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# Defection from One Political Party to Another under the Nigerian Constitution: When the Band Begins to Play

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## *Abstract*

*The rate of defection witnessed in Nigeria today despite constitutional provisions on the consequences of defection is mind boggling. The Constitution, presumably, in other to uphold political ideologies held by various political parties in Nigeria provided in section 68(1)g that once a lawmaker defects to another political party, the lawmaker ceases to be a member of the House of Representatives or Senate as the case may be. This section, as it were, is not absolute considering the proviso, which appears to be a safe haven, accompanying the provision. This work examines critically the constitutional provision as well as judicial authorities on the issue of defection as it applies to lawmakers and the executive arm of government. The relationship between the Right to Freedom of Association enshrined in the Constitution and the penal provision on defection would equally be undertaken. This work argues that the implementation provision on defection is unsatisfactory and has led to the violation of the provision. The work shows that the provision on defection is in dire need of an amendment. The methodology employed in this work is a clinical analysis of the Constitution, existing case laws and Statues on defection and its consequences.*

*Key words: Defection, Political Party, Nigerian Constitution, Ideology.*

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## Introduction

The role of political parties in Nigeria is paramount to the governance of the Nation. The Constitution[1] places so much importance on political parties to the extent that individual candidacy is still a subject of debate. A political party according to the Constitution includes "any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or of a local government council." The Electoral Act[2] followed the definition in the Constitution when it provides that "a political party include any association of persons whose activities includes canvassing for votes in support of a candidate for election under this Act and registered by the Commission." The presence of political parties to a large extent presents the State as democratic as it is alien to have political parties in a military regime.

The Nigerian Constitution in section 221 vests in political parties the right to canvass for vote for its candidates. The section provides thus "*No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election*." From the foregoing, it can be seen that it is only a political party that can nominate and sponsor one in an election in Nigeria. The Court to this end held in *Hon. Satty Gogwim v Hon. Zainab Abdulmalik & Ors*[3] that the power to sponsor candidates in an election is the sole preserve of a political party and the power cannot be challenged by the Independent National Electoral Commission. However, it must be borne in mind that this power to nominate a candidate must be in accordance with laid down rules and regulations considering the amendment to the Electoral Act and recent judicial decisions.[4]

[1] Constitution of Federal Republic of Nigeria 1999 (as amended)

[2] Section 156 of Electoral Act as 2010 (as amended)

[3] (2008) LPELR-4210(CA); *Rimi v INEC* (2005) 6 NWLR (Pt. 920) pg 56; *Tsoho v Yahaya* (1999) 4 NWLR (Pt. 600) pg 657

[4] For example, section 87(4)(b) and (c)(ii) of Electoral Act 2010 (as amended) made certain prescription which must be followed in the nomination of candidate. Thus the nomination of a candidate is not left at the whims and caprice of the political parties and the nomination can be challenged if the said nomination is in violation of the Electoral Act or the

This constitutional provision on nomination and sponsorship of a candidate in an election must have engineered the addition of section 68(1)g to the Constitution, because it is surprising to see a person sponsored by a political party defect to another political party that played no role in his nomination and subsequent election. It goes without saying that a political party represents a particular ideology on how a country should be governed and it is not in the place of a member of a political party to abandon the ideology of that party which the people supported by their votes and sprint to another party with a different ideology which the electorates rejected. It is thus unacceptable for a person to move from one ideology to another in the course of his representation of his people who voted based on a particular ideology he held and party manifesto he professed.

The rate of defection in Nigeria calls for the examination of the provision relating to the effect and consequences of cross carpeting from one political party to another.

## Examination of Section 68(1)(G)

The Constitution in section 68(1) provides for instances when a person elected into the National Assembly shall cease to hold office. Of interest to our discussion is paragraph g of subsection 1 of that section. The said paragraph provides:

> A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if –
> (g) Being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected;
> Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

Constitution of the party involved. See *Ardo v Nyako& Ors* (2014) LPELR-22878 (SC); *Ukachukwu v PDP & Ors* (2014) LPELR-22115(SC); *Dr. Nnamdi Onoche v Hon. Ndudi Elumelu & Ors* (2014) LPELR-22969(CA); *Senator Yakubu Garba Lado v CPC & Ors* (2011) 48 NSCQR 501

The above provision is *ipsisima verba* with section 109(1)(g) of the Constitution which applies to members of the State Houses of Assembly. From the foregoing section, it is crystal clear that a member of the Senate or House of Representatives vacates his office once he defects to another political party. The position taken by the Constitution accords with common sense as a political party is known to represent a particular ideology. Suffice it to say that the organisation and allocation of various positions in the House depend on the strength of one's political party.

The Court of Appeal interpreting this provision in *Sunday Ifedayo Abegunde v Ondo State House of Assembly & Ors*[5] followed the literal rule[6] of interpretation and declared thus:

> In construing Section 68(1)(g) in the light of the aforementioned judicial guidelines, it is self-evident that the said section implies the following:
> (i) A member of the House of Representatives is sponsored by a political party to that legislative house.
> (ii) A member of the House of Representatives who is so sponsored, automatically vacates his seat if he becomes a member of another political party before the expiration of the lifespan of the House of Representatives for which he was elected
> (iii) A decampee legislator would escape the consequence in (ii) (supra), if his membership of another political party is as a result of division in the sponsoring party or merger of the sponsoring political party or a faction thereof.

The Court continued:

> It seems to me that the basic aim of the paragraph is to forestall the erstwhile common phenomenon in our various

[5] (2014) LPELR- 23683

[6] This rule of interpretation posits that where the words of any section are clear and unambiguous, they must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions of the Constitution See: *Ifezue v Mbadugha & Anor* (1984) 1 SCNLR 427, (1984) 5 SC 79 at 101.; See also Nafiu *Rabiu v State* (2005) 5 WRN 54, *A.G. Kaduna v Hassan* (1985) NWLR (Pt.8) 483; *Habeeb & Anor v A.G Federation & 2 Ors* (2012) 2 SC (Pt 1) 145 at 164

> legislatures changing their party and joining another party in the legislature, which is popularly known as carpet-crossing. The penalty for a member changing his party and becoming a member of another party is to vacate his seat in the legislature.

One need not be a soothsayer to appreciate the simplicity and clarity of language implored by the Constitution in expressing itself as regards cross carpeting or defection in Nigeria coupled with the clear interpretation given by the Court. In essence, once a lawmaker joins another political party, he ceases to be a lawmaker. However, the provision is followed by a proviso which requires judicial involvement by way of judicial interpretation.

## Proviso to Section 68(1)(G)

A proviso is clearly a qualification to a section and it must be read together with the section for a complete understanding of the provision in question. In the case of *NDIC v O'Silvaax International*[7] the Court had this to say on the meaning of a proviso:

> A proviso in a provision of a law is a clause of exception or qualification and it speak the last intention of a legislature on a statute. A section of an Act that contains a proviso must be read as a whole, each part throwing light on the other

The Court on the functionality of a proviso in a statute stated that a proviso creates a conditional right in favour of the donee.[8] Thus if the donee in the provision, as in the instant case the defecting house member, wants to enjoy the benefits conferred by the proviso, the member must prove that the

[7](2006) 7 NWLR (Pt 980) 588 at 611; *Abegunde v Ondo State House of Assembly & Ors* (2014) LPELR-23683(CA); Universal *Trust Bank of Nigeria Ltd v Ukpabia* (2001) FWLR (pt.51) 1889 at 1899; *Nipost v Adepoju* (2003) 5 NWLR (Pt.813) 224 at 242. See *NDIC v OkemEnt. Ltd.* (2004) All FWLR (Pt. 210) 1176 at 1235; *Adebusuyi v INEC* (2010) All FWLR (Pt. 545) 202

[8]*H.R.H Oba Samuel Adebayo-Adegbola & Ors v James Idowu & Ors* (2013) LPELR-21448(CA); Cadogan Estates Ltd. v Mematon (2001) RPLR 17; *Kotoye v Saraki* (1994) 7 NWLR (Pt.357) p.414; See also *GTB (NIG) Ltd vUkpabia* (2000) 8 NWLR (PT.670) 580 at 5784 where a proviso is said to be "*a clause of exception or qualification in an Act, excepting something out of, or qualifying something in which for the proviso, would be within* it." See also *Irukwu v T.M.I.B*. (1997) 12 NWLR (PT. 531) p.113 at 136.

condition laid down in the proviso has been satisfied. Albeit at the expense of prolixity, it is virtuous that the proviso which is the only *bolthole* provided for defectors in other to stay alive in the legislature be reproduced in *extenso.* The proviso goes thus:

> …Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

From the foregoing, it is evident that two key words stand out in the proviso .i.e. 'division' and 'merger' the latter key word poses no difficulty as it is readily ascertainable. In essence if A was sponsored to the House by party B and the party later united with party C to form party BC, then A is at liberty to join any political party of his choice without being confronted with the grim reaper inherent in section 68 of the Constitution as his party has merged with another. A clear example is the merger between Congress for Progressive Change (CPC) and Action Congress of Nigeria (ACN) to form All Progressive Congress (APC). The legal implication as far section 68 is concerned is that any House member sponsored by any of the two merging political parties is at liberty to join another political party and still retain his seat in the House.

The other arm of the proviso namely division is as clear as mud. The Constitution never defined the meaning of the word "division". One is thus left in the dark as to what division as used in the section connotes. The word division simply means the act of splitting something into two parts.[9] It also means a disagreement or strong difference of opinion especially when this leads to a split in a group.[10] It must be conceded that division as used in this section is open to these two meanings. That is to say, division as used here is capable of being implored in two senses.

In the first sense, when a political party splits into two different political parties, there is said to be a division. This meaning of division in the first sense appears to be unacceptable as it is alien to the proviso by the use of the word '…division in the political party.' This is because explicit in the

[9]Microsoft® Encarta® 2008. © 1993-2007 Microsoft Corporation
[10]*Ibid*

wording of the provision is that the division must occur within the political party leading to two or more factions. Although the Constitution never used the word division of the political party, it is submitted that the division of the political party into two is accommodated in that section. This accommodation is supported by the wording of the section going by *noscitur a sociss* rule of interpretation because the word division was followed by the word merger which simply means the joining together of two or more organizations or association. Further, to recognize merger of two political parties as a ground to enjoy the proviso and leave out division of the party into two would defeat the essence of that section. In fact, the Court of Appeal[11] in interpreting the section as relates to members of the State House of Assembly supported this position when it held thus:

> My humble view is that for the person defecting to another party to be able to take advantage of the proviso in S.109(1)(g), he must prove that the party he is leaving has been divided into two or more. That is to say, the party must be so polarized as to have two chairmen, two or three different Boards of Trustees each claiming to be the authentic one and each still bearing the same party name. That is the type or extreme division envisaged by the Constitution. *The defector would also be covered by the proviso where the party has split into two whereby one of the factions is bearing another name and he chose to join the faction of the party with the new name*[12]

Division in the second sense of the word is when there are two or more factions in the political party. The question now is what condition or conditions must be satisfied to amount to a division in this second sense of the word? Can a division in a region of the party warrant a legislator to run away from his political party? Put differently, if there is a division in a state chapter of a party; can the members of the House of Assembly in the state defect to another political party? Or can a legislator representing a federal constituency in that state defect to another political party? This issue arose for determination in *Hon. Sunday Ifedayo Abegunde v Ondo State House of*

[11] *Delta State House Of Assembly & Anor v Democratic Peoples Party & Ors* (2014) LPELR-22808(CA)
[12] Emphasis mine

*Assembly & Ors.*[13] It is apt at this stage to reproduce the facts of the case and the ratio.

**Facts of the Case (*Abegunde v Ondo State House of Assembly & Ors*)**
The Appellant, Hon. Sunday Abegunde was elected to the Federal House of Representatives in 2007 on the platform of Labour Party (LP). Sometime in 2012 the appellant defected from Labour Party to Action Congress of Nigeria (ACN). He then brought an application at the Federal High Court praying the court for the following reliefs:

1) A declaration that under and by virtue of the proviso to Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the current imbroglio, division, crisis, factionalization, centrifugal tendencies, hurly-burly and the brouhaha bedeviling the Labour Party in Ondo State, the Applicant is entitled to dump the party (Labour Party) for another party and, as such is on a *tera firma* to have dumped the Labour Party for the Action Congress of Nigeria

2) A perpetual order of injunction restraining the Defendants from taking any steps whatsoever or howsoever described, about, concerning or pertaining to the defection of the Plaintiff as Honourable Member in the Federal House of Representatives, Akure North/South Federal Constituency from the Labour Party to the Action Congress of Nigeria.

The Respondent filed a counter affidavit to the originating motion and also filed a counter claim against the applicant. The counter claim filed by the Respondent prays for the following reliefs:

1) A declaration that the 1st Defendant to the counter-claim has automatically vacated his seat as a member of the House of Representatives having defected to another political party and having left the Labour Party which sponsored his election to the House of Representatives.

[13] (2014) LPELR- 23683

2) A Declaration that the 1st Defendant to the counter claim immediately ceased to be a member of the House of Representatives upon defecting from the Labour Party which sponsored and provided him the platform to contest the seat of Akure North/South Federal Constituency at the House of Representatives for another political party.

3) An Order of Court directing the 1st Defendant to the counter claim to vacate the House of Representatives seat of Akure North/South Federal Constituency forthwith.

4) An Order of Court restraining 2nd Defendant, to the counter claim, that is, the Speaker of the House of Representatives, or any other person acting in that office from further recognizing the 1st Defendant to the counterclaim as 'a member of the House of Representatives representing Akure North/South Federal Constituency.

5) An Order of Court directing the Independent National Electoral Commission, (the 3rd Defendant to the counter-claim) to immediately conduct a bye-election to fill the vacant seat of Akure North/South Federal Constituency at the House of Representatives

The trial court after a careful consideration of the issue before the court dismissed the originating summons filled by the Plaintiff and granted the reliefs in the counter claim. The trial court conceded that there was a division in the State Chapter of Labour Party. However the Trial Court held that the division envisaged by the Constitution must be national as opposed to division seen in state chapters like the present case.

The Appellant, obviously disgruntled with the position taken by the trial court appealed to the Court of Appeal.

## Issues for Determination in Abegunde's Case

At the Court of Appeal, the Court adopted the three issues formulated by the appellant in reaching their decision. I will reproduce the said issues in extenso

1) Whether the trial court rightly interpreted the provision of sections 68(1) and 222(a),(e) and (f) of the Constitution of Federal

Republic of Nigeria, 1999 in arriving at the conclusion that the National outlook of a political party determines the existence of division or factionalization in a political party

2) Whether the trial court's interpretation of section 68(1)(a) and (g) of the Constitution of Federal Republic of Nigeria, 1999 is correct by holding that the Appellant's defection is contrary to the Constitution?

3) On the assumption that it is a political party that wins or loses an election, whether the trial court was right to have concluded that it is a political party that defects where a member of a political party defects to another political party.

## The Ratio in Abegunde's Case

The Court of Appeal in arriving at its decision dismissed the appeal and affirmed the decision of the trial court. The Court made extensive pronouncement on what amounts to a division in a political party as seen in the second sense of the word and what can never be classified as division. The Court has this to say on this issue:

> The question now is: What is the nature of the 'Division' envisaged by section 68(1)(g) of the Constitution that would entitle a defector to escape punishment. Is it a division in the political party that affects the whole structure of the party or division that only affects a State Chapter or Local Government? In answering this poser, I have to apply the principles of interpretation by ascertaining the intention of the lawmakers from the words used by them. The principle of "Whole Statute Constitution" is also important in the construction of a document as the Constitution so as to give effect to the statute… I agree with the submission of both learned counsel for the 4th, 9th and 13th Respondents, as well as the learned Attorney-General that section 68(1)(g) contemplates division that will inflict the party at the centre and not division at State or Local Government level. A community reading of sections 221, 222, 229 of the Constitution as well as section 80 of the Electoral Act, clearly shows that the division envisaged by section 68(1)(g) of the Constitution refers to division in the party at the top or centre not division at the State or Local Government level as

> contended by the appellant. Since a political party is recognized as one corporate entity, division must be one that affects the entire structure of the political party at the centre, i.e., the national leadership of the party. A political party has to be looked at as a whole and not in piecemeal…. It must be a serious division not the type of division relied upon by the appellant. The national officers of the Party must be involved.[14]

The position of the Court no doubt represents the true position of the law. If a loose interpretation is given to the word 'division' then the quintessence of that section would be defeated. This is so because a legislator seeking to defect would organize some group of party members that are loyal to him and cause commotion in the party. The legislator can even go as far as creating his own faction in the political party. No wonder the Supreme Court held in *FEDECO v Goni*[15] that the act leading to the defection must not have been caused by the defecting legislator.

On further appeal to the Supreme Court, the highest court in the land in a considered judgment upheld the decision on the Court of Appeal and dismissed the appeal.[16]

## Implementation of Section 68(1)(G)

It is quite shocking that the Constitution provided for the implementation of section 68(1) of the Constitution. In section 68(2) we have:

> The President of the Senate or the Speaker of the House of Representatives, as the case may be, shall give effect to the provisions of subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions

[14] *Abegunde v Ondo State House of Asembly & Ors*(*supra*) The Court in *Delta State House of Assembly &Anor v Democratic Peoples Party & Or ssupra* was also of this view when the Court held that the affidavit proving factionalism and leadership tussle is not enough to prove division as provided in the proviso to section 108(1)(g).

[15] *Supra*

[16] *Abegunde v. The Ondo State House of Assembly & ORS(2015) LPELR-24588(SC)*

> of that subsection has become applicable in respect of that member.

This provision appears strange because if a person ceases to be a member of the Senate or House of Assembly, in the eyes of the law, the person ceases to exist as long as the office is concerned. There is no need to give effect to the section because as far as the law is concerned, a House member who defects to another political party no longer exists for the purpose of that office. One may be tempted to ask: If the wording of the section is mandatory then what is there to enforce? By way of extrapolation one may ask; if the governor is impeached, is there need for enforcement of the impeachment? It appears our dear Constitution is apprehensive of the import of its provision in section 68(1)(g). It appears also that the grund norm is faint hearted in that respect by searching for who will enforce its provisions. It is submitted that the law should be concerned with how the vacant position should be filled and not how the provision should be enforced. The Constitution is binding on all and sundry and the enforcement provision evident in section 68(2) tends to suggest that our law makers are above the law.

This provision on implementation of the section to our mind is inelegant. The provision vested in the person capable of breaching the law with the duty to enforce same. It must be borne in mind that there is only one Senate President and only one Speaker of the House of Representatives. In their absence their deputies act. However, what will happen if the Senate President and the deputy defects to another political party? What is the effect of donating the power of implementation of law to the law maker? These and many other questions call for answers. The provision reproduced above makes no sense even to a common man on the street. The net effect of that provision is that if a person ceases to hold office by virtue of subsection 1 of the Constitution, any grievance would be channeled to the Senate President or Speaker of the House of Representatives as the case maybe. What is more, the provision which was thought to guide against unwarranted and vexatious cross carpeting was rubbished by the bogus enforcement provision which indeed is a Potemkin village. Suffice it to say that the persons vested with the power to enforce the provision may woefully fail in their duty due to one personal interest or the other.

The Court recognizes their limitation and the need not to interfere in the case of *Delta State House of Assembly & Anor v Democratic Peoples Party & Ors*[17]when it declared in the following words:

> My own humble interpretation of S.109(2) is that when a situation as in the instant case occurs, the matter is brought before the State House of Assembly by the Speaker or a member of the House and the House has to determine whether the subsection has become applicable in respect of the member. Where the Speaker fails to act, *however I am of the view that a party with locus standi in this matter can sue to force the Speaker to take the appropriate actions*[18] provided by the Constitution.

It is interesting to note that recourse was had to the court to make declarations concerning the provision in question in the case above. Also in *Abegunde's* case[19], the 1st -3rd Respondents counter claimed praying the court to declare the office of the appellant vacant. The Speaker of the House was joined as 11th Respondent in that case and as we can rightly guess he neither caused an appearance to be entered for him nor filed any process in the matter. Few months after the judgment directing the appellant to vacate the office, the said *implementer* of the section in question defected to another political party! The defection of the Speaker raised many eyebrows as it exposed the inadequacy inherent in section 68 of the Constitution.

It is argued in this paper that the so-called implementation section has led to the breach of the section. Defection I s now a matter to be settled with the Head of the House in question and if one is in good terms with the Head involved, one continues to stay in office. This provision should be amended or removed entirely.

[17]*Supra*

[18]Emphasis mine. Does it mean the Court cannot make appropriate declaration? Must the Speaker or Deputy Speaker act in all cases of defection? To our mind, there is no need for the court to force the speaker to act. The order of the court declaring the seat vacant is enough and it is for the executors of the law to take appropriate actions in the event of disobedience to the order of the court.

[19]*Supra*

However, it must be conceded that section 68 of the Constitution is not uncomplicated. This is so because if one ceases to hold office upon defection by virtue of a self imposed affliction under section 68(1)(g) then how can one enjoy some exceptions as provided in the said section like the proviso on division and merger as seen above. It is thus submitted that for a legislator to enjoy the allowance under that section, there is great need for the legislator to obtain a declaration of court to the effect that the political party that sponsored him is suffering from a division or that the party has merged with another political party. The legislator armed with the court declaration can then join another political party without fear of losing his seat.

## Section 68 v the Executive Arm of Government

It is indeed curios and worrisome that the provision in question appeared in the section relating to the legislative arm of government. That is, section 68(1)(g) for the Federal legislature and section 109(1)(g) for the legislature at the state level. It goes without saying that the executives were elected on the same party platform as the legislature and what applies to the legislatures in the event of their defections to another political party should necessarily apply to the executives. This sophistry must have led to many court actions challenging the defection of most governors in Nigeria.

Historically the Supreme Court has interpreted the said section as if it applies to the executive arm of government. In fact the crux of the matter in *FEDECO v Goni* was the right of the respondent to contest gubernatorial election under another political platform rather than the party that sponsored him earlier. In *FEDECO's case*, the Respondent, the then Governor of the now-troubled Borno State found himself in another party i.e. Unity Party of Nigeria (UPN) which sought to sponsor his second term in office. This move was rejected by the Appellant on the ground that he cannot validly contest election into the office of the Governor of Borno State because the Respondent is no longer in the party, i.e. Great Nigeria Peoples Party (GNPP), wherein he was elected Governor of Borno State in 1979. The Appellant relied on section 64(1)(g) and section 166(1) of the Constitution of Federal Republic of Nigeria 1979. Section 64(1)g relied on by the Appellant is same with the extant section 68(1)(g) of the Constitution and section 166 of the 1979 Constitution deals with the disqualification of a person from contesting the office of a Governor.

The Supreme Court conceded that section 64(1)(g) applies to the office of the Governor as long as the issue of disqualification of the person from contesting that office is concerned because of the provisions of section 166(1) on disqualification. The section provides thus:

> A person shall not be qualified for election to the office of Governor If -
>
> (a) He does an act, acquires any status or suffers any disability which, if he were a member of the Senate would have disqualified him from membership of the Senate

According to the Supreme Court, section 166(1) accommodates section 64(1)(g) of the Constitution to disqualify the Respondent from contesting the office of the Governor. However, the Court was of the firm view that there was a division in the party and the Respondent can dash to the proviso for shelter. The appeal of FEDECO against the decision of the Federal Court of Appeal was therefore dismissed.

A clinical consideration of the extant provision of our Constitution would show that the drafter of the Constitution carefully removed the provision of the then section 166 of the Constitution that incorporated section 64(1)(g) of the extinct law. The net effect is that as far as the office of the Governor is concerned, one can defect to any party of his choice and this defection would not affect his right to contest on subsequent election.[20] The question now is: Can the defection warrant the office holder to vacate his office? The riposte appears to be in the negative. This is so because the wording of the section is very clear as to the persons concerned and all rules of interpretation appears to favour this position. There is no such rule of interpretation that what is good for the goose is also good for the gander. Such expression is extraneous, non legal and at most an idiomatic expression and cannot be accepted in the sacred enigma of interpretation of statutes and legal documents.

[20] The qualification required for a person to contest for the office of the governor can be found in section 177 of the Constitution and a person can only be disqualified based on the grounds enumerated in section 182 of the Constitution

In *Attorney General of the Federation v Atiku Abubakar,*[21] the issue arose for determination as to whether the Respondent would cease to hold office by virtue of the Respondent defecting to another political party. The argument of the Appellant was that the section on the powers of the President when the office of the Vice-President becomes vacant can be read to accommodate the reason in section 68(1)(g) of the Constitution. The said section provides thus:

> Where the office of Vice-President becomes vacant:-
>
> (a) By reason of death or resignation, impeachment, permanent incapacity or removal in accordance with section 143 or 144 of this Constitution;
>
> (b) By his assumption of the office of President in accordance with subsection (1) of this section; or
>
> (c) For any other reason.
>
> The President shall nominate and, with the approval of each House of the National Assembly, appoint a new Vice-President.

Counsel to the Appellant argued that 'for any reason' as seen in section 146(3)c warrants the importation or application of section 68(1)(g) of the Constitution and that alone is enough to assert that the office of the Vice-President is vacant. After a careful consideration of the provision, the Supreme Court per Aderemi JSC failed to see the connection with the two sections. The court held that the provision of section 68(1) and section 109(1)(g) apply squarely to legislators in the federal and lower house respectively. In the words of My Lord he stated:

> I have no doubt in my mind that the legislators have made it manifest that if any of these elective members after winning an election on the platform of a political party, later, on being a member of the Senate or of the House of Representatives, defects to another political party he is deemed, in law, to have

[21] [2007] 10 NWLR (Pt 1041) 1

> automatically vacated his seat in the House of which he is a member. No other interpretation can be given to the above provision. A similar provision was fashioned out for members of the State House of Assembly… it is manifest from the above quoted constitutional provisions that the lawmakers intended to and indeed have made punishable the defection of an elected member, from the political party that sponsored him, to another political party before the expiration of the period for which the House was elected by declaring his seat vacant. *No similar provision was made for the Vice-President or even for the President; if the legislators had intended the Vice President or even the President to suffer the same fate, they would have inserted that provision in clear terms*

What is more, the apex court affirmed that the provision of section 68(1)(g) cannot apply to the executive arm of government. Keeping in view that the apex court is supreme because that Court is final and final because that Court is supreme, one wonders why political parties are bent on challenging the defections of their Governors. Recently, the Peoples Democratic Party (PDP) brought a suit sometime in December, 2013 against four Governors[22] that defected from PDP to All Progressive Congress (APC) at the Federal High Court. The plaintiff prayed the court to declare their office vacant and for the Independent National Electoral Commission to conduct fresh elections. The Court on 12th December, 2014 struck out the suit on the ground that the originating processes issued on behalf of the Plaintiff against the Defendants were invalid[23]. The matter as it were was not heard on the merits.

The question that remained unanswered is the purport of the suit challenging vacancy or otherwise of the office of the governors that defected to another political party. Having regard to the clear provision of the section in dispute, can it be said that the parties are asking the Court to draft a new Constitution? The agitation of the disgruntled political parties may not be wrong entirely. A community reading of the provision of the Constitution may raise a glimpse of hope on the part of the affected political parties. In this regard, recourse

[22] The affected governors were Rotimi Amaechi (Rivers), Rabiu Kwankwaso (Kano), Aliyu Wamakko (Sokoto), Abdulfatai Ahmed (Kwara).

[23] 'Court Strikes out PDP's Suit Seeking to Unseat Defecting Governors' available at http://www.premiumtimesng.com/news/top-news/173202-court-strikes-pdps-suit-seeking-unseat-defecting-governors.html accessed on 24th December 2014

would be had to situations when the office of the Governor is said to be vacant. A look at the section would be of great help. The section provides thus:

> 180**.** (1) subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until -
>
> (a) When his successor in office takes the oath of that office; or
>
> (b) He dies whilst holding such office; or
>
> (c) The date when his resignation from office takes effect; or
>
> (d) He otherwise ceases to hold office in accordance with the provisions of this Constitution.

Section 180 of the Constitution makes it clear when the Governor shall no longer be in office. It may be argued that under the Constitution, one may cease to hold office if one defects to another political party. That is to say, if the Governor defects to another political party he will cease to hold office in accordance with section 180(1)(d) of the Constitution as the Constitution in section 68(1)(g) recognizes defection as one of the ways in which one may cease to hold office and having defected, the Governor has ceased to hold office in accordance with the provisions of the Constitution. It may also be argued that a provision in the statute should be interpreted to give effect to it[24] and that the various sections of the Constitution cannot be read in isolation.

This argument to our mind is very weak and can never be sustained by the clear words of section 180 of the Constitution. That section to our mind only refers to section 188 of the Constitution on the removal of a Governor.[25] In

[24] This is the essence of the rule *ut res magit valet quam paret*. This literally means that a Statute should be interpreted in other to give effect to it and not to destroy it.

[25] This is generally known as impeachment. However in *Inakoju v Adeleke* (2007) 4 NWLR (Pt 1025) 423, Hon. Justice Niki Tobi cautioned that the word impeachment should never be employed as the section never talked about impeachment. He distinguished impeachment from removal and held that the section deals with removal of a Governor and

fact, the section complements section 180(1)(d). Any interpretation of section 180(d) outside section 188 or an interpretation incorporating section 68(1)(g) would indeed be uncharitable as it ascribes to the draftsman what the draftsman never intended. Section 180(d) of the Constitution is not a new provision. It has always been there. It was there in 1979 when the apex court decided *FEDECO's case* and never saw any reason to incorporate the then section 64(1)(g). In all, it is our considered view that the section under consideration does not affect the tenure of the Governor.[26] This represents the true position of the law and there is no need to upturn the judgment except a superior argument crystallizes.

## Section 68 *v* the Right to Association

Another thorny issue is the 'threatened right' of the legislators to defect. One of the basic rights of man which is recognized by our Constitution is the right to freedom of association and the right to join any political party. The relevant provision of the Constitution provides thus:

> Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:
>
> Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.[27]

The African Charter on Human and Peoples Right also recognizes the importance of this right when it provides that "*Every individual has the right to free association provided he abides by the law… no one may be compelled*

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not impeachment. In his words, Niki Tobi JSC stated '*It is my view that the word should not be used as a substitute to the removal provisions of section 188. We should call spade its correct name of spade and not a machete because it is not one. The analogy here is that we should call the section 188 procedure one for the removal of Governor or Deputy Governor, not of impeachmen*t'.

[26] *FEDECO v Gonisupra* Here, The court reasoned that there are no consequences of defection on the tenure of office of the governor

[27] Section 40, CFRN 1999 (as amended); *Mbanefo v Molokwu & Ors* (2014) LPELR-22257(SC); *Alhaji Aliyu Salihu v Suleiman Umar Gana & Ors*(2014) LPELR-23069(CA)

*to join an association*."[28] Implicit in the right to freedom of association is the right to abandon an association or political party one is no longer interested in. In fact the Constitution made it clear that protection of one's interest is paramount to being a member of any association or political party. There is thus an agitation that the legislators have the right to freely associate and cannot be forced to remain in any association or party they no longer share their values or that no longer represent their interest.

The question now is: Does the provision of section 68(1)(g) violate the right to freedom of association by imposing sanctions on a defecting lawmaker? In tackling this issue, Majebi, a Lagos based legal practitioner stated thus:

In my opinion the provision of section 68(1)(g) is in direct contradiction of section 40 of the 1999 Constitution and since no one section of the Constitution is superior to another, when two important sections of the Constitution so sharply oppose each other, I do believe that the courts have to come in to give an interpretation anytime such a dispute arises in that regard. The fact that despite the existence of these provisions in our Constitutions we have since 1999 continued to see massive defections of legislators from party to party is evidence that this section does not really fit the realities of our present state of political development nor the natural tendency of humans to leave environments they find non-conducive and gravitate towards conducive atmospheres[29]

With the greatest respect to the learned writer, the opinion above cannot be accommodated in our Constitution. The two provisions i.e. section 40 and section 68(1) are distinct and cover different unrelated subject matters. There is no iota of contradiction between the two provisions. It must be kept constantly in mind that section 68(1)(g) never limited the right to freely join any political party of one's choice. That section can never be sighted as a bar to the right expressed in section 40 of the Constitution. Can a law maker abandon his party and join another? The answer is in the positive! The Constitution merely provided that one cannot abandon an association or party

[28] See article 10 African Charter of Human and People's Right (Ratification and Enforcement) Act, Cap A10 Laws of the Federation of Nigeria 2004. For the enforcement and status of the Charter, see *Abacha v Fawehinmi* (2000) 4 SC (Pt 11) 1

[29] E Majebo 'Defecting Legislators and Their Right to Freely Associate' available at http://www.thisdaylive.com/articles/defecting-legislators-and-their-right-to-freely-associate/193694/ accessed on 20th December, 2014.

and continue to enjoy the benefit attached to the abandoned party or association. It is not done anywhere in the world that a person would leave an association and continue to enjoy the benefits accruing to members of the association he left. Such idea, to say the least, is repulsive and cannot be accepted in construing the right to associate freely.

Section 68(1)(g) of the Constitution would still be in order assuming without conceding that the section derogates from the right to freely associate. This is so because section 40 is indeed not a sacred cow[30]. It can be derogated from as it is caught up by the derogation clause expressed in section 45 of the Constitution. Section 45 provides as follows:

> (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society
> (a) In the interest of defence, public safety, public order, public morality or public health; or
>
> (b) For the purpose of protecting the rights and freedom or other persons

It goes without saying that public morality and public order require that one should not go to sleep as a member of party A and wake up as a member of party B and sleep the same day as a member of party C. Such a scenario is not salutary to our nascent democracy. It is thus our considered view that section 68(1)(g) does not violate the right to freedom of association and the said section should not be used to cry wolf!

## Conclusion

Section 68(1)(g) of the Constitution has suffered so much violence in the hands of the lawmakers. The reality and the effect of the section are yet to be

[30] The Court has always maintain the position that fundamental rights are not absolute especially the right to freedom of association. See generally *Ukaegbu v National Broadcasting Corporation* (2007) 14 NWLR (Pt 1055) 551; *Ukpabio v National Film and Video Censors Board* (2008) 9 NWLR (Pt.1092) 219; *Dokubo-Asari v Federal Republic of Nigeria* (2007) 12 NWLR (Pt 1048) 320 *Onyirioha v Inspector General of Police* (2009) 3 NWLR (Pt 1128) 342

understood by the lawmakers themselves. The provision on the implementation of the section runs counter to all well established principles of law. Leaving the Senate President or the Speaker to enforce the section is not in the best interest of the said provision. The provision which serves as a check on our legislators that profess little or no ideology cries for amendment if it must be used effectively. The Court although handicapped by the implementation section can be said to be up and doing especially as it relates to the interpretation of the proviso of section 68(1)(g) and when the defecting lawmaker can take advantage of it. We have also observed that there is no nexus between the right to freedom of association and the consequences of defection as both are unrelated and does not interfere with the other.