QUEST FOR CREDIBLE ELECTIONS IN NIGERIA: A CRITICAL EXAMINATION OF THE ROLE OF THE JUDICIARY (IN THE FOURTH REPUBLIC)

ABSTRACT:
Most elections into political offices in Nigeria hardly end without litigation resulting in one pronouncements or the other on their validity by the courts or tribunals. The elections are usually characterized by lawlessness, violence and other acts that bring their credibility into question. This is prevalent in the present fourth republic. Here the judiciary has an onerous duty to discharge in deciding who were lawfully nominated or elected in the process. This duty is expected to be discharged with utmost uprightness, integrity and courage and for public interest. Granted that the judiciary has shown some level of valiance in the discharge of its duties, it has also been shown that in recent times, it has created some doubts and disappointments in the minds of some observers by the decisions and pronouncements of the Courts. Some observers have described these decisions and pronouncements as illogical, conflicting or contradicting, thereby eroding the trust and confidence the public had in it before now. This article is therefore targeted at critically examining the role of the judiciary in promoting credible elections in Nigeria and how congruous and spurring its decisions on election matters have been. We shall make some suggestions and recommendations that would to a greater extent, enhance the performance of the judiciary in election matters and thereby encourage credible elections in Nigeria.

Keywords: Judiciary, Credible Elections, Quest, Examination, Courts**.**

1. Introduction.

It is without saying that in recent times, elections into public offices in Nigeria are characterized by lawlessness, violence, manipulations and inconsistencies in courts' decisions on issues and disputes arising there from. Pre-elections matters are to be heard by the regular courts while elections matters are heard by election tribunals[405]. Offences alleged to have been committed before, during and after elections are to be heard and decided by the regular courts[406].

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[405] See the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as CFRN) (as amended) ss. 6, 230, 232, 233, 237, 239, 240, 249, 250, 257, 272 and 285 and Electoral Act 2010 (as amended) ss 117-132.The regular courts are the various States High Courts; High Court of Federal Capital Territory and Federal High Court. While each state has an Election Tribunal, a panel of the Court of Appeal hears petitions on presidential election.

[406] Electoral offences such as multiple voting, ballot materials snatching, violence etc are heard and decided by the Magistrates Court or High Court of a State or the Federal Capital Territory in

In performing this duty, the judiciary is faced with very challenging task of having to hear and determine many cases with complex, and diverse issues within a limited time, limited man power, inadequate and obsolete equipment, under a corrupt system.

Section156[407]defines election as any election held under the Act and includes a referendum. *Black's Law Dictionary*[408] defines election as the process of selecting a person to occupy an office usually a public office. In the case of *INEC* v *Ray*[409] the Court of Appeal stated that "The concept of election denotes a process constituting accreditation, voting, collation, recording on all relevant INEC forms and declaration of results.

2. What Credible Elections mean

Elections are said to be credible when they are characterized by inclusiveness, transparency, accountability and competitiveness[410]. Credible election must provide equal rights and opportunities for all citizens who are eligible to contest or vote, to freely participate in the elections, with however, some just and reasonable restrictions[411].

Credible elections must be transparent. Each step taken in the process should be open to scrutiny where citizens can freely interrogate the processes to find out if they are honest and accurate[412].

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which the offence is committed. Appeals from the tribunals are heard by the Court of Appeal see Electoral Act (as amended) ss 117-132. See also *Uzodimmav Udenwa* (2008) NWLR (854) 303;*AmaechivINEC*(2001) 18NWLR (1065)170; *OdedovINEC* (2008)17NWLR (1117) 554;D U Umeobika, *Practical Steps in Instituting and Sustaining Elections Litigation under the* Electoral Act (2015) P 3, Being a paper presented at the NBA, Aguata Branch monthly meeting of the 8th day of March, 2015. .

[407] Electoral Act, 2010 (as amended)

[408]B.A. Garner, *Black'sLawDictionary* (8th edn) USA,Minnesota Thomson West Publishing 2004) P557.

[409] (2004) 14 NWLR (pt 892) 92 see also the cases of *FayemivOni* (2010) 17 NWLR (pt 1222) 326 @ 388 and *APGA*v*Ohakim* (2004) 4 NWLR (pt 1130) 116@177.

[410]See open election data initiative, Section1; Electoral Integrity what are Credible Elections, at https://www.openelectiondata.nc/en/guide/electoral-integrity. accessed 9th June, 2021 and Md Adul Ahm,'What does credible election mean', at https://www.thedailystar.net> accessed 9th June, 2021. See also Article 21 of the Universal Declaration of Human Rights, where it provides that, the will of the people should be the bases of authority of government.

[411]There is no right without limitations, but the limitations must be lawful and reasonable with internationally acceptable standards.

[412] This encompasses right to information.

Also citizen must be allowed the right to accountability from other stakeholders in the election process with respect to the conduct of the elections. Government election management bodies, political parties, candidates in the election and security agencies must be accountable to the people.[413]

Credible election also connotes rights of citizens to free political competition. Interested citizen should be given the right to compete freely for political positions. No citizen should be disenfranchised by unnecessary stringent requirements by the laws. Citizens must be given reasonable and equitable opportunities to compete for elective positions.[414]

3. Constitutional and Statutory Roles of the Judiciary in Elections and Election Matters

The Black's Law Dictionary[415]defines judiciary as:

> Pertaining or relating to the Courts of justice, to the judicial department or government, or to the administration of Justice. That branch of government invested with the judicial power, the system of Courts in a country; the body of judges; the bench. The branch of government which is intended to interpret, construe and apply the law.

Judiciary has also been defined as the branch of government concerned with the legal system and the administration of justice. A country's body of Judges.[416]

From the above definitions, it is very clear that the Judiciary consists of the judges, that is, the 'Bench', and the members of staff of the judiciary. However, the 'Bar' though strictly speaking is not part of the judiciary; it is a stakeholder in the justice system.

The Bench means, 'a seat of judgment or tribunal for the administration of justice. The seat occupied by Judges in Courts. Also the Court itself is the aggregate of

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[413] See Declaration on Criteria for Free and Fair Elections unanimously adopted by the inter-parliamentary council at its 154th session (Paris, 26th March, 1994)

[414] Ibid

[415]B.A Garner, *op cit p 849*

[416] Mairi Robinson, et al. *Chambers21stCentury Dictionary*. (Chambers Publishers, 1999) p.759

the Judges composing the court'[417]. The 'Bar' has been defined as 'the whole body of Attorneys and Counselors or the members of the legal profession'[418].

The Bar and the Bench belong to what is collectively known as the legal profession. Honourable Justice T.A. Oyeyipo[419] put it this way;

> The legal profession is the portmanteau phrase encasing two vocation or calling, i.e., the "Bench and the "Bar". The relationship between the two is symbiotic…Hence it is often said, members of the Bench and the Bar are co-worshippers in the temple of justice…

The Bench and the Bar are inseparable bodies in the Justice system of any nation and either of them cannot be examined in isolation. This is more so when issues concerning election matters are considered. Section *6(1) &(2) ofthe1999Constitution* gives the Courts powers of adjudicate on.[420]

It is to be noted that, the 1999 Constitution created that there shall be established Election Tribunals consisting of a chairman and two members to hear and determine Elections petition as to the validity or otherwise of election of a member of the National and States Houses of Assembly and Governors of States and their quorum shall be a chairman and two other members for each State and the Federal Capital Territory and shall be appointed by the President of the Court of Appeal. Petition pertaining to the validity or otherwise of the elections to the offices of the President and Vice President of the Federal Republic of Nigeria, it is the president of the Court of Appeal that has the powers to constitute a panel of the justices of the Court to hear and determine such petitions[421]. A contestant

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[417] B.A Garnar. *Opcit* P. 155

[418] *Ibid,* P 149

[419] See *TheRelationship between the Bar and the Bench in the Course of justice: Nigeria Experience.* (Spectrum Law series 2002) Pp 163-166 cited by Honourable Justice D.C. Maduechesi , 'The Judiciary as the Last Hope of the Common Man: The Role of the Bar and Bench Towards its Realization' being a pre-dinner speech presented at the NBA, Aguata Branch, Law Week, 2015 held at Tripple Tree Hotel, Amokpalal, Orumba North, Anambra.

[420] The courts are; the Supreme Court, the Court of Appeal, Sharia Court of Appeal and the Customary Court of Appeal of the States and that of the FCT.

[421] See CFRN 1999(as amended) s 339 and the First Alteration Act, s 25 substituted by the Second Alteration Act, 2010 s 7, and the Second Alteration Act, 2010,s 9 Substituting the First Alteration Act, s 29 and CFRN 1999 (as amended) s 285

dissatisfied with the judgment of the Court,[422] has a right of appeal to the Supreme Court whose decision is final.

The Electoral Act[423] provides for electoral offences and punishments on conviction of any offender by a Magistrate's Court or High Court of a State or Federal Capital Territory where the offence is committed and a prosecution under this Act shall be undertaken by legal officers of the Commission or any legal practitioners appointed by it[424].

The Election Tribunals or Courts while hearing election petitions are empowered under the Electoral Act to make recommendations with respect to the prosecution by the Commission of any person for an offence disclosed in any election petition. This does not preclude the tribunal or Court from trying persons who commit contempt of court *facie* or *exfacie curiae* while hearing election petitions. The Supreme Court has no original jurisdiction in election matters.[425] Its appellate jurisdiction in election matters is derived from the Constitution only in relation to the decision of the Court of Appeal as to whether any person has been validly elected to the office of president or vice president under the Constitution.

On the other hand, the Court of Appeal under section 239 (1) of the 1999 Constitution is vested with the original jurisdiction exclusively to determine the questions as to whether any person has been validly elected to the office of president or vice president.

Election petition shall be filed within 21 days after the date of the declaration of results and election tribunal shall deliver its judgment in writing within 180 days from the date of the filling of the petition. An appeal from a decision of an election tribunal or Court[426] shall be heard and disposed of within 60 days from the date of the delivery of judgment.

Extensive alterations were made in section 285 of the 1999 Constitution prior to the 2011 general elections intended to drastically limit the long period it take election matters to be instituted, heard and determined in line with the

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[422] The panel constituted by the President, Court of Appeal is called Election Petition Court not tribunal as it is obtainable in other tiers of elections in Nigeria, seeCFRN 1999 (as amended) s239 and footnote 17.

[423] See the Electoral Act, 2010 (as amended) ss 177-132 and 150

[424] See Electoral act 2010 (as amended)ss 148 and 150

[425] See CFRN 1999 (as amended) s 233

[426] see CFRN 1999 (as amended) s. 278(5)

recommendations of Uwais' Report[427].This was to make the task of the tribunal easier and faster. It cannot be over emphasized that in a democratic setting the role of the judiciary in the electoral process is enormous since its does not only decide disputes arising from the electoral processes but also make pronouncements that would improve the electoral system as a whole[428].

Election petitions in law are considered *suigeneris* because of their distinct nature compounded extensively by political issues and issues of facts with little or no law or the application of legal principles and rules to facts which make them different from normal civil and criminal cases[429].

In election matters, normal courts are required to hear and determine cases that are strictly political in nature. This has made their duty even more tasking. Nwabueze[430] put it thus;

> It is not only that the mandate conferred by an election is purely political, not a legal right, but also the question as to which of several contestants is entitled to it is so deeply entangled in the politics of the people to an extend that the question of the constitutional validity of a legislative or administrative act is not. It brings the courts into immediate and active relations with party interests and party contests.

3. A critical examination of Judiciary Contributions to Credible Elections.

There are some instances where the Courts and Tribunals have taken courageous and sound decisions that tend to improve the electoral process in Nigeria. There are also some instances where they have made unexpected,

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[427] In the aftermath of the 2007 general elections, the federal government established a 22 member Electoral Reform Committee chaired by Hon. Justice Mohammed Lawal Uwais (Rtd). The committee was charged with the duty to examine the whole electoral process and to make necessary recommendations.

[428] Hakeem Onepajo et al op cit. P. 152

[429] See the cases of *APCvPDP* (2015) 30 WRN P 1(a) 15, *Okunlola v Shoyinka&Anor* (2019) 42 WRN P. 96@ 999 and see also Hakeen Onapajo et al *opcit* p. 152.

[430] See B O Nwabueze, *Nigeria's Presidential Constitution, 1979 -1988: The Second Experiment in Constitutional Democracy*, (New York Longman Inc 1989) p 73

legally illogical, conflicting decisions which have attracted public condemnation.

We shall attempt this assessment by critically examining some pronouncements and decisions of Courts and Tribunals in selected cases which have improved the credibility of elections in the fourth republic.

i. **Amaechi v INEC &Ors**[431]

In this case, Amaechi, Celestine Omehia and Other Aspirants contested the Rivers State PDP governorship primaries and Amaechi was declared winner of the primaries and his name according submitted to INEC for the 2007 Governorship election in Rivers State.

Thereafter, rumour has it that Amaechi's name was about to be substituted with that of Celestine Omehia. Amaechi then went to court, praying the court to stop PDP from substituting his name except in accordance with the Electoral Act. While the case was pending his name was infact substituted and Celestine Omehia's name was forwarded to INEC for the elections as its gubernatorial candidate and INEC accepted the substitution. The reason for the substitution was that Amaechi's name was submitted in error.

The case started at the Federal High Court which dismissed Amaechi's case on the grounds that the reasons given by PDP for his substitution satisfied the requirement of the Electoral Act, 2006 among others. Dissatisfied with the judgment of the Federal High Court, Amaechi appealed to the Court of Appeal and Omehia and PDP cross appealed. Within this period PDP also conducted its primaries in Imo State and one Senator Araraume won the primaries. He was later substituted by one Engineer Ugwu who contested the primaries and was placed 16th. The reason for his substitution was also "error" as in Amaechi's case. Ararume filed a case against his substitution and it was dismissed and he appealed against it to the Court of Appeal. Both Ararume and Amaechi's appeals were before the Court of Appeal, Abuja division at the same time.

At the Court of Appeal, Ararume's appeal was decided first and the Court held that his substitution was unlawful and declared him the rightful candidate of PDP and PDP was dissatisfied and appealed to the Supreme Court. While the case was pending at the Supreme Court, the Court of Appeal and parties in Amaechi's case agreed to be bound by the decision of the Supreme Court in Ararume's case.

[431] (2008) 5NWLR (Pt. 1080) 227

The Supreme Court upheld the decision of the Court of appeal in Ararume's case and held that he remained the PDP candidate in Imo State governorship election. The PDP then suspended Amaechi and Ararume and when Amaechi's appeal came up for hearing before the Court of Appeal both PDP and INEC applied for the Appeal to be struck-out as a result of the expulsion. This prayer was granted and the appeal struck out.

Amaechi was dissatisfied and appealed to the Supreme Court which upheld his appeal and ordered that his appeal and the cross appeal struck out be relisted, heard and decided on merit. While these intrigues and maneuvering were ongoing, Omehia was sworn in as governor of Rivers State. It took Amaechi filing two appeals to the Supreme Court from the decisions of the Court of Appeal, declining to hear his appeal before his appeal was finally heard and determined. Amaechi's appeal at the Court of Appeal was dismissed on the ground that his case is distinguishable from that of Ararume and that Amaechi's name was properly substituted with that of Omehia.

Amaechi went on appeal to the Supreme Court. The Supreme Court upheld his appeal and ordered that he be sworn in as Governor of Rivers State while Omehia was ordered to vacate his office. The reasons given by the Supreme Court for arriving at this decision were.

i. That there is no doubt that PDP has the powers to substitute the name of a candidate earlier sent to INEC with another candidate's name but this must be done in total compliance to the Electoral Act which requires a cogent and verifiable reason(s) to be given and in this case no such reason(s) was
ii. That there are no independent candidates in Nigeria. It is political parties that votes are cast for and not candidates or individuals.
iii. That a fresh election cannot be ordered in this case because if it is ordered a dangerous precedent would be set that whenever a court find that a candidate was wrongly or wrongfully substituted a re-election would be ordered even if a candidate's party did not win the election.

However, the Supreme Court in our opinion went too far in trying to instill party discipline and supremacy when it rightly, stated that there are no independent candidates in Nigeria electoral process but held that votes in an elections are cast for a political party not the candidates or individuals. This with due respect to the Supreme Court Justices is an over statement and perverse interpretation and

application of the law. In democratic elections[432] people vote for candidates of their choices and not political parties, since a political party may have the best manifesto and yet field a bad candidate in its election.

Again in this case, the Supreme Court played down the mandatory provision of the electoral Act[433] which is to the effect that, for a candidate to be eligible to contest an election, he or she must be sponsored by a political party[434] since there are no independent candidates in Nigeria. Rotimi Amaechi was not sponsored by the PDP or any other political party.

In its judgment, the Supreme Court was not unaware of the controversies and changes this judgment would introduce in the electoral laws and process in Nigeria. It therefore emphatically stated that courage is needed in situations like this for justice to be done even if the heavens would fall. The Supreme Court stated thus;

> A court must shy away from submitting itself to the constraining bind of technicalities. It must do justice even if the heavens fall. The truth of course is that when justice has been done, the heavens stay in place.

Again the Supreme Court admitted that it was introducing something new to the jurisprudence of Nigeria justice system albeit for the general good of the people and the system when it relied on the case of *Packer v Packer*[435] where Denning M.R. emphasized that there ought not to be hindrance or constraints in the way of dispensing justice.

ii. *Obi v INEC*[436]

By an originating summons dated 12/02/2007 and filed on the same date, the appellant as plaintiff before the trial Federal High Court sought for the determination of Whether having regard to section 180 (2) (a) of the 1999

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[432] See the case of *Agi v PDP* (2018) 3 WRNP 89. For instance, in the USA votes are cast for candidates not political parties that is why even when parties manifesto remain same, there is always changes in the political party in government because people vote for candidates not political parties. In Nigeria, the situation is not the same as people's vote for political parties not individuals and our Courts have made pronouncements to this effect, see the case of *Ameachi v INEC* (sura).

[433] See Electoral Act 2010 (as amended) 55, 87 (1-4 a,b,c)

[434] See CFRN 1999(as amended) s 177© and the case of *Pali v Addu* (2019) 14 WRN 1

[435] (194) 15 @ 22

[436] (2007) 11 NWLR (Pt. 1046) 565 or (2007) 31 NSCQR. 734

Constitution, the tenure of office of a Governor first elected as Governor begins to run when he took the oath of alliance and the oath of office among other issues and prayed for a declaration that his four year tenure of office as Governor began to run from the date he took the Oaths of Allegiance and of Office on 17th day of March, 2006.

Once again the Supreme Court took a firm and novel decision that tend to sustain the nascent democratic governance in Nigeria. The supreme Court interpreted section 280(2)(a) of the 1999 Constitution in such a way as to ensure that nobody assumes office wrongly to deprive the rightful person who won election into that office of his constitutional right of being in that office for his full tenure.

At this time, Anambra State was a center of political anarchy in the sense that negative political activities were in steady occurrences as if there was no law in the state.[437]

iii. *PDP v David Lyon*[438]

The two major contenders in the governorship in Bayelsa State 2019 were Senator Douye of PDP and Lyon of APC. After the emergence of these candidates and while the election campaigns were on going, the PDP candidate Senator Douye challenged the candidature of Lyon and his deputy at the Federal High Court on the ground that his deputy submitted forged credentials to INEC.

The Court gave judgment in favour of the PDP candidate and disqualified the APC candidates on the ground that they held a joint ticket of APC and that being the case both of them were not qualified to contest the election and that APC had no candidate in the Bayelsa State Governorship election. On appeal by APC candidates, the Court of Appeal upheld their appeal against the decision of the Federal High Court. Diri proceed to the Supreme Court which sacked the APC candidates barely 24 hours before their inauguration as Governor and Deputy Governor of Beyelsa State.

Here the Supreme Court was not influenced by the fact that the purported APC Governor and Deputy Governor elect, had 24 hours to be sworn in or are the ruling party candidates.

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[437] Kidnapping, destruction of public property, election godfatherism and malpractices were at their heights, see for instance the case of *Obi v INEC* & Ors(supra)

[438] SC/1/2020 unreported delivered ON 13/02/2020

4. Issues on Conflicting Decisions of Courts in Election Matters

In law, there are no two cases no matter how similar their facts and circumstances may be, that can be exactly the same, hence every case is decided on its facts and circumstance without any disregard to the fundamental Principles of *stare decisis.*

Moreover, election matters are by their nature *suigeneris*. Tribunals and Courts hearing them, must at all times avoid sacrificing justice and public interest on strict adherence to technicalities. In the case of *Nwobodo v Onoh*[439] the Supreme court par. Uwais JSC (as he then was) held;

> Elections petitions are by their nature peculiar from other proceedings and are very important from the other point of view of public policy. It is the duty of the court therefore to hear them without allowing technicalities to unduly falter their jurisdiction.

Similarly, in the case of *Okunlola & Anor v Shoyinka & Anor*[440] the Court of Appeal held; 'Now election petition is s*ui generis.* It is in a class of itself. It is different from a common law civil action'

Some of the decisions or pronouncements in elections matters, rightly or wrongly are seen as being in conflicts with each other. Election matters being *sui generis* with their peculiarities, are heard and decided in the same peculiar manner, hence, some decisions or pronouncements that seem conflicting may not really be so taking into consideration, public interest and circumstances under which they are arrived at.

Having stated the above, we shall discuss some cases where the courts are said to have given conflicting decisions or pronouncements.

In the case of *Amosun v Daniel*[441] , Ogun state Governorship election petition, the Court of Appeal found and held that one Tunde Yadeke was not an expert in the examination and analysis of electoral materials and his evidence to that effect rejected.

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[439] (1984) ISCNLR I and see generally Mike Ozokhome 'The legal profession in Nigeria Today: The challenges for tomorrow Lawyers' in *the Advocate* Vol. 3 1997 Unijos LCJ p 34

[440] LER (2019) CA/L/EPT/REP/855/2019 see also Abubakar v *Yar'dua* (2008)36 NSCQR (Pt.1) 231 @235.

[441] (2010) LPELR-CA/1/EPT/GOV/01/2009.

However in the case of *Aregbesola v Oyinlola*[442] in the Osun State Governorship Election petition, the Court of Appeal held that, the same Tunde Yadeke earlier rejected as an expert in the examination and analysis of Electoral materials, was an expert in the same field. Curiously, two of the three justices of the Court of Appeal were members of the panel in *Aregbesola v Oyinlola*.

In the case of *Obumneke v Sylvester*[443] the issue for determination was whether the petition was incompetent on the ground that the witness statements on oath filed with the petition did not strictly comply with the exact words used in the first schedule of the oath Act 2004 in concluding the statements on oath. The court of appeal held that failure to use the exact words or form is fatal and renders the statement on oath inadmissible in evidence.

Conversely, in the case of *Ibrahim*v *INEC*[444] the same issue arose before the same Court of Appeal, the Court held that the clear intention of the law makers and the legislature, the Oath Act is intended to accord persons who want to make declaration such as marriage, age or assets to subscribe to the declaration. That it is not the intention of the legislature that the wording of the statutory declaration must be strictly complied with and noncompliance to it is not fatal to the petition.

Some of these so called conflicting decisions, are arrived at, where the irregularities or noncompliance to the Electoral Act, laws or form are not substantial enough to have the required effects to warrant the tribunals or Courts to annul an election or a process filed in court and the court not adhering to unnecessary technicalities as against substantial justice.

The Supreme Court in the case of *Buhari v INEC*[445] on when noncompliance to the Electoral Act or the law would lead to the annulment of an election held as follows;

> Nigeria is one vast and huge country made up of so many diversities…and above all, quite a number of political parties…This diversity, couple with the usual aggressiveness…the do or die behaviour of politicians. There must be irregularities. Court of law must therefore take

[442] (2009) 14 NWLR (pt.1162) 429 see also E O Okolie, *opcit* and C Mbaka, 'Conflicting judgment in the Nigerian Courts and the CJN's Lamentation: Matters Arising'. in < https//www.the willingnigeria.com>. accessed 18/08/2020

[443] (2010) All FWLR (Pt. 506) 207

[444] (2007) 3 EPR. 50@66.

[445] *Supra*

> the irregularities for granted unless they are of such compelling proportion or magnitude as to effect substantially the result of the election. This may appear to the Nigerian mind as a stupid statement but that is the law…

In the same case of *Buhari v INEC*[446] the Supreme, per Niki Tobi JSC (as then was), made this notable pronouncement on politics, judiciary, judges and opinion of the public as follows;

> The way politics in this country is played frightens me every dawning day. It is a fight to finish affair. Nobody accepts defeat at the polls. The judges must be the final bus stop. And when they come to the judges and the judges on their professional minds give judgment, they call them all sorts of names. To the party who wins the case, the judiciary is the best place... To the party who loses, the judiciary is bad. From the foregoing, it is deducible that where a petitioner fails to prove substantial noncompliance to the Electoral Act and law but wants to capitalize on technicalities, the Tribunal or Court shall not uphold his petition.[447]

5. Suggested ways the Judiciary Can Contribute to the Quest for Credible Elections

i. The judiciary is a stakeholder in Nigeria elections process. While laws[448] are put in place to ensure credible conduct of elections, the judiciary has the duty of ensuring compliance to those laws through its decisions and pronouncements on matters brought before it.

Candidates to an election would hardly have rest of mind after the declaration of election results, until the courts make one pronouncement or the other as to who the real winner of the election was[449]. The aim of these judicial

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[446] Supra

[447] Per Katsina Alu JSC (as he then was) in *Buhari* v *INEC* Supra

[448]For instance, CFRN, 1999 (as amended) ss 6, 239, 285 and the Electoral Act, 2010 (as amended) ss 132, 150, 177 etc. are all targeted at achieving credible elections.

[449]For Instance, there are cases where courts' pronouncements on who won an election obviously go contrary to the expectations of voters at the election. This can be very discouraging. For

pronouncements should not only be, to decide who wins an election but should extend to shaping and guiding the whole electoral system towards attaining desired credibility.

ii. The judiciary must also ensure that its decisions, pronouncements and conducts are targeted at instilling discipline, civility and decency in the conduct of election. An election marred by violence, thuggery and manipulations cannot be credible. The judiciary, nay the courts, is saddled with the responsibility to by its decisions, discourage these vices in the electoral process by not allowing those involved in the infractions to have their ways into public offices.

iii. The judiciary must also build the people's confidence in the electoral process. This will encourage better participation of citizens in elections. This can only be possible when the judiciary make decisions and pronouncements that show that the people are not wasting their time and resources participating in election and that their votes count.

iv. The judiciary must be fair, firm and consistent in its conduct while hearing electoral matters. There have been instance where the judiciary has disappointed a lot of persons through their conducts[450] thereby making contestants and their supporters in elections believe that anything goes in election matters.

v. The judiciary must always act for public interest and peace. There cannot be credible elections without peace, therefore the judiciary must act as peace builder, whereby all violent related cases arising from elections and brought before it, are heard and decided thoroughly by the courts bearing in mind the need for peace in achieving credible elections.[451]

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example, the Imo State gubernatorial election of 2019 where the person declared winner by the Supreme court is strongly believed, never won the election and the people are still emphatic that they never elected him and that the Supreme court made him governor and even INEC, the umpire, seems not to agree with the judgment of the supreme court

[450] See generally Aminu Adamu Bello 'Judicial Review as an Efficient Tool for Electoral Reforms in Nigeria' at https://www.papers.ssm accessed 8th June, 2021, Akin Olawale Oluwadayisi 'The Role of the Judiciary in the Application of Peace Building theory and Method to Election Dispute Resolution in Nigeria' in Journal*ofLaw*, *PolicyandGlobalization* (vol. 45, 2016) Pp 2-5.

[451] Ibid and see also generally Osahon O. Guobadia "The Relevance of the Judiciary in a Democracy" in Africajournal*of*InternationalandcomparativeLaw (vol. 20 issue 2) p. 301. Okeke, Remi Chukwudi and Idika, Adeline Nnenna, 'The Judiciary and Democracy Consolidation in Nigeria under the Buhari Administration' in *Specialty Journal of politics and law*. (vol. 2 (4) 2017) p. 27 and Maduekwe Vincent Chuks, Ojukwu Uche Grace and Agbata Ifeanyi, 'Judiciary and the Theory of SeparationofPowers in achievingsustainable Democracy in Nigeria (the Fourth Republic)' in *British Journal of Education(*vol. 4 No. 8) Pp 84-104.

vi. vi. It is very clear that judicial decisions have added a lot to the making of electoral laws in Nigeria[452], hence the need for consistency and uniformity in judicial decisions so that our electoral laws can also be consistent and purposeful.

6. Challenges of the Judiciary in the Quest for Credible Elections

i. Electoral Fraud in the Judiciary

It is now beyond argument that there is corruption in the Nigerian judiciary particularly in handling election matters[453]. Cases of bribery aimed at influencing election tribunals' judgments are raised frequently. Commendable responses from the National Judicial Council (NJC) have also been recorded whereby some erring Judges who handled election petitions were found guilty and disciplined.[454]. Unfortunately, some of the fraud carried out in election tribunals are either carried out or facilitated by senior members of the legal profession who are rather, expected to work against it[455].

At a point in time, politicians only go to the pools to rig elections and while doing this, huge sums of monies are kept somewhere waiting for the election tribunals in case their rigging plans failed. These monies were meant to bribe Judges of the tribunals to give verdicts in their favour. Otorofani[456] captured this in the following manner;

> This is the new generation of rigging formula invented by the Nigerian judiciary to replace the old generation formula introduced by INEC that seems to have outlived its usefulness in this digital era. The Nigerian judiciary has invented a

[452] Most of the amendments in the first and second amendment in the electoral act were necessitated by decisions and pronouncement of courts on election matters

[453] See Hakeem Okapayo and Ugo Okeke Uzodike op cit Pp 155-157 where it is shown that in the 2003 gubernatorial election in Akwa Ibom State, NJC suspended four Judges over acceptance of bribe. In 2003, two Justices of the Court of Appeal were dismissed by the President on the recommendation of NJC over acceptance of bribe to rule in favour of a particular candidate in a dispute over the Anambra South Senatorial election 2003 after an investigation showed clearly that the Judges collected N15million and N12 million respectively

[454] Ibid

[455] Ibid and also it was discovered that there were several telephone conversations between the chairman of Osun State Election Tribunal and the lead counsel to the defendant, Olagunsoye Onyilola.

[456] Cited by Hakeem Onapayo and Ugo Uzodike op cit, p. 157. See also Hon. Justice Banji Orilonise (rtd) "The courts and Management of Election Petitions; Challenges, Prospects and Solution" Speech delivered at a symposium organized by Mustapha Akambi Foundation, on Wednesday 21st July 2010 at Sheraton Hotel Abuja.

modernized version to keep up with the times.

This is one of the biggest challenges against the expected roles of the judiciary in achieving credible elections in Nigeria.

ii. Membership of Election Petition Tribunals

Election petitions are distinct specie of litigation from the regular civil and criminal matters handled by the regular courts. Judges who make up the membership of tribunals are appointed from the regular courts and some special courts.[457] Some of the Judges, throughout their practice as legal practitioners and even while in the bench, have never handled election matters. Needless to say that in doing justice to cases, Judges need some level of experience especially in specialized areas of law such as election matters, which are *suigeneris*[458]

The caliber of Judges sitting in election tribunals has a lot to do with the quality of judgments they produce and this effects the quality of contribution of the judiciary to the quest for credible election.

iii. Limited Time for Hearing Petitions

There are timelines at all stages of the hearing and determination of election petitions, which are in most cases considered inadequate. For instance, election petition shall be filed within 21 days after the declaration of results and the election tribunals shall deliver its judgment in writing within 180 days from date of filing the petition. An appeal from a decision of an election tribunal or the court of Appeal in an election matter shall be heard and disposed of, within 60 days from the day of the delivery of the judgment at the tribunal or Court of Appeal[459].

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[457] In some cases, the *Kadis* of Sharia Courts of Appeal, Judges of the Customary Court of Appeal and Chief Magistrates are appointed into election tribunals. Most of them studied and practiced a particular aspect of the law, for example some of the Sharia Judges, studied Islamic or sharia law and they sit as appellate courts who do not carry out the regular duties of recording, observing the demeanor witnesses and evaluation of evidence regularly done by trial court, thus, some of the tribunal members contribute little or nothing in some cases to the hearing and determination of matters before them. Some of the Magistrates also lack the requisite experience to sit, hear and determine complex and special matters such as election petitions. See Hon. Justice Banji Orilonise (rtd) op cit, p 2.

[458] See Orubu v INEC (1988) 5 NWLR (pt 94) 323 @347.

[459] See the CFRN 1999 (as amended) ss 284-285. Some elections petitions have been dismissed for flimsy reason of failure to file pre-trial papers within time and a dismissal of this nature is treated as a dismissal on the merit which only an appeal to the Court of Appeal or Supreme court as the case may be can set aside. See C.J Uba 'Strategies and Procedure for Expediting Election Petitions and Appeals at https://www.oolinfo accessed 9th June, 2021 and Kudirat Magaji W. Owolabi 'Examination of Time Limit for Election Petitions under the 1999 Constitution in *UnimaidJournal*of*PublicLaw* 5(2) 73-87.

These provisions are in most cases sacrosanct and no extension of time is allowed to regularize whatever is done out of time[460]. Election tribunals therefore, have their sittings daily to meet up with the statutory regulations, which in some cases compel them to sacrificing substantial justice in a bid to meet timelines. This has also hindered the judiciary from effectively discharging its duties of promoting credible election in Nigeria.

7. Conclusion

Apart from Election matters being *suigeneris*, they are also controversial, complex and attract serious public attention. This is so because political offices are the main stay of human and material development in Nigeria. Money and wealth are easily made through politics[461].

Most of the cases with complaints of conflicting judgments are judgments given by the Court of Appeal and in some of the judgments, the court attempted to distinguish such cases from the other while avoiding unnecessary adherence to technicalities.

The courts have always given the impression that they are doing their best to promote the fragile democracy in Nigeria. The Supreme Court in the case of *Abubakar V. Yar'adua*[462] held; 'Despite all the insults, this Court will continue to administer justice in the interest of our most cherished democracy. This court has consistently promoted democracy in its judgments and will continue to do so'.

In all, the courts have shown some appreciable level of courage and consistency in their decisions in a bid to promote credible election and democracy in Nigeria. However, one cannot but admit that, democracy is relatively new in Nigeria and the learning process is ongoing. Mistakes are bound to be made and the judiciary is not an exception.

6. Recommendations

[460]See for instance section 18 (2)(3) and (4)of the first schedule, Rules of Procedure for Election Petitions relating to the filling of pretrial application within 7 days of the filling and service of the petitioner's reply on the respondent or 7 days after the filling of the respondent's reply as the case may be and the consequences of failure to do so within time which is dismissal of the petition. Judgment given under this rule may be set aside upon an application made within 7 day of the judgment and no application for extension of time shall be entertained or granted in both case

[461] In most cases the money and wealth are made through corruption

[462] *Supra.*

i. Experienced, disciplined and sound lawyers should be appointed judges as against the present situation where persons in power appoint relatives as judges whether they are qualified or not.

ii. The National Judicial Council has to do more in terms of approval of appointments of judges and elevation of existing ones and in monitoring and discipline of erring judges. It must insist on the best.

iii Not federal character but merit should be the main determinant in the recruitment and elevation of judges.

vii. Research and networking by judges and Courts at all levels must be established and where they exist, improved upon for better performance.

viii. Special Courts should be established to handle election matters. This would encourage specialization, quick dispensation of justice and consistency in the system.

vi. Lawyers must avoid guaranteeing their clients victory in election matters and suggesting extra judicial means of getting victory.