

**THE IMPLICATION OF EXECUTIVE ORDERS ON SEPARATION OF
POWERS: A REVIEW OF THE JUDGMENT IN AG ABIA STATE & ORS V.
AGF (2022) LCN/4988(SC)***

**NANSAT STEPHANIE OMOAREBU*
&
BILKIS S. LAWAL-GAMBARI****

ABSTRACT

The power to make laws to regulate the affairs of the nation is constitutionally given to the legislature in section 4 of the Constitution. However, some instances call for the need of the President to give out some orders for the maintenance and execution of the Constitution and other pieces of legislation. Making these orders usually calls for some subtle form of making laws without the legislature's input. Therefore, this paper aims to examine the nature and effect of Executive Orders on the Concept of Separation of Powers. The core objectives of the paper are to examine the nature and effect of Executive orders on the legislature's inherent powers to make laws, to review the case of AG Abia State and ors v AGF in which the Supreme Court gave ample explanation as to the extent of powers granted to the Executive in section 5 of the Constitution. The paper adopts the doctrinal methodology and relies on primary and secondary source materials that have been referenced. The paper finds that the use of Executive Orders in itself is not necessarily bad, however, where the executive makes orders that overreach its powers, then the legislature and the judiciary can intervene and, in extreme cases, declare the order unconstitutional. The paper therefore recommends an alteration of the Constitution to properly define the extent of executive orders and a proper orientation on the use, effects, and implications of executive orders be provided for the executive.

Keywords: Executive Orders, Separation of Powers, President, Legislature.

1.0 INTRODUCTION

It is not uncommon to see Presidents in countries around the world that practice presidential systems, such as Nigeria, issuing executive orders. The President issues such orders to agents and agencies of the executive branch to manage operations of the federal government. These orders may set out government policies, issue directives or command action relating to functions of the executive arm¹. Executive orders by their innate nature have far-reaching

* LLB, BL, LLM (IN VIEW), Research Officer, National Institute for Legislative and Democratic Studies, National Assembly, Abuja, 08144801306, Gunatnansat@Gmail.Com

** LLB, BL, LLM, PHD (IN VIEW), Senior Research Officer, National Institute for Legislative and Democratic Studies, National Assembly Abuja, 08144170974, Balkisahoeifa@gmail.com

¹ Okebukola & Kana, "Executive Orders in Nigeria as Valid Legislative Instruments and Administrative Tools", *African Journals online* Vol. 1 <<https://www.ajol.info/index.php/naujilj/article/view/136320/125810>> accessed on the 18th July, 2022.

implications, as they are not just administrative directives. Owing to this, many of these orders issued by the executive arm have been subject to abuse with constitutional implications that either trample on individual rights or undermine separation of powers.² In essence, the powers of the executive arm to make executive orders should be regulated as there is the tendency of delving into the law-making powers of the legislature. The exercise of such executive powers should be within the ambits of the law and not in a way that seeks to override the powers of other arms of government as properly set forth by the Constitution of the Federal Republic of Nigeria, 1999.

This paper seeks to examine the essence, extent, and validity of executive orders, vis-à-vis separation of powers. This paper utilizes Executive Order No 10 analyzed in the case of *Attorney General of Abia State & ors v Attorney General of the Federation*³ to highlight the fact that an executive order can be a tool for law-making in the hands of the executive which is not in tandem with the principles of separation of powers.

Although the Constitution does not expressly provide for executive orders, however, the legality of the use of executive orders can be inferred from specific sections of the Constitution which provide for broad executive powers conferred upon the President and State Governors. From the wording of these relevant sections, the power to give these orders can be implied to facilitate the execution of their constitutional duties. Section 5 of the Constitution provides that the President and the Governors shall be charged with executive powers which may be exercised directly or indirectly, to ensure the maintenance of the Constitution and all laws made by the National Assembly or the State Houses of Assembly respectively.⁴ In the light of this, the constitutionality of executive orders is therefore not in question. However, the use of Executive Orders by the Executive Head raises concern where it is intended to make laws, this is because law-making is ordinarily within the scope of the legislature while the executive is empowered to implement those laws made by the legislature. This paper finds that except the Constitution is altered to expressly provide and also state clearly the scope and application of executive orders, it may serve as a leeway for the executive arm to indirectly make laws which is contrary to the principle of separation of powers thereby opening a floodgate of judicial exercise where the courts would be approached all the time to determine the issues.

The doctrine of separation of powers is also featured in the CFRN, 1999, to prevent the arbitrary use of power by any of the three arms of government. The provisions of one arm not dominating or performing the functions of any other arm of government in order to curb excess powers is enshrined in sections 4, 5 and 6 of the Constitution. Although the principle of separation of powers is essential, it is also important to note that there is no water-tight or complete separation of powers. For instance, the legislature takes part in the domestication of treaties that has been entered into by the executive before they can become implementable in

² For instance, Executive Order 6 of 2018 and the latest Executive Order 10 of 2020 issued by President Muhammed Buhari.

³ (2022) LCN/4988(SC)

⁴ See also section 148 that provides for the power of the President to in his discretion assign to the Vice-President or any Minister of the Government responsibility for any business of the government including administration of any department of government.

the country.⁵ The Executive also share in the law-making power ascribed to the Legislature through assent of Bills to become laws and even in matters relating to Executive Orders. Therefore, this paper seeks to examine the nature and effect of Executive Orders on the concept of separation of powers.

2.0 MEANING AND NATURE OF EXECUTIVE ORDERS

An executive order is a presidential directive or guidance that implements or interprets a federal statute, a constitutional provision, or a legally-binding treaty.⁶ An executive order is a signed, written, and published directive from the President of the Federal Republic of Nigeria or a Governor of any of the States that manages operations of the Federal or State Governments respectively. They are usually numbered consecutively for ease of reference or identification.⁷ Executive orders are specific, written directions from the President of a country or the Governor of a state to carry on activities and policies of the various agencies of the Federal or State government. It is important to note that these orders are usually without input from the legislature or the judicial arms. However, they can be overruled by courts or nullified by the legislators.⁸

The expression, executive order, is not expressly defined in the CFRN 1999, nor is it interpreted in the Interpretation Act or any legislation of the National Assembly or the House of Assembly of any State⁹ as was analysed above. However, executive orders have been recognized to have the force of law and they are usually used to enforce existing statutes or to manage the resources and staff of the executive arm. The Courts have also made several attempts to explain what an executive order entails, in the case of *Elephant Group Plc v National Security Adviser & Anor*¹⁰ it was held that:

“...In law, an Executive Order such as Exhibit NSA 7 is an order or regulation issued by the President or some administrative authority under his direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the constitution or of some or treaty. It is indeed an effective instrument or tool for good governance and administration by the Government.”

Over the years, and with continuous recognition and usage, the orders play a pivotal role in molding government policies as they are utilized in addressing internal and external affairs and remain in force until they are cancelled, revoked or expired. It is also important to note that non-compliance with executive orders may attract punishment. The power given to the executive head of the country or a state to execute and maintain the Constitution and all laws

⁵ Section 12 of the CFRN, 1999.

⁶ Dr. Sam Amadi “The legal effect and limit of Presidential executive orders in Nigeria and the USA; A review of executive order 1-6 of 2017-2018 in Nigeria” DLSS Law information Brief No. 5 September, 2018, NILDS, National Assembly.

⁷ ABA, ‘What is an Executive order?’ https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-executive-order/ accessed 20 May 2024.

⁸ Dave Roos, ‘How executive orders work’ <https://people.howstuffworks.com/executive-order.htm> accessed 20 May 2024.

⁹ In this paper, “Acts of the Legislature” refer to laws either made by the National Assembly or the respective state Houses of Assembly.

¹⁰ (2018) LPELR-45528(CA).

is encompassing and the scope of it is not easily determined especially as the power is guaranteed by the Constitution¹¹. Executive orders are therefore a crucial tool in the hands of the executive in discharging its duties.

The Constitution or an Act of the National Assembly or State Assembly may also confer discretionary power on the President or Governor respectively to issue orders in certain matters and instances. The Constitution amply demonstrates this in Section 315 which allows the President and Governors to make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.¹²

The United States of America which has an age-old use of Executive Orders does not have a statutory or Constitutional definition for it. The reference made to it by the Federal Register Act mainly calls for the publication of all executive orders without defining them.¹³

The challenges ascribed with executive orders lies first with its use, sometimes, the orders are used in a controversial manner because it allows the president to make subtle laws without passing through scrutiny from the National Assembly¹⁴. Another challenge is in the area of legal scrutiny, an executive order can face legal scrutiny where the courts assess its validity based on whether it violate the Constitution or existing laws and in extreme cases, it could be overturned by the courts.¹⁵ The Court in establishing this fact held in the case of *INEC v Musa* that all powers be it legislative, executive or judicial must ultimately be traced to the Constitution.¹⁶ The legislature may also oppose the President's use of this authority if it disagrees with the substance or the process of an order's creation, or withhold funding from the order's programs. There have been instances of new Presidents reversing previous presidents' executive orders, particularly those of political opponents.¹⁷ The most important thing to note is that executive orders are only valid when they are based on the President's constitutional or statutory authority. Therefore, they must be exercised within the confines of the provisions of the Constitution¹⁸.

¹¹ Prof. Muhammed Tawfiq, The legal effect and limit of Presidential executive orders in Nigeria and the USA ; A review of executive order 1-6 of 2017-2018 in Nigeria” DLSS Law information Brief No. 5 September, 2018, NILDS, National Assembly available at < <https://ir.nilds.gov.ng/bitstream/handle/123456789/>> accessed on the 17th March, 2024.

¹² Section 315(2) of the 1999 Constitution. In addition to the President and Governor , the other appropriate authorities are the Governor of a State and any person appointed by any law to revise or rewrite the laws of the Federation or of a State.

¹³ ABA (n7).

¹⁴ Prof. Muhammed Tawfiq (n9).

¹⁵ Erica Newland, ‘Executive Orders in Court’ <https://www.yalelawjournal.org/note/executive-orders-in-court> accessed 1 July 2024.

¹⁶ (2003) 3 NWLR (Pt 806) p 72.

¹⁷ President Biden for instance quickly revoked Trump’s directives that excluded undocumented immigrants from the U.S Census. <https://theconversation.com/what-is-an-executive-order-and-why-dont-presidents-use-them-all-the-time-150896> accessed 1 July 2024.

¹⁸ Prof Muhammed Tawfiq (n9).

3.0 SUMMARY OF *A.G. ABIA STATE & ORS V. A.G. OF THE FEDERATION (2022) LCN/4988(SC)*

The National Assembly altered the Constitution to grant financial autonomy to the State legislature and judiciary. Despite this alteration, the state governments did not adhere to this change and were consistently breaching that constitutional provision. In an attempt to mitigate the situation, President Muhammadu Buhari, by virtue of the powers conferred on him by section 5 of the Constitution, signed Executive Order No. 10 of 2020 cited as “The Implementation of Financial Autonomy for State Legislature and Judiciary Order, 2020” into law. This order was made to effect sections 81(3) and 121(3) of the Constitution. A key provision of the Order is the power given to the Accountant-General of the Federation to deduct from the allocations due to a State from the Federation Account, any sums appropriated for the judiciary of a State and pay directly to the judiciary of the State when the State fails to pay the funds directly to the State’s judiciary concerned¹⁹. The Order also provided that in the first three years of its implementation, there shall be a special extraordinary capital allocations for the Judiciary to undertake capital development of State Judiciary Complexes, High Court Complexes, Sharia Court of Appeal, Customary Court of Appeal and Court Complexes of other Courts befitting of the status of Courts.²⁰

Disgruntled by the executive order, the 36 States of the Federation approached the Supreme Court and asked the court to firstly, declare Executive Order No. 10 of 2020 unconstitutional and illegal. Secondly, they prayed the court to compel the Federal Government to take up funding of capital projects for State High Courts, Sharia Court of Appeal, and Customary Court of Appeal as they are Courts of the Federation, and lastly they prayed the Court mandate the Federal Government to refund the sum of N66 billion to the 36 states, being the amount which they claimed to have spent on capital projects for the three courts in their respective states.

To determine the matter, the Supreme Court constituted a panel of seven Justices, consisting of Muhammed Dattijo JSC, Centus Chima Nweze JSC, Justice Hellen Ogunwumiju JSC, Emmanuel Agim JSC, Ejembi Eko JSC, Adamu Jauro JSC, and Uwani Abba-Aji JSC and judgment was given in favour of the plaintiff. From the pleadings filed by all the parties, the Supreme Court distilled two issues for determination.

a) Issue 1

Having regard to the clear lucid and unambiguous provisions of Section 6 and 81(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) read together with item 21(e) of the third schedule thereof whether the Defendant (the Federal Government or Federation) is not, constitutionally obligated and charged with the responsibility for the funding of all capital and recurrent expenditure of the High Courts, Sharia Courts of Appeal and Customary Courts of Appeal of all the States of the Federation of Nigeria being Courts created under Section 6 of the Constitution.

¹⁹ Lawcarenigeria, available at <https://lawcarenigeria.com/a-g-abia-state-ors-v-a-g-of-the-federation-2022/> accessed 20th July, 2023

²⁰ Samuel Anyanwu, ‘President Buhari signs Executive Order on Financial Autonomy of State Legislature, Judiciary’ <https://fmino.gov.ng/president-buhari-signs-executive-order-on-financial-autonomy-of-state-legislature-judiciary/> accessed 1 July 2024.

b) Issue 2

Considering the provisions of Section 6, 20, 81, 120, and 121 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) whether the Presidential Executive Order No 00-10 of 2020 made by the President of the Federal Republic of Nigeria on 22 May 2020 to compel the plaintiffs (the 36 States of the Federation) to fund State High Courts, State Sharia Courts of Appeal and Customary Courts of Appeal in violation of the constitutional provisions vesting responsibility for financing the said Courts of the Federal Government is not unconstitutional and unlawful. The plaintiff, amongst other things, urged the court to grant them a declarative relief stipulating that the Executive order No 00-10 of the 2020 made by the President of the Federal Republic of Nigeria is unconstitutional.

4.0 ANALYSIS OF THE JUDGEMENT

Issue 1

In a split decision, the Supreme Court relying on its previous decisions in *AG Federation v. AG Abia (No2) (2002) 6 NWLR (Pt764-905 and AG Bendel State v. AG Federation & ors (1982) 3 NCLR 1* resolved the issue by holding that salaries, allowances, and recurrent expenditure of Judicial offices in the Federation are funded from amounts standing to the credit of the Judiciary in the Consolidated Revenue Fund of the Federation and not the Federation Account. The charge on the Federation Account is inconsistent with section 84 of the Constitution and is unconstitutional notwithstanding the provision of section 162(9).

The Supreme Court, by this Judgement, has established that section 6(5) (a) – (i) of the Constitution sets out Federal and State Courts, and the Federal Government or Federation is not obligated or charged with the responsibility of funding capital expenditures of “state courts”. Their Lordships resolved 4-3 that the Constitution has expressly provided for the responsibilities of the Federal Government as it concerns the funding of State High Courts, Sharia Court of Appeal and the Customary Court of Appeal. Therefore, the provisions of section 84 as it relates to the funding of the judiciary to the extent in subsections 4 and 7 remains. As it is agreed that in the construction of statutory provisions, where a statute mentions specific things or persons, the intent is that what is not mentioned is not intended to be included and should therefore not be assumed.²¹ In further efforts made at elucidating the position, the Court also made evident the interpretation of the sections of the constitution, in addition to salaries, allowances and the recurrent expenditure of all the Courts that the constitution itself charges upon the Consolidated Fund, the defendants in the case is empowered by virtue of section 81 to initiate an appropriation bill to fund the capital expenditure of the courts only as the only two ways recognized for monies to be withdrawn from the Consolidated Revenue Fund is either where the Constitution itself makes the money being withdrawn a charge on the fund or where the withdrawal of the money is authorized by an Act of the National Assembly.

On Issue 2.

The judgment has also re-established the constitutional boundaries of the powers of the President in section 5 of the Constitution to “execute” and “maintain” the Constitution which

²¹ See the cases of *A.G Abia State & Ors v A.G Federation (2022)*, *A.G Bendel State v Aideyan (1989) 9 SC 127* and *FRN v Osahon & Ors (2006) LPELR- 3174*.

does not include the power to deduct from the Federation Account any amount or any portion thereof due to the State Governments. The President in seeking to enforce and extend section 121 of the Constitution has encroached on the rights of state governments to receive money from the Federation Account on behalf of the state judiciary and legislature and transmit their share to them. The case of *AG Bendel v AG Federation*²² also provides basis on the resolution of this second issue where the court held while interpreting section 149 of the 1979 Constitution which is similar to section 162 of the 1999 Constitution that the amount in the Federation account is public revenue which accrues to the Federal, State and Local Governments in each state, so any amount due to the State Governments, on being mandatorily distributed to them, ceases to be retained by the Federal Government on behalf of the beneficiary states.

This simply means that once there is a division of the funds, the state governments become absolute owners of the share allocated to them and it is their prerogative to exercise full control over it.²³ Accordingly, the case of *AG Lagos v AG Federation* also held a similar position where Kutigi JSC opined that if the President has any grievance against any tier of Government, he should go to Court. The President cannot kill them by withholding their statutory allocations. Therefore, the President issuing executive orders to control the states' money in his bid to enforce compliance with the Constitution is an illegality and section 5 of the Constitution would not have intended that.²⁴

The plaintiffs' claims succeeded in parts as the Court declared Executive Order 10 of 2020, void and nullified same. While the President has overstepped the limits of the Constitution in enlarging constitutional provisions to accommodate the excesses, the responsibilities of the respective tiers regarding the judiciary have been clearly stated by the Constitution.²⁵

5.0 EXECUTIVE ORDERS AND SEPARATION OF POWERS

The concept of separation of powers is an important determinant in the success of every democracy. Under the Constitution of the Federal Republic of Nigeria 1999 (as altered), executive powers are vested in the President and the Governors at the Federal and state levels respectively while the Legislature have the power to make laws and the Judiciary is charged with the responsibility of interpreting the laws. Nigeria, as a country that practices constitutional democracy, the doctrine of separation of power wherein the legislature, the executive and the judiciary have their respective roles to play is ebulliently provided for in Sections 4, 5 and 6 respectively of the CFRN 1999. The concept can be said to be with three branches which preaches firstly, that no member of one arm of government should be a member of another arm simultaneously. Secondly, no arm of government must control another arm of government and thirdly, no arm of government should perform the function of another arm of government. The fact that this concept is one of the hallmarks of democracy was reinforced by the Supreme Court in case of *His Royal Highness Lamidi Olayiwola*

²²(1989) 9 SC 127.

²³ Law Global Hub, *AG Abia v AG Federation* (2022) <https://www.lawglobalhub.com/a-g-abia-state-ors-v-a-g-of-the-federation-2022-lljr-sc/> accessed 1 July 2024.

²⁴ *Ibid.*

²⁵Samuel Anyanwu (n20).

Adeyemi & Ors vs. AG Oyo State & Ors (1984) NSCC, 397 at 473 (1984) LPELR- 169 (SC) where it was held thus:

“The doctrine of separation of powers means that neither the Legislature, the Executive, nor the Judiciary should exercise the whole or part of another’s power”.

Also, in *AG Abia State & Ors vs. AGF (2003) 4 NWLR, (Pt. 809), 123*, the Supreme Court in reinforcing the doctrine of separation of power held thus:

“The principle behind the concept of Separation of Powers is that none of the three arms of government under the Constitution should encroach into the powers of the other arm – the Executive, Legislature and the Judiciary – is separate, equal and of coordinate department and no arm can constitutionally be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction”.

As Montesquieu rightly observed, the only way to guarantee the liberty and freedom of the people is to ensure that power is not concentrated in one person or organ. If the entire power of government is concentrated in one person or organ, then there is a strong possibility of abuse and tyranny.²⁶ The concentration of government powers in the hands of one individual is the very definition of dictatorship, and absolute power is by its very nature arbitrary, capricious and despotic”.²⁷ Though, a water-tight separation of powers is neither desirable nor possible, the Constitution itself has deliberately provided for some interlinkages between the arms like the necessity of the President’s assent on Bills and even the need for the legislature’s role in the deployment of troops during cases of emergency. The Constitution does not intend an overreach of the powers of one arm on the activities of the other arm of Government. Executive Orders which rightly is some form of intrusion of the executive arm into the functions of the Legislative arm must still be utilized cautiously, strictly within the ambits of the Constitution as any action or directives given that is inconsistent with the Constitution is null and void to the extent of its inconsistency.²⁸

In the instant case of *A.G. Abia v A.G Federation*²⁹, the Supreme Court stated that the two tests for determining the constitutionality of modification to an existing law are: whether the modification order brings the relevant Act into conformity with the provisions of the Constitution; and whether there has been an infraction of the Constitution by the order. Flowing from the foregoing, it is clear that the powers donated to the President of the Federal Republic of Nigeria pursuant to section 5(1), is made subject to other overriding provisions of the Constitution. Hence, the Executive Order 10 issued by the President on 22 May, 2020, wherein he ordered the Accountant General of the Federation to deduct from source funds meant for the funding of State Judiciaries from the funds accruable to the various States of the Federation, exceeded the powers conferred by Section 5 as these are not matters with

²⁶ Baron de Montesquieu, *The Spirit of the Law* Book XI, Chapter 6(1748)

²⁷ Ben Nwabueze, *The Presidential Constitution of Nigeria*, (Palgrave Macmillan, 1981) 32.

²⁸ Section 1(3) CFRN 1999.

²⁹ (2022) LCN/4988(SC)

respect to which the National Assembly has, for the time being, the power to make laws. Accordingly, the President in the exercise of his executive powers, must do so within the circumscribed limits as provided by the Constitution.

6.0 COMMENTS

It is well established that the legislature is the only body having the authority to enact laws in Nigeria.³⁰ However, does the powers inferred from Executive Orders give room for law making functions by the Executive? By the virtue of section 5 of the Constitution, executive orders are valid and constitutional so far as they are exercised within the purview of the Constitution. The opening paragraph of section 5(1) puts a limitation to the exercise of such powers- “Subject to the provisions of this Constitution”. The executive powers of the President is made subject to the provisions of the Constitution. Consequently, when an Executive order derogates from the provisions of the Constitution, such an order is null and void to the extent of its inconsistencies. Therefore, Executive order No 10 of 2020 is unconstitutional as it seeks to alter or modify section 121 of the Constitution which is within the exclusive powers of the legislature. Therefore, the contents of the Executive Order particularly paragraphs of 2-7 are ultra vires the powers of the President.

Also, Nigeria is a federation and the Constitution it operates is a federal one. The Constitution provides a clear division of powers between the Federal Government and States’ Government. By the doctrine of separation of powers, the Executive, Legislature and the Judiciary have their respective roles clearly spelt out. Law making is exclusively within the purview of the Legislature as guaranteed under section 4 of the Constitution. Therefore, the executive arm of government cannot modify or alter laws as seen in executive No 10 of 2020. The executive is not at liberty to overstep the limits the Constitution prescribes for it. If it does, the court remains in place to declare the act unconstitutional and void.

Executive orders are beneficial as long as they are in line with the Constitution; they are not inherently negative. Having said this, it is worthy to note that the powers granted under section 5(1) (b) of the Constitution to the President may be enormous which extends “to the execution and maintenance of the Constitution and all laws made by the National Assembly”. This can be subject to abuse if it is not properly defined or streamlined by the Constitution. This means that the duty and power to execute and maintain the Constitution and all laws, is all encompassing. The scope of which cannot be easily determined until situations arise which have to be dealt with. The President may occasionally utilize this immense power to commit abuses. Therefore, the Constitution should be altered to further limit the meaning and implication of section 5(1) (b) of the Constitution.

7.0 RECOMMENDATIONS

- (a) The Constitution should be altered to further limit the meaning and implication of section 5(1) (b) of the Constitution so that the executive does not use it as a leeway for abuse.
- (b) The National Assembly should as much as possible, checkmate the use of Executive orders by the President. Regular triggering of the powers of legislative and judicial review of presidential executive orders will enhance the practical application of the

³⁰ Section 4 CFRN 1999.

principles of checks and balances in the best interest of national development, and democratic governance and prevent dictatorial tendencies or tyranny of the executive.

- (c) A proper understanding of a president's power to issue Executive Orders will enable the president to use this power confidently and lawfully in the exercise of constitutional responsibilities and to implement important administrative policies. Therefore, the executive should be properly guided or educated on the use of executive orders.

8.0 CONCLUSION

Executive Orders which can be said to have stemmed from implying the powers conferred on the executive to maintain and execute the Constitution have had several positive outcomes. Save for the instances where they are issued outside the intent of the Constitution, they are not in themselves an affront to the lawmaking powers of the legislature. The research has extensively analysed the general nature of the orders drawing instances from the United States which has a long history in the use of Executive orders. The research further examines the position of the Supreme Court in the case of *A.G. Abia State & ors v. A.G. of the Federation (2022) LCN/4988(SC)* as it relates to Executive Orders and draws the conclusion that the main challenge with this implied allocation of the executive powers is with its usage. Executive Orders therefore need to be issued as a matter of necessity which is for the implementation of a law that has been made by the legislature.