

Alternative Construction Jurisprudence of Plain Language: A Deliberation on the Synchronisation of the Nigerian Legal Framework

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Abstract. One of the greatest problems for obedience to laws is the comprehension of laws by ordinary citizens. As a consequence of this, laws are generally obeyed by default in an unconscious manner. This is more so in a country such as Nigeria where literacy is very low and the standard of education has been acknowledged to have fallen in standard over the years. This article emphasizes the need for a tilt towards plain language lawmaking as an alternative jurisprudence for the legal draftsman. It addresses the challenges that the draftsman has to surmount and arrives at the conclusion that legalese is not necessarily more compact with respect to wastage of words than plain language. In view of the findings, the article, using doctrinal and analytical methods, made some recommendations with a view to addressing and improving comprehension of legal texts by ordinary people.

Keywords: Deliberation, Synchronisation, Nigeria, Legal, Framework, Alternative, Construction, Jurisprudence, Plain, Language.

1. Introduction

The language of Nigerian statutes continue to be bedeviled by tedious legal terms, terminologies and word constructions that make meaning and comprehension an endeavour only for the initiated. In this regard, Nigeria appears to be lagging behind as many jurisdictions have turned to plain English or plain language for easier comprehension of statutory language. In

America, there is a Plain English movement, which is said to have started officially on March 23, 1978. (Flesch, 1979) On that date, then President of the United States signed an Executive Order 12044 to ensure that regulations are “written in plain English and understandable to those who must comply with” them. According to him, there has been some concerted activity in enacting statutes in plain English and cites examples such as the 1974 Pension Reform Act. The Australian Parliament explored and recommended its use in 1993. (Asprey, 1996) Several other jurisdictions have followed suit. (Asprey, 1996, 31-51) such jurisdictions include Canada, New Zealand, South Africa, Sweden, Denmark and India, amongst others.

Although the Supreme Court has complained aloud about the rather unwieldy nature of Nigerian statutory language, the legislature and its draftsmen have lacked the will to put an end to decades of tradition founded on centuries of English precedent. This article assesses, amongst others, how far away Nigeria is from plain English in its adoption of a statutory language and how much further away she could be from the adoption of plain *language*.

In section II therefore, and given the need to appreciate the concept of plain language, the article embarks on the definition of relevant terminologies and a general description of plain language. Section III discusses the general principles of the technique of plain English,

particularly citing a relevant and illustrative *locus classicus*. In section IV, the article examines the pros and cons of plain English while section V discusses the current state of statutory language and the judicial reaction to it. In the next section, the credentials and potential of the Nigerian legislature both to draft law in plain English and/or do the same in plain language is examined against the background of relevant constitutional provisions. The article ends by recommending the undeniable need for the adopting of plain language in statutory drafting in Nigeria.

2. Definitions and Conceptuals

The words “clear”, “plain”, “unambiguous” on which the literal canon is dependent are often used together as a phrase and sometimes interchangeably by the courts. (Williams, 1129) This would appear justifiable going by the ordinary dictionary meaning of these words. “Clear” is defined as “easy to understand and not causing any confusion or doubt”. (Oxford Advanced Learner’s Dictionary, 2000, 200) “Unambiguous” is defined as “clear in meaning; that can only be understood in one way”. (Oxford Advanced Learner’s Dictionary, 2000, 1296) While “plain” is also defined as “easy to see or understand”, it also means “not decorated or complicated”. (Oxford Advanced Learner’s Dictionary, 2000, 886) The latter part of that definition, it is submitted, is very important in that a second, metaphoric meaning of the term “plain” is introduced. This is instructive in that it tends to corroborate Flesch (Flesch, 1979, 115) who set out to prove not only that virtually all traditional legalisms are unnecessary” but that “any kind of legalese can be translated into Plain English” and that “the superiority of “clear, unambiguous” legal language is sheer myth. He appears to mean by this that there is a distinction between “clear and unambiguous” and “plain” in that legalese may be clear and unambiguous and yet not be plain. With this background, the import of plain language would appear easier to comprehend. In other words, plain language is not only clear and unambiguous, it is also *plain*; it is unburnished and unembellished. The distinction is that legalese may yet be clear and unambiguous and yet not be comprehensible to

the ordinary ‘unlearned’ man. But when it is plain, then it is clear to both the legal technicians and the uninitiated.

Plain language has been defined as the ordinary, everyday language. (Flesch, 1979) This would appear to be wider in scope than plain English. The description “plain English” may be appropriate for a monolithic society, in which case the terms “plain English” and “plain language” tend to be employed interchangeably. However, in a society such as Nigeria with English as the official language and three other main languages, the term “plain language” begins to assume some relevance. In order words, there is such as plain French, plain Epira and plain Yoruba, to mention a few. An example of convoluted Yoruba, for instance, would be one laden with *owe* or proverbs i.e. one in which logic is concealed in proverbs. The dictionary then defines plain English as “simple and clearly expressed, without using technical language”. (Oxford Learner’s Dictionary, 886)

3. The Technique of Plain English

The idea of plain language is canvassed in order that legal documents are drafted in the same style as in regular speech and letter writing. (Asprey, 1996, 2) The idea is to meet the requirements of “the poor, semiliterate and not very bright”. (Flesch, 1979, 9) He admonishes that legal documents be written in conversational English, contractions, sentences without verbs, colloquial expressions and calls it “the kind of style that looks spoken on the printed page”. Plain language is commended therefore for speaking clearly to all classes of people. (Flesch, 1979, 10) Flesch conceded that for actual legal documents, this conversational style might not be appropriate because they may be mistaken for explanatory brochure. (Flesch, 1979, 15) In addition, such words as “don’t do so and so” tends to remove the legal effect of the terms. Instead, he recommends that instead of “don’t” the draftsman may say “do not” and, instead of “it is illegal” he may use, “it is unlawful”. As for the argument that plain language cannot be used to express complex ideas, Flesch disagrees and submits that only more hard work is needed in such circumstances. For complex subjects like math,

he illustrates with section 3(24) of the 1974 United States Pension Reform Act, which reads:

The term ‘normal retirement age’ means the earlier of – (A) the time a plan participant attains normal retirement age under the plan, or (B) the later of – (i) The time a plan participant attains age 65, or (ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

Flesch’s plain English version would read:

Your plan must fix a normal retirement age. That age must not be over 65, except for those who joined when they were over 55. For them, the normal retirement age must be fixed at 10 years after they joined. If your plan fixes an earlier normal retirement age – say 60 or 62 – it must make the same exception for those who joined less than 10 years before.

One technique Flesch advocates for the expression of complex ideas is the use of illustrations or examples. (Flesch, 1979, 71-73) One Nigerian Supreme Court decision clearly illustrates what might be the benefits of this technique of plain language. That is *the locus classicus* of *Awolowo v. Shagari & 2 Ors.* (*Awolowo v. Shagari & 2 Ors.*, 1979). In August 1979, the Federal Electoral Commission charged with conducting elections for Nigeria conducted an election into the office of the President of the Federal Republic of Nigeria. The Petitioner was the candidate for the said election under the banner of the Unity Party of Nigeria. The 1st Respondent was the candidate put up by the National Party of Nigeria. The 1st Respondent scored the highest number of votes cast in the election throughout the country while the Petitioner scored the second highest. The 1st Respondent scored at least 25% of the total votes cast in each of twelve of the nineteen states and 19.94% of the votes cast in the thirteenth state (Kano). The Petitioner scored at least 25% of the total votes cast in six of the nineteen states. The 1st Respondent was declared the winner of the elections by the electoral commission. The Petitioner petitioned to the Election Tribunal in Lagos. In issue was whether the 1st Respondent had met the requirements of

section 34A(1)(c)(ii) of the Electoral Decree, 1977, which provided:

a candidate for an election to the office of president shall be deemed to have been duly elected to such office where... (c) there had been more than two candidates – (ii) he has not less than one – quarter of the votes cast at the election in each of at least two-third of all the states in the Federation

The Petitioner sought the relief that “the 1st respondent, Alhaji Shehu Shagari was at the time of the election not duly elected by a majority of lawful votes at the election as he has not satisfied section 34(A) subsection (1)(c)(ii) of the Electoral Decree, 1977”. The petition was dismissed.

On appeal to the Supreme Court, as to the correct interpretation to be given to the section, the issue was whether a state as a geographical entity could be fractionalised such that two-thirds of nineteen States would be twelve two-thirds rather than thirteen States. The Supreme Court held that the 1st Respondent had fulfilled the requirements of section 34A(1)(c)(ii) of the Electoral Decree in that the provision referred to the votes cast at the election in a State and not a State as a geographical land mass. Given that interpretation, the Court held, two-thirds of nineteen amounted to twelve two-thirds and that the winner was only required to score one-quarter of two-thirds of the votes in the thirteenth State.

Having noted that the words of the subsection were “clumsily drafted” Fatai-Williams CJN also came to the conclusion that the words were “plain enough”. (*Awolowo v. Shagari & 2 Ors.*, 1979, 101) This latter phrase would appear to be relative. This raises the question whether those words, drafted in legalese as they were, could be plain. Admittedly, the concept which is the subject matter of that subsection is indeed a difficult concept to draft because it attempts to legislate a formula that will endure even in the face of an increase in the number of States. It is no wonder then that the legislator has had two subsequent opportunities to amend it but has failed to. The provision was retained in the 1989

Constitution but fortuitously this coincided with a period when the number of States in the Federation was twenty one, two-thirds of which was the round figure of 14. But with the further creation of States, which brings the Federation to thirty six States in addition to the Federal Capital Territory, which, for the purpose of the election, also counts as a State, the problem of fractionalisation remains with the retention of the provision in the 1999 Constitution. The provision is now reproduced in sections 133(b), 134(1)(b) and 134(2)(b) of the 1999 Constitution. The implication is that this issue will continue to rear its head. It appears, however, that the solution may lie in this technique. As a solution, Fatai-Williams C.J.N suggested that a clause might be added clarifying the provision. He distinguished the provision in issue from paragraph 39 of Table C of Schedule 1 of the Companies Decree No. 51 of 1968 as follows, “After providing in the said paragraph that one-third of all the directors for the time being shall retire from office at the first annual general meeting of the company, the paragraph went on to say that – “if their number is not three or a multiple of three, *then the number nearest to one-third shall retire from office*” (italics mine). (*Awolowo v. Shagari*, 1979, 101-102) There is no evidence that this option was ever subsequently considered. It appears however that a more pragmatic solution is for the legislator to consider redrafting the provision in plain English. While accomplishing this in plain English is equally difficult (in the sense that since a formula is involved, one cannot state categorically 13 or 122/3 – the benchmark may shift with the creation of more or reduction of states) the use of illustrations should permanently resolve the problem. The legislator is at liberty to use examples such as indicating expressly what two-thirds of particular numbers in the context is in each case.

4. Further Benefits of and the Case Against Plain Language

There are further advantages in drafting legislation in plain language. It is said that it improves comprehension while making communication more effective. (Asprey, 1996, 58) He adds at page 19, that from his experience,

it is apparent that “there is not only a difference in style but there are also many minor changes that clarify what is said, make it sharper, more specific and – a point lawyers are interested in – more enforceable”. The implication of this is that it saves the time it would have required to read, assimilate and apply the law. (Asprey, Plain Language for Lawyers, 55) It is submitted that a necessary by-product of this is that it should minimise litigation. It appears that lack of clarity in statutory language encourages litigation although some might equally argue that lack of clarity discourages litigation. In other words, that when legislative language is muddled, litigation becomes even more a gamble that the aggrieved would not take a risk on. In addition, the courts have been enjoined to interpret statutory words in their plain, natural, ordinary, unambiguous meaning. (Ogbu, 2002) Perhaps in realisation that the language of a statute must correspondingly be plain and ordinary (i.e. this is meant to be complimentary of the requirement that words be construed in their plain, ordinary meanings), other jurisdictions (examples of which are given in Section I of this work) have begun to explore and apply the use of plain language in drafting legislation.

One of the problems usually raised is that the piece of legislation becomes longer. Asprey argues that sometimes plain language can be longer than a document written in what he calls “legalese” but that it is often due to additional explanation in order to convey complex and technical concepts. (Asprey, 1996, 14) Because if we consider that “spouse” is not plain enough and should be replaced by “wife or husband” (Flesch, 1979, 55-56.) in plain English, that should make legislation longer. While it is suggested that the word “spouse” is plain enough, (although the advent of homosexuality, bi-sexuality, transsexuality and same sex marriage, may require the word “spouse” to be adapted to context, the same fate appears to befall the descriptions “husband” and “wife”). Flesch nevertheless demonstrates that verbosity, wordiness and long-windedness is not necessarily the consequence of plain speaking, and that in many cases, drafts in plain language are actually shorter than drafts in legalese. He

makes an example of a one hundred and thirty-seven (137) worded legalese laden clause, which he translates into the following twenty seven plainly worded one:

“If you miss even a single payment, we can cancel this contract and keep all the money you’ve paid us. You’ll lose all your rights”.

The most valid argument against plain language, it would appear, is that it does not have the appearance of the force that the law should have. (Flesch, 1979, 32) When a law is phrased in terms such as “A person should not ...”, it carries the appearance of an advisory comment, not a punishable lapse when breached. The answers to this, it is submitted are: First, the argument belies the whole essence of plain language: that every concept be explained in language that is understandable by its recipients. If the legislator intends that a particular clause drafted in permissive words are mandatory, he is at liberty to expressly state the fact in clear words without reference to “shall”. Secondly, the general principles of interpretation have evolved over a period of time. For instance, the principle by which certain words and phrases came to be regarded as conjunctive and others disjunctive evolved over a period of time. Section 18(1)(3) of the Interpretation Act, Cap. 123 Laws of the Federation of Nigeria 2004, for instance, prescribes that the words “or” and “other” in a statute must be read disjunctively. There is, of course, the golden canon principle that word such as “or” that is clearly disjunctive, may be read as conjunctive and *vice versa*. (Ohanlyere & Ors. v. I. G. P., 1957, 216-217) The implication is that there may be a need to usher in a revision of these principles in line with the newer reality of plain language. In this exercise, therefore, caution is an imperative in order that revision does not result in taking plainness away from plain words and actually result in a return to legalese because hitherto plain words begin to require interpretation and hitherto plain sentences begin to require construction Third, a purposive approach to interpretation of statute drafted in plain language would negate this argument.

The issue is, what the implications are for a country like Nigeria?

5. The Antiquity of Nigerian Legislative Language

English is a second language yet it is the official language in Nigeria (Aito, 2008) and therefore the language of the law. Wagner states that as such, “all statutes, agreements, bills, and bye-laws are written and interpreted in English” (Wagner A, 2008, 225). However, section 55 of the 1999 Constitution now provides that the language of the National Assembly shall be English, and when adequate arrangements have been made, Hausa, Ibo and Yoruba languages. Under section 97, the language of a State House of Assembly shall be English but the House may by resolution adopt any language in use in the State in addition.

The main languages are Hausa, Igbo and Yoruba while there are all about two hundred and fifty other languages. (Languages and Intro, 2008). It adds that “there are however, over 300 dialects, both within the main languages, and across them” Nigeria was colonised by the British, for whom English language is the official language and which was passed down to Nigeria on attainment of independence on October 1, 1960. This fact means that the understanding of English language is different from English as spoken in England. (Awobuluyi, 2009). It refers to this as recurrent, “mostly mother-tongue induced kind of ... error . This is quite apart from the fact that the English language is sometimes a complex language in which the plural of the word “goose” is “geese”, while the *pervasive* plural of the word “mongoose” is “mongooses”. In rare use, the plural is “mongeese”. Worse still, the plural of the word “moose” is not “meese” but ... “moose”. In many indigenous Nigerian languages, it is impossible to find this singular-word plural. “Ducks” would interpret as “pepeye oruru” i.e. many *pepeye* or many *duck* in Epira language, for instance. To emphasise that the ducks are many in the extreme, the speaker might say “pepeye *tuturutu*”. If ducks were grains, he might say “pepeye *daudau*”.

Being a second language has many implications for the English language in Nigeria. One is the corrupted English language version spoken by many called “pidgin” or “broken” English.

Another is the tendency for Nigerian English speakers to directly translate their dialects into the English language and speak them as such. One good example is the Ebira sentence “Maa ve”, the Yoruba sentence “Mo mbo”, the Igbo sentence “Inna bia” or the Hausa sentence “Inna zuwa” which all translate to “I am coming” in English language. In pidgin this would be “I dey come”. In each instance these words are actually spoken by persons who are departing a place rather than arriving it perhaps to indicate the English “Just a minute”. If these words were uttered on phone to someone, it would probably mean “wait for me; I am on my way” but when uttered to someone right in front of one, it actually means “I am leaving”. The Ebira words Jeezimi” or the Yoruba “Duro de mi” which both mean “Wait for me” might have been more appropriate and are in use but the former group appear to be in even more popular use. An Englishman would not say “I am coming” unless he was coming.

A second example is imperative. There is no difference between the words “borrow” and lend in the local languages as we know it in the English language the Yorubas say “E ya mi ni ...” and the Ebiras say “Rere mi”. The words “rere” and “ya” mean both “borrow” and “lend”. Thus a substantial percentage of the population finds it convenient to say “Borrow me your book” when an Englishman would have said “Lend me your book” or “May I borrow your book?” Every Nigerian, even those who appreciate that it is grammatically incorrect, understand that “Borrow me...” means “Lend me...”. It is submitted that these become the common public understanding of these words in Nigeria. A not too dissimilar example is the decision of the Supreme Court (*Paterson Zochonis & Co. Ltd v. Gusau & Anor.*, 1962) relying on the dictionary meaning of the word “illiterate” to mean a person who neither reads nor writes in any language. The common public understanding of the word in Nigeria would appear to be of one who neither reads nor writes in English language. It is suggested that these peculiar differences ought to be factored in statutory drafting and construction in Nigeria. It is also suggested that the word “illiterate” for instance could have been replaced with the plain language equivalent, “persons who cannot read

or write in any language” in order that the law is effectively communicated.

However there is a peculiar problem in other countries such as Nigeria where the courts are still required to construe words in their plain, natural and ordinary meaning, but where there is no corresponding requirement for the legislature to enact legislation in plain language as distinct from legalese. As such, Nigerian statutes are still laden with legalese. The latest compendium of the Laws of the Federation of Nigeria 2004 has retained the old statutes all drafted almost entirely in legalese. The Corrupt Practices and Other Related Offences Act 2000, the Pension Reform Act 2004 and the Public Procurement Act 2007 all also show that legislation in Nigeria is still largely drafted in legalese. For instance, section 4 of the Pension Reform Act 2004 contains such language, amongst others, as “A holder of a retirement savings account upon retirement or attaining the age of 50 years, whichever is later”, “the balance standing to the credit of his retirement savings account”, “programmed monthly or quarterly withdrawals calculated on the basis of an expected life span”, “annuity for life purchased from a life insurance company”, “a lump sum from the balance standing to the credit of his ...”, and “the amount left after that sum withdrawal shall be sufficient to procure an annuity or fund programmed withdrawals that will produce an amount not less than 50% of his annual remunerations as at the date of his retirement”.

The Supreme Court has acknowledged that such antique and complex language results in problems during the course of interpretation. This difficulty has been highlighted by the Court (*Associated Discount House Limited v. Amalgamated Trustees Ltd.*, 2006) where the Court was confronted with construing section 22(3) of the Federal High Court Act “notwithstanding anything to the contrary in any law, no cause or matter shall be struck out by the High Court of a State or of the Federal Capital Territory, Abuja on the ground that such cause or matter was taken in the High Court instead of the Court, and the judge before whom such cause or matter was brought may cause such cause or matter to be transferred to the appropriate judicial division of the Court in accordance with such rules of court as may be in

force in that High Court or made under any enactment or law empowering the making of rules of court generally which enactment or law shall by virtue of this subsection be deemed also to include power to make rules of court for the purpose of this subsection". Acholonu JSC observed with reference to the above:

"... the wordings (sic) of this subsection is suffused with alliterations, use of cryptic words which concealed and veiled the meaning intended thereby making it seemingly difficult to decipher. I would here refer to what Thomas Jefferson said of boundless tautology in the wordings of statutes generally, 'statutes which from their verbosity, their endless tautologies, their involution of case within parenthesis, and their multiplied efforts at certainty by saids, afore-said, by or and, and to make them more plain do really render them incomprehensible not only to common readers but to the lawyers themselves'".

It is submitted that the risk of ambiguity and lack of clarity is higher when the language is not plain.

Unlike in other jurisdictions, however, there appears to be little or no writing of a legal nature on the subject of plain English or language in Nigeria.

Though plain language has not yet been adopted in our legislations, it is not a concept that is entirely absent in Nigeria. While the illustrations that accompany Richardson (Richardson, 1963) do not come within the legislation and are offered only as guides by the author, it is a good instance of use of illustrations as suggested by Flesch. (Flesch, 1979, 73) It is suggested that Nigerian legislatures may take a hint from this example in enacting statutes. Plain language is also already frequently adopted in flyers used by corporate bodies such as banks to advertise their products. The Ecobank leaflet advertising its Debit Card facility is done mostly in plain language. But some have been more successful than others. The Apt Pension Funds Managers Limited leaflet on Frequently Asked Questions on the new Pension arrangement while plain enough is not helped by the legalese adopted by the Pension Reform Act 2004.

A pertinent issue is why the Nigerian legislature has refrained from adopting the principles of plain language in enacting legislation. It is true

that statutory words are eventually crafted by legislative aids. It is also true, however, that no legislation eventually becomes operative without the stamp of approval of the legislature. Bearing this in mind, the question arises whether the legislature has the capacity as separate individuals but eventually as a group to *approve* legislation. Given the educational qualifications required of a legislator, what chance does he have to sufficiently scrutinise enactments before approval? Would the educational requirements synchronise better with legalese or with plain language?

6. The Nigerian Legislature as Lawmaker: Legalese or Plain Language?

The competence of a legislature to adequately discharge the responsibility of lawmaking is invariably a germane issue in a situation in which its laws are to be interpreted, not only in the light of parliamentary intention, (Doherty, 2003) but also in the light of the language employed by it. (*Cotecna v. Ivory Bank*, 2006) The question is – given the constitutional provisions setting out the educational requirements which are a pre-requisite for vying for seats in the legislature and, given the complex and technical subjects over which legislatures exercise jurisdiction, can it be argued that they are educationally equipped for the function? Under the 1999 Constitution of the Federal Republic of Nigeria, the only educational requirement for election into the Senate, the House of Representatives and the Houses of Assembly of the States is that the candidate "has been educated up to at least the School Certificate level or the equivalent". Section 65(2)(a) in the case of the National Assembly and section 106(c) in the case of the State legislatures. Interestingly the Constitution of the United States makes no provisions relating to the educational qualifications of its Senators and Congressmen. However given the high level of literacy and of technological development and the fact that English language is the original language of the United States, the same standards may not be applied to Nigeria whose people speak indigenous languages other than English language. Secondly, if section 318(1)(d)

gives the Independent National Electoral Commission unfettered powers, what is the logic in laying down a qualification at all? The dimensions and implications of these provisions are many. In the first place, there is no requirement that the candidate has passed his School Certificate examinations. This is against the background that the standard of education in Nigeria has fallen to very low levels. (Olorode, 2007). Olorode based his conclusion on government policy, grossly inadequate funding, charging of fees, privatization, deregulation of educational facilities and corruption amongst others sums up, “Even in the specific case of public education, the primary and secondary Departments are virtually demolished...” The Constitution proceeds to define the words “School Certificate or its equivalent” (Section 318(1) thereof) to mean:

- (a) a Secondary School Certificate or its equivalent, or Grade II Teacher’s Certificate, the City and Guilds Certificate; or
- (b) education up to Secondary School Certificate level; or
- (c) Primary Six School Leaving Certificate or its equivalent and –
 - (i) service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years; and
 - (ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year; and
 - (iii) the ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission; and
- (d) any other qualification acceptable by the Independent National Electoral Commission Flesch, (Flesch, 1979, 105) calls the language used in the section “shredded English”.

The above definition has raised several issues. The first relates to the shortfall in the above definition with particular reference to the precision of the term “Secondary School Certificate”. Nigeria’s secondary school system is run in two tiers – the Junior Secondary School tier and the Senior Secondary School tier. (Federal Government of Nigeria Country Report to UNESCO, 2001) It raises the question to which does the term “Secondary School Certificate” refer? It is submitted however that the issue would appear to require the application of the *ejusdem generis* rule by reference to the status of the Grade II Teacher’s Certificate and the City and Guilds Certificate both of which certificates were hitherto the equivalent of the West African School Certificate in that they qualified the holder to proceed to tertiary institutions. In the light of conferring capacity to proceed to tertiary institutions, the present Senior Secondary School Certificate, rather than the Junior Secondary School Certificate, would appear to be the equivalent of the Grade II Teacher’s Certificate and the City of Guilds Certificate. Also instructive is the fact that paragraph (d) appears to give the Independent National Electoral Commission absolute discretion to accept any other qualification it deems fit. It is submitted that because it is clumsily drafted, it is unclear whether paragraph (d) is an additional requirement to those set down in paragraphs (a), (b) and (c) or whether it empowers the Commission to gloss over those other requirements and recognise any certificate it deems fit. This is premised on the function or status of the word “and” at the end of paragraph c(iii). It is submitted that it is another instance of bad drafting in that it is difficult to determine whether it should be read conjunctively or disjunctively. Read disjunctively it appears to give the Independent National Electoral Commission unfettered powers. Read conjunctively, it would appear that (d) was misnumbered and should have been numbered c(iv) to make it additional to c(i), (ii) and (iii). It appears that the latter results in internal disharmony within the provision. (*Ebiri v. Board of Customs and Excise*, 1967, 35) It would appear therefore that the most reasonable way to carry out the legislative intention would be to read it as “or” to give the Commission

unfettered powers. This, it is submitted, is the purport of the golden canon, which may be employed to straighten out cases of internal disharmony. (*Ebiri v. Board of Customs and Excise*, 1967, 35) Given the loose nature of the drafting, there can be little doubt that the intent of the draftsman was to give the Commission wide discretionary powers.

Furthermore, there is no specification in the Constitution that legislators must pass English language, the language in which they make legislation neither is there any specification that they be experts in the English language, much less in plain English. The only requirement that the candidate should have the ability to read, write, communicate and understand the English language to the subjective satisfaction of the Independent National Electoral Commission relates only to those persons who hold only a Primary Six School Leaving Certificate or its equivalent (see section 318(1)). There is no requirement of specific technical skills before election into legislatures. In the composition of committees, this is also not a requirement. Ahmadu says (Ahmadu, & Ajiboye, 2004, 28) lawmaking requires expertise and professionalism. For this reason, a Committee is better equipped to scrutinize the technical details of a legislation. While this may be so, it is dependent on whether membership of the Committee has been carefully selected. As such, besides the fact that educational requirements may be low, there is also the question of a lack of expertise on the part of the legislators in many instances. This perhaps is one of several reasons why legislative draftsmen are so indispensable to legislative work (*The Legislative Draftsman in a Small Jurisdiction*, 1993) and why it is said that arriving at parliamentary intention is difficult because legislators often pay little attention to the details of legislation and are rather satisfied with the general frame of statutes. (Doherty, 2003) It is submitted, however, that the issues that arise in court are usually specific ones between two or more sides rather than general issues. (Doherty, 2003) Appropriately, section 55 of the Constitution, yet another less than plainly worded provision, provides that the “business of the National Assembly shall be conducted in English, and in

Hausa, Ibo and Yoruba when adequate arrangements have been made therefor”. The question is – what do the words “when adequate arrangements have been made therefor” regulate? Is it English language? Or each of Hausa, Ibo and Yoruba? Or do they regulate each of all the four aforementioned languages? It is easy to say the use of the comma after the word “English” and the use the word “and” after the aforesaid comma *implies* that the words defines when only the three indigenous languages may be put in use. The question is – would it not have simply made more sense to have simply relocated the aforesaid words i.e. “when adequate arrangements have been made therefor” to the space between the words “and” and “in Hausa...” so that the words would simply have read, “business of the National Assembly shall be conducted in English, and, when adequate arrangements have been made therefor, in Hausa, Ibo and Yoruba”. It is clear that those words were meant to regulate the three indigenous languages. This is because all it requires, in the information and communication technology realm, amongst others, to employ the use of the English language appear to be already in place.

More importantly, however, Nigeria’s constitution makers, in their commendable wisdom and coherence, coterminous with the aforesaid provisions for low minimum educational requirements for membership of the National Assembly, also enacted the aforesaid section 55. Unfortunately, it does not appear that any measure has been undertaken to realise this provision. These measures may involve the design of whole new computer programmes and application, not to mention the employment of expert interpreters in a setting in which many Nigerians (including the legislators themselves) are not competent speakers of their mother tongues. This means that until what is required to put the indigenous language clause into effect is done, the language of the Legislature would appear to continue to be the English language. Against the foregoing background and also the fact that law making constitutes a part of the “business”, it is instructive to scrutinise the law making powers of the Nigerian legislature. The functions of the National Assembly are enumerated in the sixty-eight items of Part I of

the Second Schedule and include, amongst others accounts of the Government of the Federation (Item 1), arms, ammunitions and explosives (Item 2), awards of national honours, decorations and other dignities (Item 4), banks and banking, (Item 6) creation of states (Item 14), defence (Item 17), all elections under the Constitution save elections to the local government councils,(Item 22) external affairs (Item 26), implementation of treaties relating to any matter under the List (Item 31), legal proceedings between governments (Item 35), the military (army, navy and air force), (Item 38) mines and minerals, including oil fields, oil mining, geological surveys and natural gas (Item 39), the police and other government security agencies established by law (Item 45), regulation of political parties (Item 56), stamp duties (Item 58), taxation of incomes, profits and capital gains (Item 59), the establishment and regulation of agencies to promote the attainment of the fundamental objectives and directive principles of state policy(Item 60), the establishment of political divisions of the country and municipal organisations; the powers of the National Assembly itself (Item 47), amongst others. The National Assembly, under Item 66, also has legislative authority over “any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of” the Constitution. Looking at the other parts of the Constitution this would include the annual enactment of the national budget (section 59(1) and (2) and 80 of the Constitution); the registration of voters and the procedure regulating elections to a local government council, (Item 11 on the Concurrent Legislative List as disclosed in Part II of the Second Schedule) regarding certain questions as to persons who may apply to an election tribunal for the determination of any question as to the validity of a person’s election to the National Assembly, whether the tenure of a person has ceased, whether the seat has become vacant and the practice and procedure of the election tribunals (section 79). Item 68 gives it authority over “any matter incidental or supplementary to any matter mentioned elsewhere” in the list. Both provisions are referred to as “the omnibus provisions” by Niki Tobi J.S.C. (*Federal Republic of Nigeria v. Anache & Ors.* 2004, 140,

198). The Concurrent Legislative List contains subject matters such as allocation of revenue (Item A), antiquities and monuments (Item B), collection of taxes (Item D), electoral law (Item E), electric power (Item F), industrial, commercial or agricultural development (Item H), scientific and technological research (Item I), trigonometrical, cadastral and topographical surveys (Item K) and university, technological and post-primary education (Item L), amongst others. The imperative issues are many. Two will be addressed. The first may be presented in the form of a question - does a School Certificate, though the minimum requirement, prepare a lawmaker sufficiently for comprehending these complex subject matters,(Motiwal, 1979) let alone ascertaining that the plain English draft confronting them is representative of their comprehension and resolutions of these subject matters? This requires a little exposition.

The impact of this seeming deficiency in our constitutional provisions regarding low qualification requirements may be assessed by reference to certain parameters. One of the parameters for adhering to an authority’s direction, according to one jurist (Marmor, 1994), is the “normal justification process”, the presumption that the authority “is likely to have better access to the right reasons bearing on the issue than its alleged subjects” (Marmor. 1994). Marmor calls this calls this the “the expertise normal justification process”. There is the question whether the legislators can be presumed to have better access if they lack the capacity to appreciate the issues better than their constituency. He adds however that sometimes it is enough to show only that the authority is “better placed than its subjects to make the pertinent decision” and that this latter one is the typical one available for solving coordination problems. Marmor call this the “co-ordination justification thesis” In his view, no expertise is required here. But he adds:

When one’s reasons for acknowledging the authority of another are based on the assumption that the authority is more likely to have a better access to the right reasons bearing on the pertinent issue, it would typically be most sensible to take the authority’s intentions into account when his directives require

interpretation...On the other hand, if one's reason's for complying with an authority's directives are based on the co-ordination thesis, there is no need to presume the person in authority to be an expert in the pertinent field. Hence there does not seem to be any particular reason to defer to the authority's intentions in order to solve interpretative questions as *ex hypothesi*, the person in authority was not presumed to have a better access than the subjects themselves to the reasons on which they should act. (Marmor, 1994, 178)

Thus, though a legislature may take umbrage in the fact that it requires no expertise or peculiar knowledge for its work, the implication of that is that there should be no necessity to refer to its intention in interpreting its statutes.

The second issue may also be expressed in the form of questions – of what use is the indigenous languages clause contained in section 55 in the face of the complex matters contained in the legislative lists? What are the chances at all that they can be expressed in plain *language* e.g. Ibo given the earlier intimated difficulties with converting from and into the various indigenous languages? If legislators, owing to possible low educational standards and a lack of expertise, may not comprehend legislative drafts because of legalese, would it not be easier for them to comprehend drafts prepared in plain English? Would their better comprehension of legislation not better aid conveyance of legislative purpose? Would the people not stand a better chance of benefiting from social engineering if the peoples' representatives understood better the complexities contained in executive bills drafted in legalese?

Based on the foregoing, it may rationally be submitted that Nigerian legislatures, as configured by the Constitution, are peculiarly ill equipped for the task of law making and that its language, plain or legalese, may not rationally be trusted as the fulcrum of the interpretation exercise. The foregoing arguments form the premise on which one may suggest that intentionalism may not be a viable approach to statutory construction and that a more functional option may be a more rational approach, perhaps purposivism.

7. Concluding Remarks

There would appear to be a need to draft laws in plain English particularly in Nigeria (see section 4 of this article) where the level of literacy is low (Igbuzor, 2006) because it is more likely to communicate the requirements of the law to the citizen more effectively. This appears to be a neglected aspect of Nigerian law at the moment considering that it raises the question of the citizen's right to know the law to which he is subject. On the one hand, ignorance of the law is not an excuse. On the other hand, there is no constitutional requirement under sections 58, 59 and 100 of the 1999 Constitution for laws to be published before they are effective. In this regard, it appears that it helps foster the new ideal of the right to know. The September 23, 2006 Lagos Declaration on the Right of Access to Information arose from the Regional Workshop on Freedom of Information in Africa, which was organised by Media Rights Agenda (MRA) in collaboration with the Open Society Justice Initiative (OSJI) admonishes public bodies to maintain and manage records and that the "information should be current, clear, and *in plain language*" (emphasis added). The interconnection could not be more plain. Secondly, though plain English may not be effective enough to recommend the literal canon, it makes legislative purpose more easily discernible. This is important because the need to discern legislative purpose is not singularly for the courts. If there is to be public order, it will be better to facilitate the means of discerning intent for the ordinary citizen. (Wagner, 2008, 225) This is evidently more attractive than for a party to arrive in court to belatedly find out that, contrary to his premeditation, he has not acted within his entitlement or, to adopt a cliché, his stable door was slammed shut after his horse had bolted.

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