

THE JUDICIARY AND ELECTORAL ADJUDICATION IN NIGERIA

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Abstract

This paper interrogates the entirety of the judiciary and the way and manner electoral cases brought before it are handled and ultimately adjudicated upon. It also examined some electoral cases which are brought before the judiciary and the eventual outcome of those cases. The paper found amongst other things that the judiciary is an important arm of government which is saddled with the responsibility of adjudicating on these electoral matters. The paper also found that there are legal frameworks upon which every electoral case must fall on or be relied upon for a fair judgment to be given. It also observed that the role of the judiciary in determining electoral outcome is constitutionally and statutorily provided for. The paper however observed that in carrying out this function, there are however some challenges faced by the judiciary such as pressures from political parties and other interferences. The paper argued that powers bestowed on the judiciary to adjudicate elections are allegedly being misused by the courts hence the slogan 'go to court' where the verdict is in one's favour. The paper recommends amongst other points that the Independent National Electoral Commission should be the final bus stop of

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elections where it conducts free and fair elections and not the judiciary.

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1.0 Introduction

The judiciary represents the courts system in the land and it symbolizes judges and justice. It was popularized by Montesquieu the French philosopher and jurist who postulated that there should be separation of judicial functions from the legislative and executive functions to checkmate tyranny. As important as the judiciary is to the sustenance of democracy, so much is expected from this all important arm of government in any election. There is however no doubt that in 24 years that Nigeria has witnessed uninterrupted democratic rule, the judiciary has played a pivotal role in the sustenance of the rule of law. This arm of government has made serious interventions where its attention was highly needed. As one of the three arms of government, its journey is germane to the democratic development of the country. The judiciary has helped a great deal in shaping the civil rule in Nigeria by deepening democracy with several landmark electoral decisions. Stolen electoral mandates have been restored while key constitutional disputes that could have threatened the unity of the nation have also been resolved by the judiciary. However, it has not only been accolades for the judiciary, as the events surrounding the annulment of elections by tribunals opened a Pandora box in the judicial sector.

According to Hussein¹ the most potent criteria of any democratic claim anywhere in the world is election and this is why democracy is generally defined as the “government of the people, by the people and for the people”. It has been argued that election is the most civilized manner to

¹ Hussein Mukhtar, ‘The Electoral Act as Amended and its implications for the Judicial Process’ in Layonu and Adekunbi (eds) *Reflections on the Nigerian Electoral System* (1st Law Concept, Ibadan, 2012) 41.

bring about positive changes in governance that would meet the aspirations of the people.

Egbewole² perceives democracy as a form of government that is responsive, responsible and guarantees to the citizens the inalienable rights of freedom of choice, freedom of association, right to shelter, freedom from discrimination, right to clothing and unqualified respect for the rule of law. He noted that this form of government “hardly exist anywhere in the world.” Given the centrality of election to democracy and its position on change of power, the political class, especially in Nigeria has made it a do or die affair. To this end therefore, any political party that loses election usually resort to the tribunal to ventilate its grievances. This is now better than the days of unmitigated violence that characterized loss of elections in the past. The resort to election tribunal is not a new phenomenon in Nigeria. This position was underscored by Mukhtar³ when he posited thus:

Historical evidence has shown that most politicians have more often than not contested electoral outcomes. From the first election in the 1950s to date, the judiciary has always been the last point of call in the settlement of election petitions/matters. The Judiciary is regarded as the last hope of the common man, keeping alive the aspirations of Nigerians by checking the excesses of INEC and restoring sanity and fairness to the nation’s electoral process.

The bond between democracy and election has been discussed extensively by scholars of various calling and analysis of various dimensions and slant given to it. Nigerian scholars did not keep silent on this issue as they also

²Egbewole, W. O. ‘Professional challenges and Practices in Democratic setup’ delivered in the 16th conference of the Institute of certified secretaries and reporters on 14th November, 2003 held at Ilorin. See also Egbowole, W.O. ‘Nigerian Judiciary Globalization and Democracy’ in Taiwo Kupolati (ed) Current issues in Nigeria Jurisprudence, 2007. P. 279.

³*Ibid.*

lent their voices to this important aspect of our democratic development underscoring our peculiarity as a people.

The Judiciary and its electoral adjudication in election matters is the focus of this discourse. We shall be looking at some of these election cases adjudicated upon by the court and some constitutional backings upon which some of the petitions are brought and how the judiciary have adjudicated upon some of these issues amongst others.

2.0 Conceptual Clarifications

According to Black's Law Dictionary,⁴ Judiciary has been defined as "the branch of government responsible for interpreting the laws and administering justice." The Judiciary is the third arm of government in a democratically elected government. Suffice to say that there are three arms of government in a federal system of government- the Executive, the legislature and the judiciary. The Judicial arm of government is the third arm of government and is supposed to be the most powerful of the three arms all things being equal. The constitution of the Federal Republic of Nigeria, 1999 vests the judiciary with the power to adjudicate on matters arising between parties. Specifically, Section 6 provides that"

- (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
- (2) The judicial powers of a state shall be vested in the courts to which this section relates, being courts established, subject as provided by this constitution, for a state
- (3) The courts to which this section relates, established by this constitution for the federation and for the states, specified in sub-section (5)(a) to (i) of this section shall be the only superior courts.....

⁴.Bryan A. Garner, Black's Law Dictionary, 11th ed.(Thomson Reuters,West publishing Co., St Paul, MN, U.S.A,2019)p.1031

The import of this section is that the judiciary is to act as an arbiter between two parties in a dispute. The courts determine the rights and obligations of parties that bring disputes before it in order to secure peace, harmony, development and democratic stability in the nation. It is important to state at this juncture, that we cannot successfully talk about elections in Nigeria without referring to democracy. In a truly democratic government, the three arms of government must be allowed to function independently without any form of interference even though there are checks and balances.

Democracy is therefore the freedom and liberties and the involvement and participation of the citizens in determining the political forms and conditions under which he/she is to live. According to Black's Law Dictionary⁵, Democracy means government by the people either directly or through representatives elected by the people. It also means a system of government in which every citizen of the country can vote to elect its government officials. It also went further to state thus:

Democracy seems to have scored a historic victory over alternative forms of governance. Nearly everyone today, whether of the left, right, or center claims adherence to democratic principles. Political regimes of all kinds throughout the world style themselves as democracies- although there may be vast differences between statement and execution in some of these cases. Democracy seems to bestow an aura of legitimacy on modern political life...

Election according to Black's Law Dictionary⁶ has also been defined as the process of selecting a person to occupy an office. Furthermore, "*the will of the people shall be the basis of authority of government; this 'will' shall be expressed in periodic and genuine elections*". This was declared in Article 21 (3) of the Universal Declaration of Human Rights.⁷

⁵ Ibid p.544

⁶ Ibidp.654

⁷ Article 21 (3) of the Universal Declaration of Human Right, 1948

The 1999 Constitution of the Federal Republic of Nigeria (as amended)⁸ provide for election into various elective offices in the Federal, State and Local Government levels every four years. These offices comprise of the offices of the President and Vice President of the Federal Republic, the Governor and Deputy Governor of a State, membership of the Senate, the House of Representatives and the Houses of Assembly of each state of the federation.

Election petition has been defined in *All Nigerian's Peoples Party (ANPP) v INEC &ors*⁹, by the Supreme court as “a formal written request presented to court or tribunal for enquiry into the validity or otherwise of a candidate’s return when such return is allegedly invalid.”

The above decision is wide, non-restrictive and elastic. Again, for an election petition to be competent the basis must be the election or return of the person complained against whose undue return or undue election is being challenged.¹⁰

Furthermore, the necessary steps to be taken for an election to be concluded or deemed as conclusive were enumerated in *Sowemimo vAwobayo*¹¹, as follows:

- i). Accreditation
- ii). Conduct of polls
- iii). Counting of votes
- iv). Collation of results
- v). Signing of result forms &
- vi). Publication of results

Consequently, therefore there is a growing realization among members of the common wealth of the nations that the holding of free and fair elections is the center piece of democratization. This has caused many countries like Kenya, Ghana, Botswana, Zambia, Seychelles, Singapore, Malta, Bahamas, Trinidad and Tobago to review their constitution and

⁸ Laws of the Federation of Nigeria, 2004

⁹ (2020) 3 SCM p. 32.

¹⁰ See *Awuse vOmehia* 6 EPR

¹¹ (1999) 7 NWLR (PT 610) P. 335.

electoral laws which provide for basic fundamentals of the legislative framework and on which the judiciary shall rely in adjudicating electoral cases. However, we shall be looking at the attitude of the courts in determining some electoral cases which is very key to developing our democracy as a nation.

3.0 The Judiciary

The Judiciary has a major Constitutional role to play in determining the outcome of election cases. However, this has generated a lot of mixed reactions from the people as the petitioner who succeeds will applaud the Judiciary while the Respondent who loses will always make cynical comments such as 'Kangaroo court judgment', as was asserted recently by minister Pauline Tallen referring to a judgement of a federal high court and NBA sued her for making such comments and subsequently got judgement against her, compromised justice system and so on. The courts will always do justice to the case by deciding the petition on its merits. To appreciate better the role of the judiciary in determining the outcome of election cases, we must examine some of the legal framework that regulated how such matters are adjudicated. The legal framework put in place to adjudicate electoral matters in Nigeria include the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act 2022, the Electoral Regulations and Guidelines, the Election Tribunal and Court Practice Directions 2022, the various Court Civil Procedure Rules, other statutes and case laws.

This goes to show that the judge does not decide electoral cases based on his sentimental judgment but based on laws that have been put in place to regulate and to guide the judiciary. Again, as it is common with every human endeavour, the process of adjudication is sometimes challenged by the incompetence of the judiciary to navigate the inconsistent, vague and overly complex rules and procedures that attend the process in addition to the ever increasing wave of political pressures and interference.

The role of the judiciary in determining the outcome of elections is constitutionally and statutorily provided for by the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act, 2022 respectively. Section 6 of the Nigerian Constitution¹² vested the judicial powers of the Federation in the courts as established by the constitution. This implies that all disputes regarding election shall be submitted to the courts for adjudication and resolution. Similarly, part VIII of the Electoral Act, 2022 has expressly vested the determination of election petitions arising from elections on the various election Tribunals. The Electoral Act is very key to electoral adjudication. It envisages two main types of disputes; the pre-election and the post-election disputes. All disputes relating to disqualification, nomination, substitution and sponsorship of candidates for an election are pre-election disputes. It is worthy of note to state that the Federal High Court is the proper court to file a pre –election matter once INEC is joined to the suit.¹³ On the other hand, post-election disputes involves collation and announcement of results. According to Azeez¹⁴, post election litigations simply represent a bulk of after election grievances, disapprovals and outright objections to the purported credibility of election results which are documented in written form and formally forwarded to a procedurally constituted legal authority for interpretation and determination Section 130¹⁵ of the Electoral Act provides that “No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an election petition) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act and in which the person elected or returned is joined as a party. The Act

¹² Constitution of the Federal Republic of Nigeria, 1999

¹³ *Ibid* s. 251.

¹⁴ Azeez T., (2013) 'Global Perspective on Electioneering Ethics and Principles: A lesson for Nigeria.

¹⁵ S. 130 of the Electoral Act, 2022

also provides for the persons who are entitled to present election petitions. They are as follows;

- a) A candidate in an election and
- b) A political party which participated in the election.

The Act also went further to state in subsection 2 that a person whose election is complained of is in the Act, referred to as the Respondent. Section 285 of the Constitution of the Federal Republic of Nigeria, 1999 stipulates the tribunals to adjudicate on post- election matters. The supreme court is the final court of Appeal in Gubernatorial elections by virtue of Section 233(2)(e)(iv) of the Constitution of the federal Republic of Nigeria, 1999. Section 239(1)(a) confers on the court of appeal original jurisdiction to hear matters pertaining to presidential elections. The Supreme Court remains the appellate court in respect of presidential and vice presidential elections. The various states also have the responsibility to create electoral tribunals to adjudicate on local government elections by virtue of section (7)(1) of the Constitution of the Federal Republic of Nigeria, 1999. The grounds upon which an election petition may be presented under Section 134 of the Electoral Act are as follows;

- a) A person whose election is questioned was at the time of the election, not qualified to contest the election.
- b) The election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
- c) The Respondent was not duly elected by majority of lawful votes cast at the election.

The Electoral Act of 2022 has done away with two other grounds contained in the 2010 Electoral Act. These grounds include;

- a) That the petitioner or its candidate was validly nominated and was unlawfully excluded from the election and
- b) Section 138(e) dealing with submission of a false information of a fundamental nature in aid of qualification.

It is important to state that doing away with the above grounds is highly commendable and salutary by the drafters of the Electoral Act and wish to state further that once a party conducts an election to pick candidates, it

must be held to the sanctity of its outcome which is a contract between the party and the candidates that contested the primary election as provided for in Section 29(1) of the Electoral Act, 2022.

The Act also provides that certain defects should not invalidate an election by stating that “An election shall not be able to be invalidated by reason of a compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the Act and that the non-compliance did not affect substantially the result of the election”. The above grounds have been subject of litigation in electoral petitions.

3.1 Electoral Adjudication

We shall consider some of the leading cases decided by the courts based on the above grounds and how they were interpreted by the courts.

3.2 Qualification

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for the qualification and disqualifications of persons seeking election to the offices of the President and Vice President,¹⁶ Governors and Deputy Governors,¹⁷ membership of the Senate and House of Representatives,¹⁸ membership of the State House of Assembly.¹⁹ These qualifications and disqualifications are basically the same except for the requirements of age, which differs from one political office to the other and the limitation of tenure to two terms of four years in the case of the office of the President/Vice President and Governor/Deputy Governor, where a candidate at any election fails to fulfill any of the qualifications or suffers any of the qualifications stated in the constitution, the unsuccessful candidate or the political party that participated in the

¹⁶ S. 131 and 137

¹⁷ S. 177 and 182

¹⁸ S. 65 and 66

¹⁹ S. 106 and 107

election is at liberty to file an election petition. The courts in *ANPP & Anor v Usman & Ors*²⁰ have held that the qualification and disqualification of a candidate to stand for the governorship election are exclusively determined within the limits of Section 177 and 182 of the Constitution and nothing shall be added to those provisions. Again, Section 32 of the Electoral Act, 2006 gave credence to the view that the Act does not lay down any criteria for qualification to contest an election outside those provided for under the Constitution of the Federal Republic of Nigeria.²¹

Furthermore, in *PDP v INEC*²² the Supreme Court stated as Per Okoro JSC that “a person who wishes to challenge the election on the basis that the winner was not qualified to contest the election has *umbrage* in Section 138 (i) (a) of the Electoral Act. That is to say, where a person failed to take advantage of section 31(5) and (6), he can still approach the Electoral Tribunal under Section 138(1)(a). It is therefore the settled position of the law in Nigeria that the INEC, code of conduct Bureau, Economic and financial Crimes Commission or any executive body cannot disqualify a candidate from contesting as it is only a Court or Tribunal that has the jurisdiction and power to disqualify a candidate to contest any election in Nigeria. In *Action Congress v INEC*²³, INEC had disqualified the presidential candidate of the Appellant on the ground that the candidate was allegedly indicted for fraud and embezzlement by an Administrative panel of Enquiry. The supreme court in declaring the action of INEC void and of no effect, stated that disqualification is a judicial exercise of powers that do not extend to INEC. Musdapher, JSC as he then was stated thus

The indictment for embezzlement against a person to deprive him of the right granted by Section 131 of the

²⁰(2008) LPELR 3786(CA)

²¹ See also *A.G Abia State v A.G Federation* (2002) 6 NWLR (Pt 763) 264 and *Rimi v INEC* (2005) 6 NWLR (Pt 920) p. 56

²² (2012) LPELR 8409 (CA)

²³(2007) SC 69

Constitution to contest or vie for president is a very serious matter and the issue can only be pronounced upon by the judicial branch.....

Furthermore, the issue of possession of the minimum educational qualifications has come up for decision in several cases. As noted earlier, the constitutional provision that qualify a person to contest the office of the President and Vice President, Governor and Deputy Governor, members of the State House of Assembly are the same and it is that the person should possess at least a school certificate level or its equivalent. This provision has been interpreted by the courts and it has been concluded that even a primary school leaving certificate qualifies a person to contest for the office of the president of Nigeria.

By virtue of Section 318 of the Constitution of the Federal Republic of Nigeria, 1999, School Certificate or its equivalent is defined as follows:

1. A secondary school certificate or its equivalent or Grade II Teachers Certificate, the city and guilds certificate; or
2. Education up to secondary school certificate level; or
3. 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 INEC for a minimum of ten years and
 - ii. Attendance at courses and training in such institution 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 English Language to the Satisfaction of INEC and
 - iv. Any other qualification acceptable by INEC

Another ridiculous ruling by the court of appeal in *ACN & Anor v Jimoh Afiz Adelowo & Ors*²⁴ is that a candidate for any office in Nigeria is not required to prove his so called qualifications by presentation of a certificate. According to the court, he need not to have sat for any examination nor passed same. Uwa, JCA stated

²⁴(2012) JELR 34726(CA)

From the clear words of the constitutional provision, it did not require or state that an aspirant or candidate to the House of Representative or as the case may be, must pass or possess a certificate. The important thing is to have been educated up to secondary school level or its equivalent.’²⁵

. This was the decision reached in *AtikuAbubakar v INEC&Ors*²⁶and *TerverKakih v PDP &Ors*.²⁷

From the above decisions of the Court, we can safely conclude that the Nigerian law and the position of the Courts with regard to educational qualification for elections is that even a primary school leaving school could qualify a person to become the president of Nigeria provided it is acceptable to INEC. This rather unfortunate situation was lamented by Abba AjiJSC in *AbubakarvINEC*²⁸ when he said, “in clarity, the constitution has unfortunately to my mind, made it that even where the person does not possess a secondary school certificate, he can be qualified by the effect of S. 131 and 218 of the Constitution if he is educated up to at least school certificate level or its equivalent”.

Another common feature of the ground of qualification is the allegation that the Respondent alleged not to be qualified to contest an election is the issue of the presentation of forged certificates. The attitude of Courts/Tribunals has been to declare that the allegations were criminal offences and so must be proved beyond reasonable doubt and to prove the allegation, the genuine document from which the forgery was made must be produced. In *APC v PDP*²⁹the S.C stated that “forgery is a criminal offence and when it is an issue in any proceeding, it must be proved beyond reasonable doubt.” This issue came up in the recent case of PDP and Labour party against the All Progressive Congress party of Bola

²⁵ See also *Bayo v Njida* (2004) 8 NWLR (Pt 816) p. 544, *Arebi v Gbabijo* (2008) 49 WRN p. 29 and *Imam v Sheriff* (2005) 4 NWLR (pt 914) p. 43.

²⁶ (2019) CA/PRPC/002

²⁷ Ibid

²⁸(2020)12 NWLR (Pt. 1737)p.37

²⁹ (2015) LPELR 24587 (S.C.)

Ahmed Tinubu in which the current president of Nigeria is being accused of forged certificates with discrepancies in dates and signature.

3.3 Non – Compliance

The ground for non-compliance in election petition litigation is another barometer to measure the attitude of the Courts in determining the outcome of elections in Nigeria. It is the commonest ground for challenging elections but unfortunately, a ground whose ingredients of proof depend largely on the disposition of the Judiciary. This is the ground on which the public has lost confidence in the judiciary. Non-compliance as a ground for an election petition has been very controversial and difficult to prove. The burden of proof is high that most petitioners prefer to rely on other grounds. This is because the provisions of Section 139 (1) of the Electoral Act, 2010 now Section 135(1) of the Electoral Act 2022 and the onerous interpretation given to same by the Courts has made it impossible for petitioners to prove noncompliance. In *Buhari vObasanjo*³⁰.The S.C as per BelgoreJSC as he then was stated thus,

“It is manifest that an election by virtue of S. 135 (1) of the Electoral Act of 2002 shall not be invalidated by mere reason it was not conducted substantially in accordance with the Provisions of the Act it must be shown clearly by evidence that non-substantiality has affected the result of the election. Election and its victory is like soccer and goals scored. The petitioner must not only show substantial non- compliance but also the figures i.e votes that the non-compliance attracted or omitted. The petitioners must not only assert but satisfy the Court that non- compliance has so affected the election result to justify nullification.³¹ The petitioner must also present eye witnesses i.e. those who were present at the various units across the election area. This indeed is a daunting task.³² In summary, the Courts have set an insurmountable road block for

³⁰(2003) SC 133

³¹*Awolowo v Shagari* (1979) NWLR 120 at 161

³²*Andrew v INEC* (2018) 9 NWLR (1625) P. 507

petitioners who seek to question an election based on non-compliance with the provisions of the Act.

3.4 Majority of Lawful Votes

This is another ground for questioning an election whose results have been declared by INEC. This ground is contained in Section 138 (1) (c) of the Electoral Act, 2010 as amended, now Section 134 (1) (c) of the Electoral Act, 2022 which provides that “An election may be questioned on the grounds that the Respondent was not only elected by majority of lawful votes cast at the election.

To establish this allegation, there must be a proper tabulation of the registered voters, the total number of votes cast and the votes scored by each candidate. In *Ogu vEkweremadu*³³ the CA held that “By the very nature of election cases, evidence alleging election malpractice or irregularity must not only be precise and definite but must also be unequivocal and certain. Vague and imprecise evidence alleging election malpractice or irregularity cannot be accepted by a tribunal or court of law.” Therefore, where there is an allegation that a candidate did not score the majority of lawful votes cast in that election, the petitioner must plead the mathematical figures as contained in the Declaration of result of Election specifying the units of which ward (s) of the constituency in which the alleged errors occurred. The petitioner is also required to plead the particulars of result of polling stations which they would want the tribunal or court to nullify out of the votes allocated to the declared winner. The section in the case of *Omoboriowo vAjasin*³⁴ held that where the petitioner’s complaint is that the Petitioner scored a majority of lawful votes, he is to prove that within the balance of probability or preponderance of evidence. It is settled law that in election matters, the best form of evidence are documentary evidence. In *Ngige v Obi*³⁵ the court held that the decision of the tribunal on the ground that “the

³³ (2004) 2LREC 293

³⁴ (1984) ALL NLR 105

³⁵ (2007) 21JELR 54479

respondent was not duly elected by majority of lawful votes cast at the election” would be based largely on documentary evidence mainly election result forms.

It should be noted that by virtue of section 168 (1) of the Evidence Act³⁶ results of election declared by INEC are presumed correct, authentic and genuine. Thus, a petitioner challenging the result of the election on the grounds that the respondent was not elected by a majority of lawful votes cast at the election has the burden of rebutting the presumption. Where such allegations are predicated upon crime, the rebuttal must be proved beyond reasonable doubt. But where such allegations are based on mere complaint, the petitioner had a majority of lawful votes, then the proof of rebuttal or the presumption only need to be proved within the balance of probability.

Finally, looking into another electoral adjudication by the courts on the ‘implication of time limitations in election petitions has caused a lot of uproar in the polity³⁷. The Supreme Court in *Bello v Yusuf*³⁸ held thus,

“ *in the computation of time in an electoral action, including pre-election matters, in the light of the Constitutional alteration referred to as 4th Alteration and as highlighted under Section 141 of the Electoral Act, the computation includes the very date on which the results were declared.*”

The case of *ANPP v Alhaji Mohammed Goni&4ors*³⁹ made it unambiguously clear that the import of the provisions of section 285 (6) of the 1999 Constitution is that an election petition tribunal must mandatorily deliver its judgment within 180 days from the date of filing of the petition, failing which the tribunal becomes automatically stripped of its jurisdiction to continue further hearing of the petition.

The decision further made it clear that Section 285 (6) equally covers situations where an order for retrial of an election petition is given by an

³⁶ Evidence Act, 2011

³⁷ See also *All Nigerian People Party ANPP v Alhaji Mohammed Goni & 4 Ors*(2012) 7 NWLR (Pt 1298) 1 S C.

³⁸ (2019)15 NWLR(pt. 1695)250@280 para F-G

³⁹ Op-cit

Appellate Court. By implication, where an order for retrial is given by Appellate court, such order can only be valid if it is given before the expiration of the originally stipulated 180 days from the date, the petition was filed. But before the proceedings, there are a few suggested posers as theoretical and practical bench marks for assessing the import of the extant Supreme Court judgment. The posers include:

- a. Whether the decision has advanced in truth, the cause of election sanctity and democratic justice in Nigeria?
- b. Whether the interpretation ascribed to Section 285 (6) was most constitutionally just and only probable one that could have been ascribed in the circumstance, considering the critical need for electoral sanctity in Nigeria?
- c. Whether the extant decision runs contrary to earlier decisions of the Supreme Court on the unconstitutionality and poverty of justice inherent in prescribing time limitations for election petition?
- d. Whether the decision can survive the security of all universally acclaimed and timeless principle of true and substantial justice?
And many more questions.

With utmost respect, we totally disagree with the Supreme Court interpretation of section 285 (6) of the 1999 Constitution and humbly suggest that the supreme court should be more proactive in handling such matters.

Be that as it may, all and sundry must never lose sight of the constitutional finality of the Supreme Court decisions. Except reversed by the court itself or by a legitimate and constitutional legislation, the Supreme Court decision and indeed decisions of any properly Constituted court, must never be disregarded. But the said finality does not connote jurisprudential infallibility of the court neither does it extinguish the citizen's freedom to objectively examine and even prudently criticize the court judgments.

In exercising such freedom, society's attention must continually be drawn to the long and short term implications of judgments emanating from our courts, in order to enhance the overall good of both the current and unborn

generation. Even the Supreme Court appears to have explicitly admitted fallibility in some of its timeless decisions. For instance, in *Adegoke Motors Ltd v Adesanya*,⁴⁰ the Supreme Court philosophically opined:

We are final not because we are infallible rather we are infallible because we are final. Justices of this court are human beings, capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth.

The learned Jurist, Aderemi JSC (Rtd), added in *Dapianlong & 5 Ors v Dan & Anor*⁴¹, that:

Let it be said that as we are all mortals, infallibility can never be our virtue. From time to time as human beings, we must make mistakes. But let those mistakes be genuine and honest, let them be seen to reflect the limit of our human knowledge.

Going forward, some authors and jurist⁴² have posited that if the public views section 285 of the constitution as a bad law, then they should go back to the legislature to amend the law since according to them, it is the duty of the judiciary to interpret law and the law should be interpreted the way it is.

4.0 Key Issues decided by the Judgment

While there were other issues addressed in the judgment of *ANPP v Alhaji Mohammed Goni & 4ors*,⁴³ the most important issues unambiguously settled by the court was that “an election tribunal in an election petition matter must deliver its decision/judgment/ruling/order in writing within

⁴⁰ (1989) 5 S.C, (pt 113) p. 129

⁴¹ (2007) SC 39/2007

⁴² Mohammed, Ibrahim Tanko ‘Judicialism and Electoral Processes in Nigeria What the Supreme court may did: What the supreme court may do’ (2012, Nigerian Institute of Advanced Legal Studies, Lagos)

⁴³ (Consolidated Appeals No. SC.1/2012 and SC.2/2012), (2012) JELR 35243 (SC) Supreme Court • SC.1/2012, (2012) LLJR-SC

one hundred and eight (180) days from the date the petition was filed. This means that the judgment cannot be given a day or more or even an hour or more after the expiration of 180 days from the date the petition was filed. The decision further stated that the 180 days time limitation also covers an order for retrial that may be granted by an Appellate court. The decision of the Supreme Court held per Onnoghen JSC state thus”.

It has been held by this court in a number of cases including consolidated cases that the time fixed by the constitution is like the rock of Gibraltar of Mount Zion which cannot be extended or expanded or elongated or in any way be enlarged, that if what is to be done is not done within the time fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter. It is very worrisome that despite the decisions of this court since October, 2011 on the time fixed in the constitution, some of the justices of the lower court still appear not to have gotten the message. From where will the election tribunal get the jurisdiction to entertain the retrial after the expiration of the one hundred and eighty (180) days assigned in the constitution without extending the time allotted. Do the courts have the powers to extend the time assigned by the Constitution? The answer is obviously in the negative.

*Elklit*⁴⁴ posits that the legal and institutional framework, the political context and levelness of the electoral playing ground are important in assessing the equality of elections. Referring to Kenya’s national election and more recently, Togo’s

⁴⁴Elklit J 2011’ The role of international organisations during electoral crisis: The case of Kenya, 2007-2008’ Journal of Democracy, vol16, no. 4, pp 172-175

election, Shah⁴⁵ notes that the presence of peace was used as a measure of a free and fair election.

Goodwill-Gill⁴⁶ is of the opinion that any discrepancies in the electoral process should be identifiable as per the law, acceptable by principle and can be corrected through political dialogue and the rule of law.

5.0 Conclusion

In conclusion, we must have to look at the implication of the import of section 285(6) of the constitution and the decisions of the Supreme Court. The immediate effect of the apex court's judgment was not long in coming. Across the states, election petitions that had exceeded the 180 days' time limit all suffered abrupt deaths. Pending election petitions were dismissed, irrespective of their hearing stages and absolutely none stood any further chances of being heard on the merit. All that mattered was whether 180 days had elapsed and nothing else.

The danger in this decision is not farfetched as traumatized voters will likely be told by political protagonists that 'let's make sure we get mob justice at the polling stations by whatever means it takes just like what played out in so many states of the federation in the just concluded 2023 elections.

All such real and imagined fears of a shrinking political space and of a sharply abridged right of access to the court will compound the alarmingly dwindling faith of the people in the fairness of our country's administration of justice system.

One can therefore safely speculate that an atmosphere for aggravated political desperation has appeared on the horizon since the purport of section 285(6) has now been fully exposed. It would thus be a reasonable guess to suggest that the current Nigerian political class

⁴⁵Shah, S. 2015' Free and fair? Citizens' assessments of the 2013 general election in Kenya' *Review of African Political Economy*, vol 42, no 143, pp44-61.

⁴⁶Goodwill-Gill, GS 2006, *Free and Fair Elections*(new and expanded edition), Inter-parliamentary Union, Geneva.

will struggle illegitimately to undo each other in subsequent elections in view of section 285(6) of the constitution.

All that would then matter at the polls is for one group to rig the election better than the other and therefore become assured that the questions of legitimacy will be simplified since section 285(6) 180 days deadline will eventually lay the matter to rest. This was what played out in the 2023 presidential elections.

Forecasting the future, the Nigeria's political system cannot be better for such acts of aggravated desperation. The concerns generated over the strict interpretation recently accorded section 285 of the constitution are therefore very much understood at least for those who see further the trappings of the transient present.

6.0 Recommendations

Having discussed at length the position of the courts in adjudicating electoral matters, it is evident from the foregoing that there are still issues to be addressed. The paper makes the following recommendations:

- i. The legislature should have a second look at the Electoral Act and the Constitution with a view to reviewing them.
- ii. For the judiciary, the law and justice to remain respected, technicalities should be allowed less opportunity to defeat a just electoral suit. Best application of our laws in this area is hoped will prevail always.
- iii. All constitutional and attitudinal constraints especially by the various courts to the development of our country should be done away with.
- iv. Democracy should be fully practiced by all to avoid electoral adjudications.
- v. The courts should be given full autonomy financially to run its affairs as a situation where the courts are run by the levies on litigants will certainly produce biased judgment as the highest bidder will be made to get a favourable judgment.

- vi. Finally, Electoral Reform Act should be implemented to give an equitable approach to justice.

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