appeal. Having won such elections and took fresh oaths of allegiance and office the re-elected governors have insisted that their 4-year term have just commenced. Since Governor Obi did not benefit from the rigging of the 2003 governorship election in Anambra State his case cannot be a justification for the extension of the tenure of election riggers.

It is trite that the law cannot compensate a party who has engaged in illegality or criminality. To that extent the re-elected governors cannot spend beyond 4 years in office. More so, that they collected security votes, salaries and allowances attached to the office of the governor. Following the annulment the election of Chris Uba as the governor of Anambra State, the members of- Enugu State House of Assembly asked the Court to set aside the proclamation of the House performed by the dismissed governor. Both the High Court and Court of Appeal rejected the relief on the ground that the removal of Chris Uba as governor did not affect the proclamation which was deemed legal when it was carried out.

THE DECLINE OF HUMAN RIGHTS

A review of the several decisions of Nigerian courts attests to the growing development of human rights jurisprudence in the Second Republic. Even under the most brutal military dictatorship the Supreme Court mustered the courage to uphold the human rights of the people of Nigeria. Disturbed by the development, the Babangida junta prayed the Supreme Court, in the case of **Federal Civil Service Commission v. Laoye** (1989) 2 NWLR (PT 106) 652, to overrule the case of **Garuba v. University of Maiduguri** (1986) 2 NWLR (PT 18) 559 and other decisions of the same genre. In rejecting the request Oputa JSC stated that:

"The jurisdiction of the ordinary courts to try any allegation of crime is a radical and fundamental tenet of the Rule of Law and the cornerstone of democracy. If the Executive branch is allowed to operate through Tribunals and Executive Investigation Panels that surely will be a very dangerous development. This Court cannot be a party to such dangerous innovation. It is only when one is on the receiving end that he can fully appreciate the wisdom in the aspect of Yesufu Garba's decision that the

learned Attorney-General now wants the Court to overrule. Rather than overrule Garba's case the Court ought to strengthen and fortify it"

In the cases of **Garba v. University of Maiduguri (supra)**; **Legal Practitioners Disciplinary Committee v. Fawehinmi**; **Director, State Security Service v. Agbakoba** (1998) 8 NWLR (PT 559) and **Fawehinmi v. Abacha** (2000) the Supreme Court upheld the rights of Nigerians to fair hearing, personal liberty and freedom of movement. In the case of **INEC v. Balarabe Musa (supra)** the right to freedom of association guaranteed by Section 40 of the Constitution was judicially recognized.

Regrettably, the Supreme Court made a sharp u-turn in the **University of Ilorin v. Idowu Oluwadare** (2006) NWLR (PT 1000) 751. In that case the Respondent, an undergraduate was expelled by the University of Ilorin on the ground that he was involved in examination malpractices. In an application for the enforcement of his fundamental right to fair hearing, the Respondent had sought a declaration to the effect that his expulsion

"pursuant to allegation of criminal offence of examination malpractice without his guilty (sic) having been established before a court of law or constitutional tribunal constitutes a flagrant abuse of the Plaintiff's right to fair hearing".

The High Court and the Court of Appeal nullified the expulsion on the ground that the Plaintiff's right to fair hearing was violated by the University. Both Courts had relied heavily on the case of **Garba v. University of Maiduguri (supra)** and similar authorities.

But on appeal to the Supreme Court the appeal was allowed on the ground that the expulsion of a student could not be challenged via the Fundamental Rights Enforcement Procedure Rules 1979. In the leading judgment of the Court Gnu JSC held inter alia:

" ..the defect in the procedure adopted by the Respondents is fatal and that it affected the competence of the action and of course, the jurisdiction of trial court because the case cannot be said to be initiated by due process. And what is more, the right to studentship not being among the rights guaranteed by the 1999 Constitution, the only appropriate method by which the Respondent could have challenged his expulsion was for him to have commenced the action with a writ of summons under the applicable rules of court."

See also the cases of **WAEC V. Akinwunmi** (2008}.f1t.NWLR (PT 1091) and **WAEC v. Adeyanju** (2008) 9 NWLR (PT 1092j which were also struck out by the Supreme Court on the ground that the Respondents had wrongly challenged the cancellation of their School Certificate Examination results under the Fundamental Rights Enforcement Procedure Rules. In the case of **Garba vs University of Maiduguri (supra)** the late Chief Rotimi Williams (SAN) had argued, rather ingenuously, that the principal issue for determination was the termination of the studentship of the Appellants which ought not to have been challenged under the Fundamental Rights Enforcement Procedure Rules. In rejecting the contention the Supreme Court (per ESG JSC) held that **"there is no doubt that the action of the applicants is hinged on a constitutional provision; and I do not agree, with respect to Chief Williams, that this case is based solely on contract...I think this special jurisdiction could be invoked anytime there is a breach,**

threatened breach of the provisions of Chapter IV of the Constitution, which sets out all the fundamental rights guaranteed to a citizen".

While recognizing the power of the university to discipline any erring student once the rules of natural justice are complied with the Supreme Court held that offences against the laws of the land fall outside the jurisdiction of the Visitor and the Vice -Chancellor. The position of the Court was admirably summarized by Obaseki JSC when he said **"Ours is not a perfect society but our imperfections can be eradicated by our observance of the rule of law. Our human resources are our greatest asset and unless we use them to advantage, the Nigerian nation will be the loser. We cannot afford to lag behind while other nations march forward and enjoy the full benefit of their developed human resources."**

CONCLUSION

No doubt the cases covered by this paper have attempted to show that the decisions of the Supreme Court are either predicated on the rule of law or the rule of the law. Since some of the judgments met the exigency of the moment the court should endeavour to review them when an opportunity presents itself having regard to its own previous decisions in similar cases. In the area of human rights the Supreme Court should adopt a more progressive position so as to promote the human rights of the Nigerian people.