

HOUSE OF REPRESENTATIVES

REPORT
OF THE

ADHOC COMMITTEE ON INVESTIGATION OF THE
HON. ATTORNEY GENERAL'S DECLARATION IN
RESPECT OF THE KOGI STATE HOUSE OF ASSEMBLY
CRISIS

(BY RESOLUTION OF THE HOUSE ON TUESDAY APRIL 12, 2016)

1. BACKGROUND

- 1.1. On the 16th day of February, 2016, the Speaker of the Kogi State House of Assembly was impeached by 5 (Five) out of 25 (Twenty five) members following a protracted crisis in the State House. The House of Representatives, after considering a motion on Tuesday, the 23rd day of February, 2016 in respect of the illegal removal of the Speaker of the Kogi State House of Assembly, resolved to set up a 5 (Five) man fact finding delegation to look into the affairs of the Kogi State House of Assembly with the aim of restoring sanity to the House.
- 1.2. The delegation immediately commenced work and on Wednesday the 9th day of March 2016, the House considered the report of the delegation and approved the recommendation as amended which inter alia are:
 - i. A directive to the Inspector-General of Police to seal up the Kogi State House of Assembly
 - ii. That the business of the State House be taken over by the National Assembly in compliance with Section 11 (4) of the Constitution of the Federal Republic of Nigeria 1999 as amended.
- 1.3. The House Resolution was concurred to by the Senate
- 1.4. However the Attorney-General of the Federation, while responding to a letter dated March 18, 2016 from the Inspector-General of Police seeking legal opinion and advice in respect of the provision of Section 11(4) of the Constitution, stated that the action of the National Assembly was unwarranted and unconstitutional and advised the Inspector-General of Police to unseal the Kogi State House of Assembly describing the situation in Kogi House of Assembly as a mere misunderstanding between Legislators.
- 1.5. Concerned by this direct affront on the National Assembly, the National Assembly on the 12th day of April, 2016 constituted a 22-man Ad-Hoc Committee to investigate the matter and report to the House in 2 (Two) weeks; and also to invite the Inspector-General of Police and the Honourable Attorney-General of the Federation to appear before the Ad-Hoc Committee to make clarification(s) on the matter.

2. IN THE COUSE OF THE INVESTIGATION, THE AD-HOC COMMITTEE FINDS AS FOLLOWS:

- 2.1. That the Attorney Generals' letter dated April 5 2016 was a response to a letter dated March 18, 2016 from the Inspector the Inspector General of Police on the formers' legal opinion and advice on the directive of the National Assembly and its' resolution to take over the Kogi State House of Assembly in accordance with the provisions of Section 11 of the Constitution.
- 2.2. That the Attorney-General communicated his advice to the Inspector General to the effect that what the action of the National Assembly was ultra vires and therefore illegal.
- 2.3. That following the Attorney-Generals' advice, the Inspector General of Police went ahead and promptly reopened the Kogi State Assembly without further recourse to the National Assembly.
- 2.4. That the same number of legislators purportedly passed the budget of Kogi State and continue to make laws for the state contrary to sections 98 and 100 of the Constitution the Nigerian Constitution.
- 2.5. That the Attorney Generals advice was premised on the following grounds:
 - i. That before the National Assembly can take over the functions of a State Assembly, there has to be a state of insecurity prevailing in the entire State beyond the House of Assembly and that the situation in Kogi was a mere disagreement between legislators.
 - ii. That the Rules of Procedure of the National Assembly preclude it from taking decision on a matter/adopting a Resolution where such a matter is pending before a Court of law.
 - iii. That the National Assembly cannot by a resolution close and take over the affairs of the Kogi State House of Assembly as a resolution does not carry the force of law.

3. OBSERVATIONS:

GROUND 1

- 3.1. Committee finds that the provisions of Section 11(4) are not restrictive neither is it limited only to insecurity in a state as posited by the Attorney General.
- 3.2. The Committee further finds that situations of security are already provided for in section 305 of the Constitution which allows for a declaration of a state of emergency.
- 3.3. The Committee believes that the condition precedent envisaged by section 11(4) is the Assembly's "inability to perform its functions by reason of the situation prevailing whether in the entire state or any part of the state". The existence of 2 Speakers, purported and illegal of impeachment of the Speaker by 5 members out of 25 is definitely a "situation" in the state as envisaged by the constitution. Should 20 members of a State Assembly be trapped on an island and unable to get back to Nigeria or Kogi a "situation" leading to the inability of the state assembly to discharge its functions would have arisen under section 11 (4).
- 3.4. Indeed the Supreme Court has covered this field in the takeover of the Rivers Assembly by the National Assembly when it declared that though the House was right in evoking section 11 of the constitution in taking over the Rivers State Assembly, the matter had become mute because the issues had been resolved and the House had started sitting constitutionally.
- 3.5. To describe the impeachment of a Speaker by 5 legislators and the filing of legal action by one "faction" against another as "mere" disagreement by the Attorney General shows a complete misunderstanding of the legislature and situation in Kogi State. In any case the "mere" disagreement has made it impossible for the Assembly to discharge its functions as under the constitution, a simple majority of all members is required for the purpose of making laws.

GROUND 2

- 3.6. The learned Attorney General argued in his letter that the rules of procedure of the House precluded the House from discussing a matter pending before a court of law and since the matter was already in court

it should not have been entertained by the House. To this extent it was the Attorney General's opinion that the House breached its own rules.

- 3.7. The Committee believes the Attorney General erred factually on 2 grounds. First there is no House rule that states that any matter before a court cannot be discussed in the House. Any such rule would invariably render the House redundant as most issues of importance will ultimately end up in court. For the avoidance of doubt Order 9 Rule 5 of the House rules provides :

- 3.8. ***"Reference shall not be made to any matter on which a judicial decision is pending, in such a way as might in the Speaker's opinion prejudice the interest of parties thereto".***

The rule is not absolute but requires the satisfaction of the Speaker that discussing a matter relating to a case would prejudice the outcome of the case. In any case, taking over a state assembly which is unable to discharge its functions pending the resolution of a crisis cannot in anyway prejudice its outcome.

- 3.9. Secondly, the Attorney General was misguided when he claimed that Suit **No FHC/LKJ/CS/16/16 (KOGI STATE HOUSE OF ASSEMBLY & 3 ORS V. NATIONAL ASSEMBLY & 2 ORS)** was pending in court as of the time the House Resolution was reached. The fact of the matter was that the matter he referred to was filed on the 15th of March, 2016 whilst the debate and resolution of the House was on 9th of March, 2016. Therefore the doctrine of *lis pendens* upon which the Attorney General referred to is inapplicable here.

GROUND 3

- 3.10. The Attorney General in his letter to the Inspector General also raised a third issue and opined that the Resolution of the NASS was of no effect. He argues that resolutions are only persuasive and also that section 11(4) can only be effected by a law or Act of the National Assembly and not a resolution.
- 3.11. The Committee disagrees with the learned Attorney General and stipulates that the provisions of section 11(4) are triggered automatically by the occurrence of the condition stated therein and passing of a resolution was a mere formality. The committee further believes that a resolution of the House which springs from a constitutional mandate as in section 11(4) cannot be described as persuasive only in nature. Such an

interpretation would lead to an abominable belief that the Executive can choose to obey or disobey a constitutional requirement.

- 3.12. The committee also believes that to require the National Assembly to make a law to take over a state assembly is a misread of section 11. Section 11 only requires for laws to be made by the National Assembly after taking over the State Assembly and not to take over the Assembly. A take over especially in an emergency situation is meant effected immediately and not meant to be subjected to the rigorous and time consuming procedure of Bill passage which can be months or sometimes even years.

4. CONCLUSION

- 4.1. That the Attorney General was wrong in advising the Inspector General of Police to reopen the Kogi State House of Assembly after it had been taken over by the National Assembly by operation of law, to wit, section 11 (4) of the Nigerian Constitution.
- 4.2. That the Attorney General has no powers under the constitution or any known law to reverse a decision made by the legislative arm of government whether or not such decision was made rightly or wrongly.
- 4.3. That the only body or institution vested with powers under the constitution and under the democratic principles of separation of powers, to interpret the constitution is the judiciary and not the Attorney General
- 4.4. That the Attorney General erred by seeking to interpret the constitution and acted ultra vires in so doing. The Attorney General in seeking to undermine the legislature himself said in his letter to the Inspector General:

“it appears to me that the determination by the National Assembly that the alleged impeachment of the Speaker of the House of Assembly by 5 members of the House of Assembly was null and void was an exercise of judicial power by the legislature contrary to section 1 of the 1999 Constitution as it is a matter that should be determined judicially on the application of the affected persons.....matters of constitutionality are issues for judicial determination.”

- 4.5. The Committee finds it ironic that the attorney general now seeks to do that which he condemned in his letter by determining the constitutionality of the resolution of the National Assembly. A matter that is the exclusive preserve of the judiciary.
- 4.6. That the only option left to the Attorney General where and when he disagrees with the legislatures actions is to seek redress in court.
That the Inspector General of Police acted in bad faith by reversing and disobeying the directives of the National Assembly.
- 4.7. That the actions of the Attorney General and Inspector General of Police were an affront on the legislature and our democracy.

5. RECOMMENDATIONS

1. That the Attorney General immediately withdraw his letter and advice to the Inspector General
2. That the Attorney General be reprimanded for undermining the authority of the legislature
3. That the Attorney General proceed to court if he has any issue with the resolution of the National Assembly on this matter or any matter in the future
4. That the Inspector General of Police immediately reseal the Kogi State Assembly pending the resolution of the Kogi crisis.
5. That the Inspector General of Police be reprimanded for undermining the authority of the legislature.
6. That all resolution, laws and actions taken by the State Assembly from the date of the National Assembly resolution be declared null and void by operation of law.
7. That the Governor of Kogi should immediately send his budget and other executive Bills to the National Assembly for consideration as stipulated in section 11 of the constitution.

MEMBERS OF THE COMMITTEE

1. HOUSE LEADER
2. DEPUTY WHIP OF THE HOUSE
3. DEPUTY MINORITY LEADER
4. CHAIRMAN, COMMITTEE ON JUSTICE

5. CHAIRMAN, COMMITTEE ON JUDICIARY
6. CHAIRMAN, COMMITTEE ON RULES AND BUSINESS
7. HON. OSSAI NICHOLAS OSSAI
8. HON. JAGABA ADAMS JAGABA
9. HON. HERMAN HEMBE
10. HON. ALIYU MADAKI
11. HON. NNENNA UKEJE
12. HON. ZAKARI MOHAMMED
13. HON. BABAJIMI BENSON
14. HON. WOLE OKE
15. HON. PHILIP SHUAIBU
16. HON. NNANNA IGBOKWE
17. HON. SADIQ ABUBAKAR
18. HON. MUSA SOBA
19. HON. PWAJOK GYANG
20. NKEM-ABONTA UZOMA
21. HON. MAJEED ALABI
22. HON. ABDULLAHI MOHAMMED