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**Legislative Immunity in Nigeria: Case Review of  
*Dino Melaye and 4 others V. The Speaker,  
House of Representatives and 2 others*<sup>1</sup>**

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**C. Anagbogu\***

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**Introduction**

The legislature is the prime feature of any serious democratic setting. It is an arm of government, the others being the executive and the judiciary. For the purpose of separation of powers, especially in a presidential system where such separation appears more conspicuous, the various arms are given different spheres of operation in regard to their powers and functions. Thus, while the executive and judiciary execute and adjudicate on (or interpret) laws, respectively, the legislature promulgates those laws.<sup>2</sup>

It is probably in view of the status and powers of the legislature that it has been clothed with immunity or privilege to engender unimpeded dispensation of its duties. In explaining the embodiment and rationale for legislative immunity, Erskine May<sup>3</sup> states most approvingly that:

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<sup>1</sup> 1 Suit No FHC/ABJ/CS/460/2010, A. Bello, J., Federal High Court, Abuja delivered on 2 December, 2010. I am very grateful to Christopher O. Onwuekwe, Esq. of Amobi Nzelu and Co., Wuse II, Abuja without whose assistance the acquisition of a copy of the corrected version of this judgement would have been well-nigh impossible. This work was originally assigned to me by Associate Professor G. N. Okeke as a post-graduate seminar paper at the Faculty of Law, Nnamdi Azikiwe University, Awka, in April, 2011. I am very grateful to him for his invaluable comments.

<sup>2</sup> Constitution of the Federal Republic of Nigeria, 1999. See sections 4, 5 and 6.

<sup>3</sup> Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (17<sup>th</sup> edition, 1904) pp.42-43. quoted in B. O. Nwabueze, *The presidential Constitution of Nigeria*, (London: Hurt and Co. Publishers, 1982).

Parliamentary privileges is sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. The distinctive mark of a privilege is its ancillary character... they are enjoyed by individual Members, because the House cannot perform its functions without the unimpeded use of the series of its members, and by the House for the protection of its Members and the vindication of its own authority and dignity.

Flowing from the foregoing, the Legislative Houses (Powers and Privileges) Act<sup>4</sup> in many of its sections confer immunity on the President of the Senate and the Speaker of the House of Representatives and on members as well as oust the jurisdiction of any Court from adjudicating on any issue relating to the exercise of powers.<sup>5</sup>

Thus, the old prevalent rule, before the progressive decisions were handed down by courts like the decision under review, is that “the internal affairs and functions of the National Assembly are not intended to be under the jurisdiction of Courts.”<sup>6</sup> Hence, the legislator is a judge of his own privilege.<sup>7</sup>

It is for this reason that a review of *Dino Melaye v. The Speaker, Federal House of Representatives* becomes germane as it has progressively reviewed the law that the court can review legislative acts. We shall now turn our attention to the facts of the case under review before we delve into its review.

### **Facts of the Case**

The facts leading to the case of *Dino Melaye and Four Others v. The Speaker, House of Representatives and Three Others* are notorious and widely reported in most Nigerian tabloids<sup>8</sup>, and became subject of comments and analyses on both national and foreign media — print and electronic.

The facts of the case were not fully rendered in Justice Bello’s judgment, apparently to edit away, the ignominious role of the Federal House of

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<sup>4</sup> Cap L12, LFN, 2004.

<sup>5</sup> *Supra*, Ss 3, 24, 30 31.

<sup>6</sup> *Senate of National Assembly v. Momoh* (1983) 4 NCLR 269 at 298 per Nnaemeka-agu, JCA.

<sup>7</sup> *Ashby v. White* (1703) 2Ld. Raym 938; *Stockdale v. Hansard* (1839), 9 a & E. 1.

<sup>8</sup> It made front page headlines of *The Guardian, Vanguard, Daily Independent*.

Representatives in the fiasco, and partly because, having been commenced by way of Originating Summons, it became unnecessary to relay the facts which were also of little controversy between the parties. So, it will be germane and beneficial to us, to state the facts of the case as reported in some Nigerian newspapers.

Like in most other crises in the National Assembly, the wild wind that blew up the case was obviously money<sup>9</sup>. Factly commenting on this, Jide Ajani and Tordue Salem of *Vanguard* newspaper wrote that:

The National Assembly is a Janus-faced conundrum of sorts. Since 1999, the Chamber has thrown up those with a vision and lawmakers with a deep tendency for corruption and the compromise of their official vows. Money, the love of it, has always been at the root of most crises in the House of Representatives, nay the National Assembly<sup>10</sup>.

The group styled “progressives<sup>11</sup>” which metamorphosed from the Nigeria First Forum<sup>12</sup>, with Dino Maleye as its arrow-head, caused some publications to be made in some national dailies, exposing corruption and fraud perpetrated by the Speaker of the House of Representatives and some of its principle officers. Chief in the allegation was the unaccounted N9 billion purportedly expended on cars and other items at highly inflated rates<sup>13</sup>. Apparently, the

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<sup>9</sup> For example, the Hon. Patricia Etteh gate.

<sup>10</sup> See *Vanguard*, 27 June, 2010 P. 1 See also “House of Reps of Shame: The Role of Money and Committee Chair,” [http://www.vanguard.com/2010/6/house-of-reps-of-shame-the-role-of-money-and-committee-chair/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=feed%3A+vanguardngr%2Fdleb4Vanuard+News+Feed](http://www.vanguard.com/2010/6/house-of-reps-of-shame-the-role-of-money-and-committee-chair/?utm_source=feedburner&utm_medium=feed&utm_campaign=feed%3A+vanguardngr%2Fdleb4Vanuard+News+Feed) accessed on 7/2/2011.

<sup>11</sup> Moving his motion ‘on a matter of privilege’, the Honourable Chile Ugbawua, named Dino Melaye, West Idahosa, Independence Ogunewe, Solomon Ahumahuri, Austin Nwachukwu, Anas Abba, Gbenga Oduawaiye, Kayode Amusan, Gbenga Onuigbogi, Kaze and Doris Uboh as “progressives” for suspension and referral to the Ethics and Privileges Committee. See House of Representatives Record of Proceedings for 22 June, 2010 admitted as Exhibit 2 in *Dino Melaye v. Speaker, House of Representatives*.

<sup>12</sup> The Nigerian First Forum was a group of lawmakers brought together for the purpose of ensuring that the House partnered the Senate to declare the then Vice-President, Dr. Goodluck Jonathan as Acting President in the face of the deceit by some unscrupulous boot-licking political jobbers to perpetuate the terminally ill late President Umaru Musa Yar’adua in office as President.

<sup>13</sup> According to the Socio-Economic Rights Advancement Project (SERAP) in its petition to the Independent corrupt Practices and Other Related Offices Commission (ICPC), “The allegation of corruption by lawmakers would undermine the credibility of the legislative process and impede the ability of the House of Representatives to effectively play its

major aim of the hyper-ventilation was to unseat the incumbent Speaker, the Honourable Dimeji Bankole and have him replaced.

In reaction to the widespread publication of the corruption scandal, the House leadership, through its privy, the Honourable Chike Ugbawua moved a motion for the suspension of the “progressives” on grounds we shall discuss later, which were also the fulcrum of the defense of the Defendants. Ugbawua was interrupted by Melaye and his group which led the Speaker, without allowing Ugbawua finish his speech, read out the eleven names of the ‘progressives’ suspending them and ordering that they be physically thrown out<sup>14</sup>. It was the resistance put up by Melaye, Nwachukwu, Doris Ubah and others that led to the real fisticuffs and physical combats between the pro – Bankoles and the anti-Bankoles. In the end, the “progressives” chiefly Messrs Melaye, Awinawhi, Nwachukwu, Kaze and Mrs Uboh were thoroughly manhandled by their colleagues and National Assembly staff so that while the aforementioned went home in shredded clothes, Mr. Nwachukwu left with just his pants – almost naked – while Chinyere Igwe left with a broken arm. This now paved the way for the Honourable Ugbawua to move his motion suspending the eleven-member “progressives” which was seconded by Garba Matazu<sup>15</sup>.

It was the suspension that Melaye and four others challenged because in Melaye’s words “I have not done anything against the Rules of the House and Constitution of the Country<sup>16</sup>,”

### **A Review of Issues in the Matter and Court’s Decision**

The plaintiffs framed three and sought for determination by the Court and sought four reliefs. The questions are:

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constitutional oversight role or to provide the necessary leadership in the anticorruption fight.” Cf. <http://www.news2.onlinenigeria.com/government/37665-House-commotion-Reps-for-all-Progressives-members-brought-arms-the-House-MelayeNwachukwu-arrested-members-Progressives-group-suspended-Ono-Suspensionciuwashed-Melaye.html>. See also Tribune, 23 June, 2010 p. 1.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Daily Independent*, 23 June, 2010 P. 1 See also, Rotimi Akinwumi, et al, “Melaye Stripped as Representatives Exchange Blows -11 Members Suspended Indefinitely” <http://allafrica.com/stories/201006230334.html> accessed on 7/2/2011.

<sup>16</sup> See [http://news2.onlinenigeria.com/... op.cit](http://news2.onlinenigeria.com/...op.cit).

a) Whether the indefinite suspension of the Plaintiffs on June 22' 2010 by the defendants has not violated Section 68 of the Constitution of the Federal Republic of Nigeria, 1999.

b) Whether the purported indefinite suspension of the Plaintiffs under Section 24 of its Legislative Houses (Powers and Privileges) Act is not illegal and unconstitutional.

c) Whether the purported indefinite suspension of Plaintiffs can be justified under Order V Rules 1 and 2, Order XVII Rule (3) (b) (c) (d) of the Standing Order of the House of Representatives and Section 60 of the Constitution of Federal Republic of Nigeria, 1999.

They then sought the following reliefs, viz:

(a) A DECLARATION that the purported suspension of the plaintiffs from the House of Representatives throughout the legislative session commencing from June 22nd is illegal and unconstitutional as it violates Section 68 of the Constitution of the Federal Republic of Nigeria, 1999.

(b) A DECLARATION that the purported suspension of the plaintiffs from the House of Representatives throughout the remaining legislative year commencing from the 22nd of June, 2010 under Section 24 of the Legislative Houses (Powers and Privileges) Act, (Cap 12) Laws of the Federation of Nigeria, 2004 is illegal and unconstitutional, as it violates the Fundamental Right of the Plaintiffs to fair hearing guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and Peoples Right (Cap, A9) LFN, 2004.

(c) A DECLARATION that the purported suspension of the Plaintiffs from the House of Representatives throughout the remaining legislative year commencing on June 22nd 2010 under Order V, Rules 1 and 2, Order XVII rule 7(3) (c) (d) of the Standing Orders of the House of Representation is illegal and unconstitutional as it violates the fundamental rights of the Plaintiffs to freedom of expression guaranteed by section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 9 of the African Charter on Human and Peoples rights. (Cap . A9), Laws of the Federation of Nigeria, 2004.

(d) AN ORDER setting aside the purported suspension of the Plaintiffs from the House of Representatives as reflected in the 2nd Defendant's votes and proceedings of Tuesday, June 22, 2010.

As it is with the Rules, the Originating Summons was supported by an affidavit and a written address.

The Defendants in response thereto, respectively filed their counter-affidavits and, except for counsel for the first Defendant, Chief Wole Olanipekun, SAN who came by way of Motion on Notice, filed their Notices of Preliminary Objection in opposition to the Suit.

Generally, the Notices of Preliminary Objection were the same and are as follows:

(a) That the Court lacks jurisdiction to determine issues involved in the matter as it arose out of the internal affairs, of the Legislative House

(b) The action brought by way of Originating Summons is incompetent.

From the totality of submissions made by the respective counsel to the parties, the Court formulated three issues for determination which are as follows: -

(a) whether it is proper for the Plaintiffs in this case to approach the Court by way of Originating Summons rather than by the procedure laid down under the Fundamental Rights Enforcement Procedure Rules having regard to the fact breach of fundamental human right is central to their case<sup>17</sup>

(b) Given the clear and unambiguous provisions of Sections 3, 22 and 30 of the Legislative Houses (Powers and Privileges) Act, 2004 and Order x Rule 5 (6) of the Standing Order of the House of Representatives, whether this Court has jurisdiction to entertain Plaintiff's action.

(c) Having regard to the fact that based on the affidavit an of the Plaintiffs above, the action is contentious, coupled with the fact that the counter-affidavit of the first defendant reveals that the action is hostile, whether that is an action that can be commenced by way of Originating Summons.<sup>18</sup>

It can be gleaned from the distilled issues that the third issue may conveniently be subsumed within the first issue as the resolution of issue one will affect the answer to issue three. So, our review will be based on the first two issues distilled and formulated by the Court.

Now, in respect to the first issue, which is at the risk of repetition, whether it is a proper procedure to come by way of Originating Summons rather than by

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<sup>17</sup> See Relief 2 of the Plaintiffs.

<sup>18</sup> *Dino Melaye v. Speaker, House of Representatives, supra* at p. 11.

the procedure laid down by the Fundamental Rights (Enforcement Procedure) Rules<sup>19</sup>.

It is argued strenuously for the Defendants that the only way the Plaintiffs can seek redress for the action is by the procedure laid down by the Fundamental Enforcement procedure Rules. The learned counsel for the second Defendant, Mr. Yusuf Ali, SAN relied on *Dangote v. CSC Plateau State*,<sup>20</sup> *Nwaogwugwu v. President, Federal Republic of Nigeria*<sup>21</sup> and *Abia State University v. Anyaibe*.<sup>22</sup>

On his own part, Mr. Femi Falana (now SAN), counsel for the Plaintiffs submitted that an application for enforcement of fundamental rights may be brought by a means acceptable to the court. He also called in his favour some decided authorities<sup>23</sup> including the notorious *Abacha v. Fawehinmi*.<sup>24</sup>

After due consideration to counsels' arguments, the Court concluded that "the Plaintiffs herein after have not been precluded from initiating their action to enforce their fundamental rights by means of Originating Summons in view of Order 32 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009."<sup>25</sup>

The decision of the Court with regard to this issue is sound, in every respect and in line with the provisions of the extent Fundamental Rights (Enforcement Procedure) Rules, 2009, which provides that: "an application for the enforcement of the fundamental right may be made by any originating process accepted by the court, which shall subject to the provision of this Rules, be without leave of the Court."<sup>26</sup>

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<sup>19</sup> 13 2009 as made by the Chief Justice of Nigeria pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria, 1999, Cap C24, LFN, 2004.

<sup>20</sup> (2001)19 WRN 125.

<sup>21</sup> (2007) WRN 101.

<sup>22</sup> (1996) 3 NWLR (pt 439) 646.

<sup>23</sup> *ANPP v. IGP* (2006) CHR 181; *IGP v. ANPP* (2008) 12 WRN 40; *Aihaji Lafiaji v. Military Administrator of Kwara State* (1995) FHCLR 321 and *Ogugu v. State* (1998) 1 HRLRA 167.

<sup>24</sup> (2000)4 SC (pt 11) 1.

<sup>25</sup> *Dino Melaye v. Speaker, House of Representatives*, at p. 17.

<sup>26</sup> Order 11 Rule 2.

So, the decision in *Dangote v. CSC, Plateau State*<sup>27</sup> and the likes, where the court held that:

It is well-settled principle that where a special procedure is prescribed for enforcement of a particular right or remedy, non-compliance with or departure from such procedure is fatal to the enforcement of the remedy...the remedy provided by the statute must be followed...<sup>28</sup>

It becomes irrelevant law as far as the 2009 Fundamental Rights (Enforcement Procedure) Rules are concerned and good as far as the repealed academic 1979 Rule is concerned.

This enactment<sup>29</sup> has in effect revived the old case of *Tofi v. Uba*<sup>30</sup> which earlier held, contrary however to the provision of the 1979 Rules, that any citizen may approach the Court for the enforcement of his rights in any convenient manner including by Originating Summons or by a combination of the methods.

The case under review<sup>31</sup> will remain a reference for practitioners as far as method for enforcement of fundamental rights is concerned under the extant rules.<sup>32</sup>

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<sup>27</sup> *Supra*.

<sup>28</sup> *Supra* at 147.

<sup>29</sup> The Fundamental Rights (Enforcement Procedure) Rules, 2009.

<sup>30</sup> (1987) 3 NWLR 707.

<sup>31</sup> *Dino Melaye v. Speaker, House of Representatives, supra*.

<sup>32</sup> Order 2 Rule 6 of the Federal High Court (Civil Procedure) Rules, 2009 provides: "Any person claiming to be interested under a deed, will, enactment or other instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested" Rule 7 provides: "Any person claiming any legal or equitable right in a case where the determination of the question of whether such person is entitled to the right depends upon a question of the construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the rights claimed." Clearly from the above, the Plaintiffs herein have approached this Court in view of the circumstance of their case. Such circumstance, according to Eso, JSC in *NEN Ltd. and Anor v. Alakila and Anor* (1978) 9-1.0 Sc 59 at 71, "as where there is no dispute on question of facts or the likelihood of such dispute where for instance, the issue is to determine such questions of construction and not matter of such controversy that the justice of the case would demand the setting of pleadings, Originating Summons could be applicable." In the instant, the only dispute is the illegality or otherwise of the suspension of plaintiffs herein.

Now, we proceed to the second issue, which is:

Given the clear and unambiguous provisions of Sections 3, 22 and 30 of the Legislative Houses (Powers and Privileges) Act, 2004 and Order X Rule 5 (6) of the Standing Order of the House of Representatives, whether the Court has jurisdiction to entertain the Plaintiffs' action.

The Defendants generally submitted that the legislative arm of government has clothed on her, immunity to guarantee some measure of freedom and confidence in the performance of Legislative functions constitutionally assigned it. Consequently, actions filed in Courts cannot, be entertained. In the instant case, they argued, the action of the House was carried out in the exercise of its powers under Section 22 of the Legislative Houses (Powers and Privileges) Act.<sup>33</sup> References were made to *Ekponkhio v. Egbadon*,<sup>34</sup> *Senator Okwu v. Dr. Joseph Wayas*,<sup>35</sup> *Chike Obi v. Waziri*<sup>36</sup> among others to persuade the court to decline jurisdiction.

Arguing against the foregoing submission, it was contended on behalf on the Plaintiffs that the above decisions cited have no relevance to the instant case, because, in the cases cited, the civil rights of the respective Plaintiffs were not found by the Courts to be affected, but in this case, the validity of the suspension of the Plaintiffs for a whole legislative session is called to question.

The Court in arriving at the decision after a consideration of lengthy legal arguments of all counsel could not but hold that "No amount of legal polemics, with all due respect to counsel, can take away the jurisdiction so conferred on the courts."<sup>37</sup>

The Court in that decision reasoned that it is not the law that when a statute like the Legislative Houses (Powers and Privileges) Act, which purports to oust jurisdiction of a Court is waived at the Court, the Court should cringe with trepidation and decline jurisdiction, no, the Court is empowered by law to assume jurisdiction with a view to investigate the matter, in order to see for itself whether the act complained of is one carried out under the power

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<sup>33</sup> Cap L12, LFN, 2004.

<sup>34</sup> 28 (1993) 2 NWLR (pt 308) 717.

<sup>35</sup> (1981) NCLR 522.

<sup>36</sup> (1961) 1 All NLR 371.

<sup>37</sup> *Dino Melaye v. Speaker, House of Representatives*, *supra* at p. 46.

conferred by the statute. Where it is found that there is a breach of the procedure provided by the statute, it is well within its jurisdiction and competence to intervene and provide remedy as is appropriate in the circumstances of the case.<sup>38</sup> The court relied chiefly on *Inakoju v. Adeleke*<sup>39</sup> and on *Nzeribe v. Senate President*<sup>40</sup> to arrive at this decision.

Now, the law sought to be constructed in issue is Section 22 of the Legislative Houses (Powers and Privileges) Act, which provides as follows:

A member of the legislative house who has been suspended from the service of that house shall not enter or remain within the chamber or precincts of the house while such suspension remains in force, and if such member is found within the chamber or precincts of the House in contravention of this Section, he may be forcibly removed therefrom by any officer of the House and no proceedings shall lie in any Court against such officer in respect of such removal.

Section 30 of the same Act also provides:

Neither the President nor the Speaker as the case may be, of a legislative House or any officer of a Legislative House shall be subject to any jurisdiction of any Court in respect of any power conferred on or vested in him by or under this Act or the Standing Order of the legislative House, or by the Constitution.

Then, Order X Rule 5 of the Standing Order of the House of Representatives provides as follows:

When a member is named by the Speaker, if the offence is a minor one, the Speaker may order the member to withdraw for the balance of the legislative day but if the matter appears to be of a more serious nature, the Speaker shall put the question on motion being made, no amendment, adjournment or debate being allowed, that such member be suspended from the service of the House, such suspension being for any time stated in the motion not exceeding 14 legislative days.<sup>41</sup>

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<sup>38</sup> *Supra*, at p. 45.

<sup>39</sup> (2007) 4 NWLR (pt 1028) 423.

<sup>40</sup> FHC/ABJ/CS/380/2002 Federal High Court, Abuja, Ada, J. 5th May, 2003. In that case, the Federal High Court nullified the 14-day suspension handed down to the Plaintiff as being ultra vires its Rules.

<sup>41</sup> See Sub Rule 4.

A combined reading of the provisions rendered above as well as their reliefs and questions for determination would show that the unanimous contention is the suspension of Plaintiffs for a legislative session of one year, which is contrary to the House's rules reproduced above. From Order X Rule 5 (4), the suspension must not exceed 14 days stipulated there. The Court in Dino Melaye's case is therefore right to have assumed jurisdiction. This is because, in addition to the reasoning of Bello, J., earlier rendered, it has been held elsewhere that:

It is... not the law that the legislature has absolute immunity from interference by the Court in its internal proceedings where it acts contrary to the Constitution or the statute law, the Courts will intervene, even in England where the doctrine of supremacy of Parliament is accepted there are to be found opinions of judges placing limits on the doctrine of non-interference by the Court in the internal proceedings of parliament.<sup>42</sup>

The above case, as well as our case under review, has reechoed the new attitude of our Court towards statutory ouster clauses.<sup>43</sup>

At this stage, it becomes convenient to turn our attention to the merits of the case, which shares a thin wall, if any, with the second issue. Bello, J., formulated for determination in the Notices of Preliminary Objection and the responses thereto.

With regard to the substance of the case, the court went to consider and interpret Section 24 of the Legislative Houses (Powers and Privileges) Act, Orders V and X of the Standing Orders of the House upon which the Plaintiffs' suspension were predicted upon. In moving his motion for the suspension of the eleven "progressives," the Plaintiffs herein inclusive, the Hon. Ugbawua moved the House to suspend the affected members...for failing to adhere to the provisions of the Legislative Houses (Powers and Privileges) Act, Code of Conduct for Hon. members and Rules of the House in stating their grievances in--house instead of taking their matter to the public domain with the view to maliciously bringing the image of the House into disrepute...

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<sup>42</sup> Ogundare, A.g. C.J. (as he then was) in *Akomlafe v. Speaker, Ondo State House of Assembly* (1984) 5 NCLR 350 at 365. This decision came on the heels of a similar judgment of the Supreme Court in *A.G., Bendel State v. A. G., Federation* (1981) 10 SC 1.

<sup>43</sup> Compare with *Okwu v. Wayas 22 Ors* (1981) 2 NCLR 522

Now, Section 24, the relevant provision of the Legislative Houses (Powers and Privileges) Act which the “progressives” were alleged to have contravened provides as follows: Any person who;

- (a) publishes any statement whether in writing or otherwise, which falsely or scandalously defames a legislative house or any committee thereof; or
- (b) publishes any writing reflecting on the character of the President or Speaker as the case may be, of a Legislative House or the Chairman of a Committee of a Legislative House in the conduct of his duty as such President, Speaker or Chairman; or
- (c) Publishes anything in writing containing a gross, willful or scandalous misrepresentation of the proceedings of a legislative House, shall be guilty of the offence and shall be liable on conviction to a fine of two Hundred naira or to imprisonment for twelve months, or to both such fine and imprisonment.

After a review of the above provisions, the Court held that the House erred in not giving the opportunity to the Plaintiffs to be heard, referring them to the House Committee on Ethics and Privileges for investigation of the veracity of the allegations against them. The Court also held that the House ought to refer the breach of Section 24 to the Honourable Attorney- General of the Federation<sup>44</sup>, the House lacking the vires to investigate or try crimes<sup>45</sup>.

Apart from the above, the Court held that the House’s suspension of the “progressives” for the remainder of the legislative year ran contrary to Order X Rule 5 Sub-Rule (4) of the Standing Orders of the House which states that such suspension shall not exceed 14 legislative days. In the words of Bello, J. I hold that the initial suspension of the Plaintiffs indefinitely beyond 14 days is clearly wrongful, illegal, null and void. This means that there was no suspension when the 1<sup>st</sup> Defendant purported to invoke Order X Rule 5 (6)<sup>46</sup> to suspend the Plaintiffs for the remainder of the session. This has the legal effect of rendering the subsequent suspension of the Plaintiffs by the Speaker also wrongful, illegal, null and void and I so hold. *Ex nihilo nihil fit*, from nothing,

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<sup>44</sup> Page. 76 of the judgment.

<sup>45</sup> See Section 31 of the Legislative Houses (Powers and Privileges) Act, *supra*.

<sup>46</sup> It provides that, “if any member who is suspended from the Houses refuses to obey the direction of the Speaker, when summoned under the Speaker’s own Order by the Sergeant-at-arms, the Speaker shall call to the attention of the House that force (that) is necessary in order to compel obedience and any member named by the Speaker as having refused to obey his or her direction shall thereupon, without any further question being put, be suspended from the service of the house for the remainder of the session.”

nothing comes. And put in another way, you cannot put something on nothing and expect the thing to stand. It will fall.<sup>47</sup>

The premises for the above conclusion of the Honourable Justice A. Bello and the judgement itself are legally sustainable and sound, However, having earlier predicated his judgement on the pedestal that the House failed to afford the Plaintiffs a hearing opportunity before punishing them, the Court, ought, in the circumstance, to equally consider the constitutional provisions in this regard.

Now, Section 60<sup>48</sup> which validates the Rules made by a legislative house for its sitting and procedure, provides that “Subject to the provisions of this Constitution, the Senate. or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.”

From the foregoing provisions, the House had, and still has, power to punish its members for misconduct in accordance with its Rules. However, before such punishment, the House now sitting as a quasi-tribunal for that purpose, must afford the person a fair hearing pursuant to section 36(1) of the Constitution. This is moreso as section 60 is made “*subject to the provisions of this Constitution.*” Section 36(1) provides that:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality<sup>49</sup>.

In the light of the foregoing, the House of Representatives have failed to comply with statutory provisions. According to Akintan, JSC in *Inakoju v. Adeleke*<sup>50</sup>...where the Court finds that there is a failure to comply with what the statutes provides for, such act purported to be done under the statute will be ultra vires, and would be declared null and void as such provisions of the statute or Constitution.<sup>51</sup>

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<sup>47</sup>p. 83 of the judgment.

<sup>48</sup>of the Constitution, *supra*.

<sup>49</sup>This applies also to administrative tribunals and any authority acting in such capacity.

<sup>50</sup>*Supra*, p. 284.

<sup>51</sup>See also *Ekpo v. Calabar Local Government* (1993) 3 NWLR (pt 281) 324.

In the above case, the State House of Assembly of Oyo State failed to comply strictly with the provisions of the law with regard to impeachment and the Court, despite ouster clause, nullified the illegality. That case broke fresh grounds on the issue of impeachment, which, hitherto, many scholars have thought, the Courts lacked the jurisdiction to quash.

### **Conclusion/Recommendation**

In effect, this decision has substantially differed from the other cited cases of *Ezeoke v. Makarfi*<sup>52</sup>, *Senate of the National Assembly v. Momoh*<sup>53</sup>, *Ekpenkhio v. Egbadon*<sup>54</sup> and others which hold that the Court cannot interfere in the matters concerning the legislature. Happily, *Dino Melaye v. Speaker, House of Representatives* has provided exceptions to the general rule re-echoed by the above cited decisions on non-interference of the judiciary on the affairs of the House. These exceptions are as provided in *Inakoju v. Adeleke*<sup>55</sup> and *A.G., Bendel State v. A.G., Federation*<sup>56</sup> where the Legislative body has failed to comply with constitutional provisions guiding its actions, and similarly, where in the exercise, or purported exercise, of its legislative powers, the fundamental right of a citizen of Nigeria, including of a legislator, is affected, may, given the peculiar nature of the facts, come by way of originating summons or any other manner the Court accepts.

This decision, as rightly opined by Sola Egbeyinka, Esq., and counsel to the Plaintiffs after the judgment, “is an improvement in our jurisprudence.”<sup>57</sup>

It is therefore, suggested that the various legislative houses of the States and the National Assembly should contract the services of counsel to improve on their respective Orders and Rules in the light of the decisions in *Dino Melaye v. Speaker, House of Representatives*, *Nzeribe v. President of the Senate*<sup>58</sup> and the likes<sup>59</sup>, and always seek sincere, professional legal advice before taking any action capable of having legal implications.

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<sup>52</sup> (1982) 3 NCLR 663.

<sup>53</sup> (1983) 4 NCLR 269.

<sup>54</sup> (1993) 7 NWLR (pt 308) 707.

<sup>55</sup> *Supra*.

<sup>56</sup> Pp. 85-86 of the judgement.

<sup>57</sup> *Supra* at p. 45.

<sup>58</sup> *Supra*.

<sup>59</sup> See also *ICPC and Anor v. The Senate*, FHC/ABJ/429/2002, Ada, J.

Finally, the lawmakers and the Law Review Commission should also bear this mind while effecting any amendment the Constitution and the relevant laws. The exceptions created by judicial authorities including this case reviewed should be effected in relevant statutes. This will help strengthen our nurturant democracy.