



**THE NEED FOR FURTHER AMENDMENT TO THE
1999 CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA IN ORDER TO
REINVIGORATE ENTREPRENEURSHIP SPIRIT IN
THE CITIZENS.**

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ABSTRACT

It is said that entrepreneurship is about utilization of idle time but such opportunity is not available to the teeming population of Nigerian public officers. The fifth schedule of the 1999 constitution makes provision that deprives public officers the right to utilize such idle time except on farming. The said provision has to a great extent hampered the growth of entrepreneurship spirit in civil servants with experiences and zeal to make good use of their idle time. The wisdom that prompted the legislature to insert the said provision in the Constitution might be germane and convincing but whatever is the reason, it is quite important to revisit the provision in the light of the present Government's desire to encourage entrepreneurship development. Consequently, this work suggest an amendment to aforementioned 5th schedule to the 1999 constitution of the federal republic of Nigeria (as amended) and other legislations that limit the sprit and growth of entrepreneurship.

Keywords: *Amendment, constitution, entrepreneurship, public officer.*

INTRODUCTION

To understand the concept of entrepreneurship one has to consider certain terms from the perspectives of economy sociology, and business. The term is associated with creation of new opportunities by taking risk. Ronstadt (1984) defined entrepreneurship "as the dynamic process of creating incremental wealth" The wealth is created by individuals who assume the major risk in terms of equity, time, and/or carrier commitment or provide value for some products or services. The product/service may or may not be new or unique but the entrepreneur must somehow infuse value by receiving

and allocating the necessary skills and resources”. Hisrich Paters and shepherd (2008) view entrepreneurship as the process of creating something different with value by devoting the necessary time and effort, assuming the accompanying financial, psychic and social risk and receiving the resulting rewards of monetary and personal satisfaction and independence.”

Entrepreneurship can therefore be defined as a means by which individuals, group or firm pursue opportunities without regard to the resources they control at the moment. While an entrepreneur is one who brings resources, labour, materials and other asset, into combinations that make their value greater than before and also as one who introduces changes, innovations and a new order.

On the other hand, the word constitution has been variously defined by writers and authors of the subject like most concept therefore, the word constitution defies a single definition owing to the different perception of it. The truth of how perceptions colours ones understanding of the concept is interestingly offered in the example of how five blind men whose ambition to see an elephant could be achieved only by touching the different parts of the elephant. And therefore describes it from the angle they touched.

According to Hood Phillips (1978) the word, constitution is used in two different senses. The abstract and the concrete sense. In the abstract sense, he said it is the system of laws, customs and conventions which defines the composition and power of organs of the state and regulates the relationship of the various state organs to one another and to the private citizen. In the concrete sense, a constitution is defined as the document in which the most important laws of the constitution are authoritatively ordained.

According to P.A.O. Oluyede (1992) a constitution is an expression whether in documentary form or unwritten of legal principles, rules, laws and in some cases, conventions or customs in accordance with which a country is governed and by which its citizens are bound thus, the general writers consensus therefore is that a constitution is that supreme law of the land, which defines the structure of the organs of state and the relationship between these organs with one another on the one hand and with citizens of the state on the other.

AMENDMENT: According to Oxford Advance Learner’s Dictionary 9th Edition; amendment means, a small change or improvement that is made to a law or a document the process of changing a law or a document. Also in the **SPDC NIG. LTD. VS. EDAMKUE & ORS (2009) 8-9 NMLR PG278.**

@284 R: 14. The supreme court of Nigeria has interpreted amendment to mean substitution.

Notwithstanding the foregoing, the need for utilization of idle time to create and generate wealth especially among millions of Nigerian civil servant cannot be overemphasized, given the daily demands for salary increment and complaint of lack of adequate welfare by the various labour organizations. The take home pay of an average Nigerian worker cannot as a matter of fact takes him home. However, by the nature of Nigerian civil service Rules. And regulations, a civil servant is mandated to work at least eight hours every five days a week and go back to his home or use the remaining hours for farming activity if he's interested in one.

LEGAL IMPLICATION OF PUBLIC OFFICERS ENGAGING IN ANY OTHER BUSINESS RATHER THAN FARMING.

It is important to note that, by the extant provision of paragraph 2(b) of part 1 fifth schedule to the 1999 constitution of the Federal Republic of Nigeria (as amended) a public officer is precluded from engaging in any private business profession or trade except farming.

The paragraph provides thus;

2. Without prejudice to the generality of the foregoing paragraph, a public officer shall not;

(b) "except where he is not employed on full time basis, engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.

In addition to the above, disciplinary measures are provided in both the constitution and public service regulations of the federal Government of Nigeria and of the states for engaging in business in one way or the other.

For instances, paragraph 12 of the fifth schedule, Constitution of the Federal Republic of Nigeria (supra) provides as follows;

"Any allegation that a public officer has committed a breach of or has not complied with the provision of this code shall be made to the code of conduct Bureau."

It is important to note here that, upon the complaint to the code of conduct Bureau, the Bureau has a duty to investigate the allegation and if the Bureau is satisfied that a prima facie case is established against the public officer, it

will then refer the case to the Tribunal for prosecution. See the case of **AHMED VS. AHMED (2013)12 (pt. 2) SCM page 55.**

However, where the code of conduct Tribunal finds a public officer guilty of contravention of any of the provisions of the code, it shall impose upon the said officer any of the following punishments;

- a. Vacation of office;
- b. Disqualification from the holding of any office for a period not exceeding ten years; And
- c. Seizure and forfeiture to the state of any property acquired in abuse or corruption of office. See paragraph 18(1)-(2) of the 5th schedule to the Constitution of the Federal Republic of Nigeria (supra).

Most importantly, in the event the code of conduct Tribunal gives a decision as to whether or not the public officer is guilty of contravention of any of the provisions of the code, a right of appeal exists from such decision to the court of appeal. See paragraph 18(4) of the 5th schedule (supra).

It is not in doubt that a creative person in an employment whose idea is rejected by his employer may decide to satisfy his creative need. He may decide to do so, using his idle time. The provisions of the constitution of Nigeria (supra) cited above, have to be removed or made amendable for such a public officer or civil servant to legally engage in any entrepreneurship activities.

CONCLUSION AND RECOMMENDATION

In the light of treatise above, the following recommendations are advocated;

1. Further amendment to the 1999 constitution of the federal republic of Nigeria (as amended) particularly part 1 fifth schedule paragraph 2(b) thereof.
2. Allowing the public officers to engage in entrepreneurship activities will significantly help to curb corruption in the services most of which is fueled by the inadequacy of their take home pay.
3. A lot of public officers' have expertise and enough time to utilize the said expertise outside their offices but couldn't do so for fear of breaching the law.
4. Removing the provision or amending same will give public officers the needed impetus for them to further contribute to the growth of the Economy.

5. Unless the 5th schedule is amended, government advocacy and mobilization towards reinvigorating entrepreneurship spirit in the citizens will remain but a mirage and elusive.

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