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Presidential Pardon Recently Granted to Some Former State Governors and Others with the Attendant Negative Effect on the Fight Against Corruption in Nigeria

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Abstract

This paper examines the application of presidential power of "prerogative of Mercy" in Nigeria as enshrined in the constitution of the Federal Republic of Nigeria (1999 as amended) which made similar provisions for the state Governor(s). The powers of either the sitting president of Nigeria or the State Governor to grant clemency by way of prerogative of Mercy on deserving citizen is subject to the trial and conviction by court of competent jurisdiction for Federal offences in case of the president and state offences in case of state governors respectively. The power of pardon is a veritable component part of the executive powers which allows the President or the state governor(s) to grant pardon as a way of showing compassion and mercies of the ruling government on deserving convict(s) periodically. The exercise of this power of pardon is the exclusive prerogative of the President or State Governor(s) and fears and apprehension are being expressed in some quarters that such powers can be deployed arbitrarily and subject to abuse, as same can often be used to favour political associate and cronies to the disadvantage of the government fight against corruption in Nigeria. This work discusses the application of the power of pardon by either the Executive president or governor(s), reactions from individuals including officials of Anti-corruption agencies as to how the recent pardon of the two politically exposed persons and others, who have been convicted and currently serving their respective jail terms at correctional centers within the country had dealt a devastating blow to the fight against corruption in Nigeria. Also, the application of prerogative of mercy in other jurisdictions such as in South Africa and the United States of America (US) are briefly discussed, and then conclusion as to

the desirability or otherwise of the application of this power in the face of the prevailing Anti-corruption struggles by successive governments in Nigeria.

Keywords: Prerogative of Mercy, Abuse of Power, President, Governor, Corruption and Jurisdiction.

INTRODUCTION

The recent exercise of grant of Presidential prerogative of mercy by President Muhammadu Buhari to Joshua Dariye, Jolly Nyame and other convicted Nigerian citizens; on the 14th day of April, 2022 has elicited reactions from several quarters and individuals as the exercise was adjudged to be a display of abuse of power, interference by the executive with the exercise of judicial powers and a setback to the Anti-corruption fight of the ruling government. The power of the president to grant mercy in form of a pardon is contained in the constitution of the Federal Republic of Nigeria 1999 (as amended)[1] as follows:

1. The President may-
   (a) Grant any person concerned with or convicted of any offence created by Act of National Assembly a pardon, either free or subject to lawful conditions;
   (b) Grant to any person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
   (c) Substitute a less seviere form of punishment for any punishment imposed on that person for such an offence, or
   (d) remit the whole or any part of any punishment imposed for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.
2. The powers of the President under subsection (1) of this section shall be exercised by him after consultation with the Council of State.
3. The President, acting in accordance with the advice of the Council of State, may exercise his power under subsection (1) of this section in relation to persons concerned with offences against the Army, Naval or Air force law or convicted or sentenced by a court-martial.

Similar provision is made for prerogative of Mercy in the state of the federation to be administered by the state governors[2] whenever the need arises. It is of common knowledge that both Joshua Dariye and Jolly Nyame governed their respective states of Plateau and Taraba respectively from 1999 to 2007.

[1] Section 175 of the constitution of the federal republic of Nigeria 1999 (as amended)

[2] Section 212 of the 1999 constitution of Federal Republic of Nigeria (as amended)

The purpose of this work is to ascertain whether the exercise of the powers of pardoning convict by the President as enshrined in the Nigerian constitution is clothed with other extraneous considerations that are outside the law or whether certain categories of convicts are barred from enjoying the Presidential prerogative of mercy as the case maybe. This is in view of the fact that both the President of the country and state Governors are under Oath not to allow their personal interest to influence their official conduct or decisions among other provisions encapsulated in their oath of allegiance to the people and Constitution of the Federal Republic of Nigeria during their inauguration. One of the cardinal principles and spirits of the constitution which both the President and State Governors vowed to adhere to is to stamp out corruption from the polity as provided in the constitution thus:[3] the state shall abolish all corrupt practices and abuse of power.

This work is set out to examine the nature, purpose and effect of the pardoning power on anti-corruption fight in Nigeria and examine the application of the same concept in other jurisdiction with a view to proffer far reaching recommendations and conclusion.

NATURE OF PRESIDENTIAL PARDONING POWERS

2.1. The concept "pardon is defined by the Osborn's Concise law Dictionary[4] as follows:

> the release by the crown of a person from punishment incurred for some offence.

This definition was further given effect to in the decided case in UNITED STATES V. WILSON[5], where pardon was explicitly described as:

> an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individuals on whom it is bestowed from the punishment the law inflicts for a crime he or she has committed….., and that pardon was not complete without it's acceptance by the convict and that if it was rejected by the convict there was "no power in a court to force it on him"

The above definition and legal principle was laid credence to in a decided case in FALAE V OBASANJO[6], where the Appeallant, Chief Olu Falae brought a petition in the year 1999 against the eligibility of Chief Oluesegun Obasanjo then the (president elect) to even contest for the exalted office of the President of Nigeria, having been convicted by the tribunal during the Late Sanni Abacha's regime, it was held per Musdapher, JCA (as he then was) as follows:

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[3] Section 15(5) of the 1999 constitution of Federal Republic of Nigeria (as amended)

[4] 7th Edition by Roger bird (sweet & Maxwell 1983) p.244

[5] 32 US (7 pet) 150 (1833)

[6] (1999) 4 NWLR (pt. 599) 476

in my view, under Nigerian law there is no distinction between "pardon" and "full pardon". A pardon is an act of grace by the appropriate authority which mitigates or obliterate the punishment the law demand for the offence and restores the right and privilege on account of the offence. The effect of a pardon is to make the offender a new man, novus homo to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned. I am of the view, that by virtue of the pardon contained in Exhibit 11, the disqualification of the 1st respondent was to suffer because of his conviction, has been wiped out. His full civil rights and liberties are fully restored and accordingly, he has not been caught by the provisions of section 13(1) (h) of the Decree

2.2 The powers of the president to grant pardon extinct to all offences created under federal laws without exception. By this, all classes of offenders way benefit from the president's prerogative of mercy as a matter of constitutional grace. Thus, moral considerations cannot be relied upon to restrict the ambit of the pardoning powers conferred on the President. This is in line with the literal interpretation and ambiguous language used in section 175 (1) (a) of the 1999 constitution (as amended). It is thus pertinent to state that for any condition attached to a pardon to be lawful, it must be in consonance with the extant provisions of the 1999 constitution (as amended) the only exception is if such violations can be saved under 45(1) of the same constitution[7]

2.3 It is imperative to state clearly that thee powers the constitution[8] can only effectual and exercised by him after consultation with the council of state; as there is a mandatory constitutional duty imposed in the President to consult the council of state before exercising his Pardoning of powers in issue. This constitutional obligation to consult imposers a duty on the President to provide sufficient information to members of the council of state to enable them reach an informed opinion on any pending application for presidential pardon, but also to convey such opinion to the President. This is even when the President is not obligated or bound by the opinion of the members of council of state as the decision to grant or refuse such an application is the exclusive preserves of the president[9].

[7] Z. Adangor "The presidential pardon granted Chief D.S.P Alamieyeseigba: Time to revisit the presidents pardoning power under section 175 of CFRN 1999 (as amended) " Journal of Law, policy and Globalization" vol.39, 2015 page 187.

[8] Section 175(2) CFRN 1999 (as amended)

[9] Z. Adangor ibid

Furthermore, prerogative of mercy as a legal concept cannot be set in motion unless there is a sentence of court on a convicted person(s) which the mercy will act to water down or out rightly waive the punishment. It must be pointed out that where the convict(s) sentenced have exhausted his or her right of appeal or fail to use same, the only plausible option available is to make an application for prerogative of mercy. This principle was enunciated inSOLOMON ADEKUNLE V.A OGUN STATE[10], where it was held as follows:

It appears to me from the general tenor or gamut of the Appellant's claim that, the appellant seeks to set aside or at least reduce the sentence passed on him and which sentence has been affirmed by the supreme court. Such an action cannot be under the fundamental rights (Enforcement procedure) Rules (Supra). As rightly pointed out by the learned trial judge, the only available option left for the Appellant was to apply to the Executive Governor of Ogun State to exercise his prerogative of mercy under section 212 of the constitution to either conditionally or unconditionally or to commute such death sentence to a term of imprisonment. However, as things stand now, his conviction and sentence having been affirmed by the Supreme Court, no other court in Nigeria has the vires or jurisdiction to interfere under any guise whatsoever. That sentence stands forever, subject only to section 212 of the constitution.

2.4 Prerogative of mercy can be carefully classified among others depending on the nature of the application thus:[11]

a. Unconditional Pardon: This is an absolute pardon or mercy granted by the president of a country or the Governor of a state as the case may be to person or group of persons who have been sentenced by a competent court after a successful trial.

b. Conditional pardon: This is a pardon which absolves the sentence of a convicted person(s) by the President or Governor but however premised on the occurrence of a certain event or the fulfillment of an act by the person(s) pardoned.

c. Definite respite: This is a prerogative of mercy which when exercised has the effect of suspending or extending the time for a specified period before the sentence of court can be executed on the person pronounced against.

[10] 2014 LPELR – 22569 (CA)

[11] K. Usendu, "The prerogative of mercy under the Nigerian criminal Justice System and the Quasi-Judicial power of the Executive "Legal researchers Nigeria-2016.
< https:www.//legalresearchersnigeria.worldpress.com/2016/08/13> Accessed on 26 January 2024

d. Indefinite Respite: This prerogative of mercy when exercised result in the suspension of the sentence of the court against the beneficiary of such mercy for a given period of time or a permanent period.

e. Substituted pardon: This class of prerogative of mercy mitigates the sentence of the court on the convict by designating a less severe punishment in place of the one provided by the law or pronounced by the court of law.

f. Remission: This is a prerogative of mercy granted by the president or Governor to a person(s) having a financial obligation to fulfill, a fine to pay or an asset to forfeit and which when granted have the effect of cancelling or extinguishing all or part of the liability.

PURPOSE AND EFFECT OF GRANT OF PREROGATIVE OF MERCY IN NIGERIA

3.1. Several reasons abound by the Government in power both at the National and States level for granting pardon to deserving citizens, and some of these reasons stems from remedying the injustice done by the judiciary, public policy purpose, ill-health etc. Opinion differs on the justification for the grant of presidential pardoning power which in its self is considered to be an important component of Executive powers and it allows the President to intervene and grant pardon as a way of "dispensing the mercy of government" in exceptional cases where the legal system fails to deliver a morally or politically acceptable results[12].

Study reveals that Certain reasons abounds in support of Presidential pardoning powers and some are:

i. Remedying a noticeable injustice done by the judiciary.

The judiciary as an institution is maned by human beings who are prone to make mistakes. Thus, the pardon power may be exercised in a favour of a person wrongly convicted yet the penal sanction may appear severe or excessive or overbearing.

However, in the case at hand and for the purpose of this work , no case of injustice done by the Judiciary was established to have justified the grant of power of pardon by the President in 2022.

[12] A. Hamilton, The Federalist 74 at 402 (maintaining that, "the criminal code of every country partakes so much of necessary security that without an easy access to exceptions in favour of unfortunate guilt, justice would wear a countenance too sanguinary and cruel") in I. Udofia, eds. The abuse of presidential power of pardon and the need for Restraints, (Beijing Law review, 2018) 115

ii. Public policy purpose:

Pardons can also be granted to foster a broader public policy purpose in other to enhance peace and tranquility in a particular society. It was asserted that in seasons of insurrection or rebellion, there are often critical moments when well-timed offer of pardon to the insurgent or rebels may restore the tranquility[13] It is a common knowledge that President Yar'dua granted Amnesty to Niger Delta militants "if they lay down their weapons by 4th October, 2009 and cease fighting".

In further buttressing the public policy purpose argument for the grant of Presidential Pardon, the pardon granted to D.S.P Alamieyeseigha on March 12th 2013 by the Former President Goodluck Jonathan which generated wide negative reactions from the public, was justified by the then Government as follows:

> a gesture that will encourage him to work more assiduously towards minimizing the militancy in the Niger Delta and stabilizing the oil production which is the main stay of the Nigerian economy. Thus, the position of the federal government is that the pardon conduces to public welfare and that public interest would be better protected by it[14]

iii. Ill-health and life threatening ailment:

This also is one of the factors considered as moral justification for the grant of presidential pardon to deserving convict(s), already serving their respective jail terms. This study reveals that due to the public outcry and reactions against the grant of presidential pardon to Dariye, Nyame and others in 2022, the defense of the Federal government then through the Senior Special Assistant to the President on media and publicity, Mallam Garba Shehu was as follows:

> Dariye and Nyame were pardoned due to life threatening ill-health and that the action would not derail the anti-corruption war of President Muhammadu Buhari and that the President assured the nation that nothing done was intended to achieve a political end or send a revisionist message on the relentless war against corruption which he had ably an evidently led by

[13] A. Hamilton Ibid

[14] Z. Adangor, op cit, page 188

personal examples.[15] It is of public knowledge that this defence could not sway or calm down the frustrations and disappointment in the minds of Nigerians who felt that the quasi-judicial power of presidential pardon was been deployed to satisfy narrow political interests and nothing more since no medical report of any kind was shown to the public in support of the above government positions

3.2. EFFECT OF GRANT OF PRREROGATIVE OF MERCY

The effect of grant of prerogative of mercy can be understood under the following:

(i) It acts as estoppels or defence/answer to an allegation contained in a charge or information, the defendant may plead that he or she has obtained a pardon for the offence during arraignment. This can only be proved to the satisfaction of the trial court that a pardon has been granted by the production of the instrument of pardon. When this is established, the charge must be dismissed and the defendant acquitted. In the same vein, a person who is granted prerogative of mercy cannot be prosecuted for that same offence. This is in consonance with the law to the effect that:

> no person who shows that he has been pardoned for a criminal offence shall again be tried for that same offence[16]

In OKONGWU V THE STATE[17], the court held thus:-

> the effect of a free pardon is such as to remove from the subject of the pardon, "all pain, penalties and punishment whatsoever that from the said conviction may ensure, but not wipe out the conviction itself.

(ii) A pardon reaches both the punishment prescribed for the offence and the guilt of the offender and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law, the offender is as innocent as if he had never committed the offence. It makes the convict a new man and gives him a new credit

[15] M. Olaniyi, "Dariye, Nyame pardoned over life-threatening Ailment"-presidency, Daily Trust 21 April 2022

[16] Section 36 (10) CFRN 1999 (as amended)

[17] (1986) 5 NWLR (Pt. 44) 721 at 740

and capacity, thereby making a supposed criminal Novus homo (a new man) without any tint of guilt[18]

(iii) Return of a ceased property of the convicted person. By this, any title, property, or monies earlier forfeited on account of the offence, are as a general rule, usually restored forthwith to the person who is pardoned. The only exception is where the pardon is not full or that the property can no longer be specifically restored, due to the fact that the property has legally vested in other persons, in which case monetary compensation is usually made to enable him recover his loses[19]

(iv) Reduction or wavier of the punishment as pronounced by the court. This depends largely on the nature of the application, made to the President for the grant of prerogative of mercy and the physical/health status of the convict. For instance, a pregnant female convict who is at the point of being delivered of the baby can be fully granted pardon or waiver of some prisons terms with a view to enable her stand the rigor of child delivery.

3.3 EFFECT OF PARDON ON ANTI-CORRUPTION FIGHT IN NIGERIA

3.4 Apart from some of the noticeable effects discussed above, the grant of prerogative of mercy by the President in the instant case and from the views point of commentators seems to have dealt devastating blows to the much acclaimed fight against corruption in Nigeria under the immediate past government of President Muhammadu Buhari. Some of the vociferous reactions which cut across the entire strata of the Nigerian society are as follows:

According to the boss of Centre for Anti-corruption and Open Leadership (CACOL),[20] he was of the firm view that:

the likes of (Joshua) Dariye, (Jolly) Nyame and a few others, It took more than 11 years before they were convicted and after conviction, the government gave them a prerogative of mercy which is not justifiable. So, no government should be allowed to release anybody who is convicted on issues of corruption or any crime that involves the generality of the people which is called wholesale

[18] Olu Falaye V Obasanjo (Supra)
[19] I. Udofia op cit, Gov. of Lagos State V Ojukwu (1986) I NWLR (Pt. 18)
[20] M. Lawal "Its wrong to grant convicted leaders amnesty" Punch Newspaper 14 January 2024

corruption crimes so that anyone who plan to commit would be dissuaded.

Corroborating the above argument, the lead prosecuting Counsel to the Economic and Financial Crimes Commission (EFCC)[21] who represented the commission in prosecuting this case right from the court of first instance up to the Supreme Court reacted thus:

> i am disappointed in the decision of the Buhari regime and that the message being conveyed was that prison was only for the poor, noting that this would embolden the younger generation to embrace fraud. He added that the pardon meant that both Dariye and Nyame could later run for elective offices. This means that they can hold offices and run for elections as it has turned the anti-corruption war into a joke. It is a set back against the fight against corruption. They are setting a bad example for the younger generation. This case went from the High Court to the Supreme Court and now the convicts are being pardoned. It will demoralize the judge, the investigators and the prosecutor.

A more in-depth and horrific critism of the grant of Presidential pardon to these individuals arose from some EFCC personnel that were directly involved in the investigation of the two former Governors that were granted presidential pardon, and their reaction is as follows:

> that huge sum of money was spent on investigations and prosecution between 2007 to 2008. Dariye's case in particular was said to have cost a lot more as it emanated from London and the star witness, Peter Clark who was a policeman, had to be flown from the UK on several occasions and lodged in Hotels while the case dragged on[22]

3.4 Bishop Matthew Hassan Kukah, in an emotional laden reaction said thus:[23]

> there are many innocent people languishing inside Nigerian's "broken system" who should be also freed. I thank the president for accepting the report of the committee on the prerogative of mercy granting pardon to over 150 Nigerians serving various turns of imprisonment. The more serious challenge is to immediately free all innocent Nigerians who are held captive and whose crime is that they are living in Nigeria.

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[21] R. Jacobs (SAN) "we are demoralized" Punch newspaper, 16th April 2022, <http//WWW/punchng.com> April 16 2023

[22] E. Akinuoti and others "President pardon – How EFCC spent 11 years, millions to prosecute Dariye, Nyame" Punch Newspaper Ibid.

[23] Bishop of Sokoto Diocese of the Catholic Church in his Easter hourly on 17th April, 2022 at Sokoto.

3.6 It is instructive to note that the vehement oppositions and outcry among members of the Nigeria public including the EFCC officials to the grant of presidential prerogative of mercy to the mentioned personalities attest to the fact that the presidential pardon in issue did not go down well with a larger majority of Nigerians.

Federal government only struggled to put up a defence of *life-threatening ailment* as the basis for the grant of the presidential prerogative of mercy to the two former governors, the said defence was merely in the imagination of the presidential aide[24] as handful of Nigerian could not be swayed by the said explanation even when there was no known medical report evidencing the said life threatening ailment afflicting the duo of Dariye and Nyame to win public supports and aparty towards the unwarranted presidential pardon in issue.

PRESIDENTIAL PARDONING POWERS IN OTHER JURISDICTIONS SUCH AS SOUTH AFRICA AND THE UNITED STATES OF AMERICA (USA)

(i) South Africa

Pardoning power in South Africa is captured under the present South African constitution 1996, to the extent that the power of pardon is vested in the president of the country and the law provides interlia thus:[25]

> the president is responsible for pardoning or reprieving offenders and remitting any fines, penalties or forfeitures.

By this law, the South African President is imbued with powers to pardon an individual or a group of persons. The South African parliament cannot restrict the powers of through legislation[26], while the president cannot restrict his said powers himself by agreement[27]. Presidential pardoning powers in South Africa is wide, devoid of any restriction, but the president in exercising the powers must ensure that it is in consonance with the spirit of the constitution of the country and must be seen to have acted in good faith rationally for legitimate purpose while exercising his powers in this regards personally[28]

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[24] See G. Shehu's remarks op-cit

[25] See Section 84(2) (J) a996 of South African Constitution <http//www.presidentialpardon.co.za> assessed on 24 January,2024

[26] President of the Republic of South Africa V South African Rug by Football Union 2000(1) SA (SARFU) para. 155

[27] Ibid Para. 159

[28] See Certificate of the Constitution of the South Africa 1996 (4) SA 744 (CC) Para 116

Such instances of the application of powers of presidential pardon in South Africa were echoed in HUGO's case, [29]where the former president Nelson Mandela "remitted the sentences of all mothers with children under the age of 12 who were imprisoned for having committed minor offences, and when former president Mbeki "pardoned certain people who would have been eligible for amnesty from the Truth and Reconciliation commission, but failed to apply for it[30].

A striking departure under the South Africa's constitution from that of Nigeria in respect to pardoning powers of the president is that the South African president do not need to consult anybody or act on any advice as the president is solely responsible for the head of state powers in section 84(2) of the country's 1996 constitution.[31] This is a far cry from what is obtainable under section 175 (2) (3) of 1999 constitution of Federal Republic of Nigeria (as amended)

(ii) United States of America (USA)

Under the U.S. constitution,[32]

> the president shall be commander in chief of the Army and Navy of the United States and of the militia of the several states; he may require the opinion, in writing of the principal officer in each of the executive department , upon any subject relating to the duties of their respective offices and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Presidential power of pardon had since attained notoriety in the U.S. far back in 1886 in the case of Exparte Garland[33] "where the court referred to the presidential authority to pardon as "unlimited" except in cases of impeachment, extending to every offence known to the law" and able to be exercised "either before legal proceedings are taken, or during their pendency, or after conviction and judgment".

It is pertinent to note that despite the unlimited pardoning powers conferred on the U.S. President, there exists at least two limitations as follows:-

(a) Clemency may only be granted for "offences against the United States indicating that state criminal offences and Federal or State civil claims are not covered

[29] See President of South Africa V Hugo (1997) (4) SA 1 Para 29

[30] See Albutt V Centre for the study of volence and reconciliation (Solo) (3) Sa 293 © and I. Udofia Opcit Page 27.

[31] The President can exercise the power of the head of state including power to pardon entirely on his or her own and Udofia Ibid.

[32] Article 11, section 2 clause, <http//www.//constitution.findlaw.com> accessed 24 January, 2024

[33] 71 U.S 333,380 (1886), United States V Klein, 80 U.S 128,147 (1871)

(b) The pardoning powers of the president cannot be used in cases of impeachment[34].

Apart from the above limitations, other constraints on the pardoning powers of the U.S. President exists thus:

(i) Such power may be exercised "at any time after an offence's commission, meaning that the president may not preemptively immunize future criminal conduct"[35]

(ii) That an exercise of clemency "may include "any condition which does not otherwise offend the constitution, meaning that the President may not make clemency subject to a condition that is prohibited by another constitutional provision[36]

The effect of full pardon without transgressing on the clearly stated constraint on the power of the president to grant pardon in the U.S. broadly obviates all legal guilt of the offender, effectively erasing the crime from existence[37]. Subsequent judicial pronouncement have altered this principle to now a new law "suggesting instead that although a full pardon precludes punishment for the offence, a prior and pardoned offence may still be considered in subsequent proceedings[38]

It is also worthy to note that like in other jurisdictions, parliament does not constrain the President's pardon authority through legislation, as the U.S. congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders[39]

However, there is historical legislation facilitating the exercise of the pardon power through either funding of Executive Branch positions to review clemency petitions, or legislative functions/tools such as legislative oversight, impeachment and constitutional amendment as the case may be[40]

CONCLUSION

A careful and holistic application of the provisions of section (175) of 1999 Constitution of Nigeria (as amended) shows clearly that the exercise of president's

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[34] U.S constitution article 11&2, Cl. 1 and Exparte Grossman, 267 U.S 87,111,115,122 (1925)

[35] Garland, 71 U.S at 380

[36] 419 U.S at 267

[37] Carliste V United States, 83 U.S 151 (1872)

[38] Carliste Vs New York, 233 U.S 51,59 (1914) (determining that pardoned offence could still be considered "as a circumstance of aggravation under a state habitual offender law)

[39] Garland U.S at 380, Schick V Reed, 419 U.S 256,266 (1774). The power

[40] See Brown Vs Walker, 161 U.S 591,601 (1896), Exparte Grossman, 267 U.S 87, (1925) (indicating that hypothetical effort by President to "deprive a court of power to enforce it orders" through successive pardons would suggest resort to amendment by the congress. The power of clemency flows from the constitution glove, not from any legislative enactment and it cannot be modified, abridged or demarked.

powers in terms of the persons to be granted pardon is not limited in any way. However, considering the fact that the present is holding or occupies his office in trust on behalf of every Nigerian, that ordinarily should act as a restraint on the use of his powers.

In South Africa for instance as shown in this work, for the power of the President to grant pardon to be appropriately exercised, "such powers must be applied in a way that is consistent with the constitution; while in the U.S. clemency may only be granted for offences against the United States (U.S.), indicating that state criminal offences and Federal or state civil claims are not covered.

In the Nigerian situation, for exercise of power of pardon to be validly exercised, the Council of State which the President, "shall" consult as a condition precedent under section 175(2) of the 1999 constitution, is merely a ceremonial body compared to other similar advisory bodies. In view of this, it is advisable and suggested that such a weighty constitutional duty which bothers on general public interest, be subjected to legislative scrutiny where by the constitution is amended in section 175 in way and manners that "the president can only exercise his power of pardon after consultation with the Senate of the Federal Republic of Nigeria" as done in other situations[41]

It is further recommended that the advice of the council of state on the ground or refusal of pardon to applications should be made binding and all encompassing in all cases instead of limiting the binding effect in respect of cases involving military officers and discretionally in respect of all others.

In the same vein, the said section 175(1) of the constitution made a blanket provision for Presidential pardon as far as a such convict is found guilty of any offence created by an Act of the National Assembly. Again, this is discriminatory and unjust against other Nigerian citizens convicted and serving several jail terms in Nigerian correctional centres spread all over the country. This promotes corruption in public life in Nigeria and tantamount to a violation of section 15(5) of the same Nigerian Constitution 1999 (as amended) which expressly provides that "the state shall abolish all corrupt practices and abuse of power"[42]

It is of common knowledge that the serious danger caused to the Nigerian Public as a result of corrupt practices generally calls for an amendment to the provisions of section 175(1) of the 1999 constitution (as amended) with a view to prohibit the sitting President from exercising his pardoning powers to persons convicted for money laundering, general misappropriation of public funds and corrupt practices generally. This will ring an alarm bell to public and private individuals entrusted with public

[41] Section 86(1), 147(2) and 154(1) CFRN 1999 (as amended)

[42] J. Ogunye, "Legal Implications of Jonathan's pardon" Premium Time Nigeria 16 April,2022, >https//www.premiumtimesng.com/opinion125017>accessed on 5th October 2023

funds and also impress it in the minds of the international community including business partners of Nigeria that the Federal Government's anti-corruption struggle is not a wishful thinking and a mere political gimmick.

It is also recommended that the practice in South Africa and the United States Of America (U.S.) is adopted by the Nigeria President where in, public interest is of paramount consideration in granting presidential pardon to fraudsters and criminals who have misused public trust bestowed on them by the citizenry. The Nigerian President being a politician and a member of a political party cannot be insulated from political bias and sentiments in his resolve to set free persons who have emptied their respective states treasury at a particular point in time. It is instructive to note that even when in the instant case, the former president in exercising his powers of pardon did not in any way violated the Constitution, he continues to carry the moral burden of abusing his exalted office and aided wanton corruption in the country. By this singular act, a very negative precedent is already set for the younger generations of Nigerians.