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COMPELLABILITY OF SITTING GOVERNORS AND SOME OTHER GOVERNMENT OFFICIALS AS WITNESSES IN JUDICIAL PROCEEDINGS IN NIGERIA

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INTRODUCTION:

The doctrine of compellability in the law of evidence addresses whether an individual can lawfully be required to appear before a court and testify. Under Nigerian law, the general position is that every person is both competent and compellable to give evidence, except in cases where specific legal provisions create an exception. Sections 175 to 178 of the Evidence Act 2011 set out the general rules governing competence and compellability. Consequently, unless a privilege or statutory immunity applies, any person may be summoned to testify or produce documents before the court. Under the Evidence Act, 2011, certain persons cannot be compelled to give evidence in certain proceedings. They include:

- a. An Accused Person is Competent to testify in their own defence but they are not compellable to testify for the prosecution — they cannot be forced to incriminate themselves.
- b. A co-accused is not competent to testify against another accused person, except if they become a prosecution witness after being discharged.
- c. In criminal cases, the spouse of an accused is compellable to testify for the defence, but he/she is not compellable to testify for the prosecution, except in specific offences such as:
 - i. Offences involving the spouse or a child (e.g., assault, sexual offences, etc.)
 - ii. Bigamy and related offences.
 - iii. Where one spouse is charged with an offence against the other).
- d. In civil cases, spouses are both competent and compellable for or against each other
- e. Under international law, diplomatic agents enjoy immunity from compulsion to appear as witnesses.
- f. Judges are generally not compellable to testify about deliberations or matters arising in the course of performing their judicial duties.
- g. Professional Privilege: Lawyers and medical doctors cannot be compelled to disclose client communications.

This article however focuses specifically on the compellability or otherwise of certain government officials to give evidence as witnesses in courts in Nigeria.

IMMUNITY OF SITTING PRESIDENTS, GOVERNORS AND THEIR VICE AND DEPUTIES

Section 308 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) grants immunity to the sitting president and state governors, including

their vice and deputies. This section shields them from both criminal and civil proceedings while in office. Specifically, it states that:

- No civil or criminal proceedings shall be instituted or continued against the President or a Governor during their tenure.
- They shall not be arrested, imprisoned, or compelled to appear in court in any civil or criminal proceedings.

This constitutional immunity therefore extends to their compellability as witnesses. The courts have consistently held that a sitting President or Governor cannot be compelled to testify in any court of law during their tenure. This position was affirmed in **Metuh v. F.R.N** (2018) 3 NWLR (Pt. 1605) 1 at 56, where the Court of Appeal per Ige, J.C.A, stated, thus:

Persons who can be classified as not compellable are persons who are legally disqualified from giving evidence or persons with statutory or constitutional immunity, who enjoy immunity under the Constitution of the Federal Republic of Nigeria 1999 as amended and who cannot be compelled or amenable to any court process while in office are the president, vice president, Governor or Deputy Governor. No writ of subpoena or other summons can be issued against them or issued for service upon any of them personally during the period or tenure of their office. In other words, persons in that category are competent witnesses in civil or criminal proceedings but are not compellable witnesses by any summons or process issued out of any court of law.

Once they leave office, such immunity ceases, and they may be called upon to testify or even be prosecuted for acts committed before or during their tenure.

OFFICIAL GOVERNMENT SECRETS

Furthermore, apart from the immunity enjoyed by sitting Presidents, Governors and their vice and deputies, section 190 of the Evidence Act 2011 provides that with regards to official records or information relating to state affairs, no one, whether government or non-government shall be permitted to produce such official records without the permission of the head officer of the ministry, Agency, Department or with court's discretion.

Section 190 of the Evidence Act 2011 provides as follows:

Subject to any direction of the President in any particular case, or of the Governor of a State where the records are in the custody of a state, no one shall be permitted to produce any unpublished official records relating to affairs of state or to give any evidence derived from such record except with the permission of the officer at the head of the Ministry, Department or Agency concerned who shall give or withhold such permission as he thinks fit;

provided that the head of the Ministry, Department or Agency concerned shall, on the order of the court, produce to the judge the official record in question or as the case may be, permit evidence derived from it to be given to the judge alone in chambers; and if the judge after careful consideration shall decide that the record or the oral evidence, as the case may be, should be received as evidence in the proceeding, he shall order this to be done in private as provided in section 36(4) of the Constitution.

In other words, Section 190 of the Evidence Act 2011 established a delicate balance between governmental confidentiality and judicial transparency. It recognizes that certain official communications must remain secret to protect the State, but also affirms the judiciary's supervisory role to prevent abuse of that privilege. Thus, if after due consideration, the judge is satisfied that the official record or information should be received; it shall be done in private as provided in section 36(4) of the Constitution. Section 36(4) of the Constitution provides as follows:

36(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that –

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

Section 190 of the Evidence Act is designed to protect State secrets and confidential government communications from being disclosed in judicial proceedings when such disclosure may be injurious to public interest, national security, or the effective functioning of government.

In **Minister of Petroleum Resources & Anor v. S.P.D.C (2021) LPELR-55436 (CA) Pg. 45**, the Court of Appeal reaffirmed that public officers are generally

competent and compellable to testify unless official privilege applies. The government may object to the production of certain documents on the ground that it would be injurious to the public interest, but such a claim must be substantiated. The court must be satisfied that the document indeed falls within the ambit of official privilege. See also the case of **Asiatic Petroleum Company Ltd v. Anolo Persian Oil Co. Ltd (1916) 1 KB 822, 829-830**. Therefore, Government officials may resist giving evidence or producing documents only when such disclosure would genuinely prejudice public interest. The court, not the government, ultimately determines the validity of such a claim. This principle ensures that while the State's security and interest are preserved, the administration of justice is not hindered by unfounded secrecy.

It is instructive to note that the application of section 190 of the Evidence Act is not limited to serving government officials. The language of section 190 of the Evidence Act 2011 is "...no one shall be permitted..." Thus, where a former government official (e.g former Minister or Attorney-General) is sought to be compelled to give evidence on a matter that can be classified as official government secret, he can invoke the provisions of section 190 of the Evidence Act to shield him from being compelled to give such evidence. It is incumbent on the Judge to examine the evidence and determine whether it qualifies as official government secret that should be left out of judicial proceedings or not.

CONCLUSION

The law is clear that though a person may be a competent witness, he may not be compelled to give evidence under certain circumstances.

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