

THE JUDICIARY AND GENERAL ELECTIONS IN NIGERIA

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INTRODUCTION

Elections are considered as cardinal and indispensable in the practice of modern democracy. According to Nnoli (1990) "It is closely tied to the growth and development of democratic political order that is generally held to be the single most important indicator of the presence or absence of democratic government". Elections if properly organized, devoid of rigging and all forms electoral manipulations and malpractices do not only establish and entrench democracy, but confers legitimacy on the leadership that emerged from the process, the political institutions, policies and programmes that accompany such administration. Election has been defined as the manner of choice agreed upon by people out of many to occupy one or a number of positions of authority (Nnoli, 2003). Elections have always been the legitimate way of transferring power from one regime to another through the ballot box. Through election, popular conduct and participation in public affairs is created in the society, Ugoh (2004).

The current global emphasis on democratization has made election an inevitable process of leadership choice and succession. Obviously, the stability of every democracy is tied to the integrity of the electoral process while the quality of a representative government is also related to the capacity of state to evolve viable, transparent, and trusted electoral machinery that will inspire the interest and confidence of broad spectrum of civil society and contending factions of political society (Okolie, 2008). Regrettably, election in Nigeria since political independence has been characterized by violent action that often results in socio-economic tension and unrest. This has indeed remained a recurring decimal in Nigeria's political life despite efforts at curbing it. Besides, political violence in the country has experienced recurring cases of disputed elections. The 1999 elections, which brought a retired general, Olusegun

Obasanjo to power, were blighted by such widespread fraud that observers from Carter Centre concluded that "it is not possible for us to make an accurate judgment about the outcome of the presidential election". Hence, the elections were challenged in the courts.

The 2003 and 2007 general elections were also allegedly manipulated (Lewis 2003; Suberu 2007). The 2007 elections, in particular, severely dented Nigeria's democratic credentials due to the national and international condemnation they elicited. However, on a positive note, the elections led to a great deal of soul-searching among the Nigerian leadership. The president at the time, Umaru Musa Yar'Adua, publically acknowledged that the election that brought him to office was fundamentally flawed. He therefore set up the Electoral Reform Committee (ERC) to suggest measures that could improve the conduct of elections, restore electoral integrity, and strengthen democracy in Nigeria. Some of the ERC's recommendations were reviewed and adopted as amendments to the Constitution and Electoral Act. The government also tried to restore the integrity of elections in the country by appointing credible leadership to the INEC. For its part, the INEC adopted series of internal measures aimed at restoring public confidence in the electoral process (Kuris 2012). All of these measures contributed to the relative successes of the 2011 and 2015 general elections.

Nigeria's electoral process results into a number of disputes that have arisen due to allegations of breach of the electoral laws. The Independent National Electoral Commission of Nigeria (INEC) has come under attack every time the country holds elections. Many stakeholders view the Commission as merely a tool for the party in power. Many political analysts have been arguing that this lack of transparency by INEC has put into doubt the integrity of the Commission in the management of elections and resolution of disputes that arise thereof. These disputes are subject to be resolved through a number of mechanisms which will be discussed in this work. Among these mechanisms, the primary mechanism is the Judiciary as it is the arm of government that is ultimately responsible for the delivery of justice in the nation. Therefore, this project work aims at critically evaluating the role of the Nigerian Judiciary (Courts) in the resolution of electoral disputes. To this effect there are various laws governing elections and among them is the 1999 Constitution of the Federal Republic of Nigeria as amended, the Electoral Act, 2010 as amended. The Electoral Act empowers the Independent

Electoral Commission of Commission (INEC) to make election regulations and provides for offences and penalties in connection with elections. The Act also provides for election petitions and the hearing and determination of applications relating to parliament and for matters incidental to or connected with the foregoing. The laws cited above provide for fairness and effectiveness in the electoral process. However, there are incidents where candidates engage in electoral conflicts, electoral offences, corruption and other malpractices before during and after elections. In cases of electoral conflict, the INEC is empowered to resolve the conflicts and disputes through conciliation or mediation and to set up conflict management committees to resolve disputes. Conversely, if a candidate wishes to challenge election results, the only process through which that can be done is by way of election petition in an election tribunal and its general system of courts.

Definition and Nature of Elections

Universally, election is regarded as the heart of representative democracy. A credible election not only confers legitimacy on political leadership, it is also crucial to the sustenance of democratic order. Election provides citizens with the freedom to choose their rulers and to decide on public policy. Under any democratic system, citizens who are legally qualified to exercise franchise are provided with opportunity to choose political alternatives and to make decisions that express their preferences. In a multi-party dispensation, this choice is made out of the several parties and candidates competing in the electoral market. In all democracies, election performs several functions: it is an instrument through which the voting public compels accountability from elected officials; it facilitates political recruitment; it enables citizens to make enlightened choices; and it confers moral authority on political leaders. Within the context of the last function, election is viewed as a "legitimizing institution, functioning to give elected leaders the wherewithal to govern." (Schlozman and Verba, 1987:3) Diamond et al (1989: xxi) describe democracy as a governance model that meets three basic conditions: competition among individuals and political groups (political parties); inclusive system of leadership recruitment; and existence of a regime of civil-political rights. These conditions underscore the importance of election both as a regime legitimizer and as a guarantor of citizen participation in public governance.

Election represents the lifeblood of modern democracy and the frequency, fairness and openness of such election are crucial to the political stability of the polity. The extent to which election advances democratic order depends in large part on the existing electoral system, its nature and its acceptance by the stakeholders in the electoral process. Electoral system refers to a “complex of rules and regulations that govern the selection of officeholders” (Nnoli, 2003:230) in a democratic context. The choice of a particular electoral system does not only have a profound effect on the political life of a country, it also distributes costs and benefits to political actors i.e. political parties and candidates. Designing a credible and inclusive electoral regime is a necessary enterprise in all democracies whether transitional or consolidated. While for the former, the challenge is to design an electoral regime that suits their social and historical conditions, for the latter, it is to re-craft their electoral systems to respond to new political realities and challenges. The existence of a viable electoral system is crucial to the survival of any democracy. This is even more so in a country like Nigeria where access to the state and its resource allocating powers is viewed as the means of guaranteeing one’s economic security. Consolidating Nigerian democracy through the conduct of credible elections has remained an albatross. The history of Nigeria’s democratic experiments demonstrates that elections and electoral politics have generated so much animosity which has, in some cases, threatened the corporate existence of the country (such as happened after the annulment of the June 12, 1993 presidential election) and in other cases instigated military incursion in to political governance, most notably in 1966 and 1983. At the heart of electoral crisis in Nigeria is the lack of credibility for the official results of elections leading to the rejection of such results by a sizeable portion of the Nigerian voting public. Since the 1964 general election, the first to be conducted by the postcolonial Nigerian government, elections in Nigeria have consistently been characterized by the contestation of results and organized violence. While there is a plethora of factors that account for electoral crisis in Nigeria, the institutional factor (designing a credible electoral system) appears to be the most salient. In addition, the process of implementing such an efficient electoral regime is challenged by sociological variables such as the pluralist character of the Nigerian nation, underdeveloped political culture and irrational elite behavior.

In the case of Nigeria, section 1(2) of the 1999 Constitution of the Federal Republic of Nigeria makes it clear that the Federal Republic of Nigeria

shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution.

In some advanced democracies, elections are such a routine matter, that the credibility and validity of each electoral process and cycle is assessed on the quality and performance of new technologies and innovations and Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election. These same provisions are repeated in sections 115-118 of the Constitution of the Federal Republic of Nigeria 1999(as amended) relating to election to State Houses of Assembly and sections 130-138 and 176-183 relating to the election of the President and the Governors. The implication of these provisions is that persons and political parties can only come to power through the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act,2010(as amended). The due observance and adherence to Constitutional and Electoral stipulations and timelines is fundamental to the credibility of elections. This is because, the processes and procedures enumerated in the Constitution and the Electoral Act, 2010(as amended) are processes, steps and stages that must be complied with before the process of voting, collation and announcement of results will take place. If the Constitutional and Electoral. Framework of an electoral process is faulty, skewed or manipulated; it may be difficult for such a process to produce results that would be acceptable to the Nigerian people.

The Electoral Act is the law which currently regulates elections in Nigeria. Applying broad interpretation, the Court of Appeal in *Progressive People Alliance (APP) v. Sariki* interpreted the word "election" as used in section 137(1)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to mean the "process of choosing by popular votes a candidate for a political office in a democratic system of government." It cannot refer exclusively to the polls. The casting of votes by the electorates on the day of the polls is just part of the electoral process. By the provision of the Electoral Act under Part IV, the word election is a generic term comprising *inter alia* submission of list of candidates and their affidavit by political parties, nomination of candidates, conduct of the polls, etc. In this project work, the term election will be used in a broad manner.

The procedure for challenging an election under the Electoral Act 2010 is by way of an election petition complaining of either an undue election or

undue return. An election petition presupposes that an election has been held and the result announced. A petition, for example as to who is validly elected as governor of a State can only arise after an election. After the 2007 general elections, Nigerians did not only witness the challenge of the presidential election won by Late Alhaji Umaru Musa Yar Adua, but also litigations against governorship election results in States across the country. The former Court of Appeal President, Justice Abdullahi Umaru said that about 1,527 petitions were lodged in respect of the 2007 general elections saying it was the highest in the history of Nigeria. Justice Abdullahi Umaru agreed with the former President of the Nigeria Bar Association (NBA), Chief Oluwarotimi Akeredolu (SAN), that the way and manner the 2007 general elections were conducted might have given room for the welter of petitions.

In theory, election is a process of testing the performance of a government, the level of political participation and the credibility of an existing government. Election is often considered as the heart of democracy and as such carries an intense weight in the success of representative democratic politics all over the world. However, conducting free and fair election has been a weighty albatross in Nigeria's repeated attempts at sustained democratic governance (Inkoba and Kumokor, 2001). Similarly, the International Institute for Democracy and Electoral Assistance (IDEA) (2001:217) emphasised that the process of election in Nigeria are characterized by stuffing of ballot boxes with ballot papers, over-bloating of voting registers, special treatment of voters, disappearance of or destruction of ballot boxes as well as distortion or doctoring of election results and that electoral malpractice had become an entrenched practice in Nigerian political system. At worse, the ruling elite resorted to using judicial tribunals to unjustifiably uphold their elections. A common feature of elections and electoral process in Nigeria is that it has been by irregularities, fraud and lack of credibility. Late president Yar'Adua admitted openly during his inaugural speech that the general election which brought him to power, was seriously flawed and promised correct the weakness in the electoral system, and decided to set up the Electoral Reform Committee (ERC), mandated to fashion out how to improve on the quality of future elections. The committee submitted its findings in December 2008. Among the most significant of the reforms were those to increase INEC independence and fiscal autonomy. Some of the recommendations of the ERC were implemented and became

handy in the 2011 elections under the watch of Professor Attahiru Jega the INEC Chairman.

The 2011 election conducted by INEC under its chairman Professor Jega was applauded by both local and international observers of being credible and transparent. But the conduct of the 2011 elections was not without some challenges before, during and after the election. These challenges are among others the problem associated with the PDP zoning formula that became the most contentious and candidacy of President Jonathan; rampant cases of underage registration and voting; Ad-hoc INEC officials who resisted the pressure to register minors and allow them vote were threatened and harassed into submission; cases of ballot box snatching in spite of the open/secret system of voting as well as multiple thumb printing despite the availability of Direct Data Capturing Machine that were used electronically; 60% of polling units were unable to receive the necessary materials and also accusation of outright fraud and collusion amongst INEC agents etc. These shortcomings were noted by the Transition Monitoring Group (TMG) (Think Africa Press, 2013).

The Nexus between Election and Democracy

Generally, social systems either authoritarian, monarchy, socialist, oligarchy aristocracy, democracy and so on from the views of elite theorists are divided into two distinguishing classes or group: the minority and majority, the rule and the ruled. All social systems are characteristic by the competition for scarce resources and political power. Political power in a democratic system comes through what is termed as periodic, competitive, free and fair election. In other words what distinguishes democracy from other forms of government is the conduct of periodic election as a process for transition from one set of political office holders or leaders to another for specific tenure. Election and democracy cannot be divorced from one another for they are organically linked. Scholarly attempt at establishing this link emphasise that it is through elections that formal allocation of power occurs in all democracies which give meaning to power relationships within the political community and also serve as a medium of legitimacy. Election therefore reflects the basis of the social contract between representatives and the represented, or people and their governors. Periodic elections also provide opportunity for transition from particular sets of representatives and office holders to another set of rulers. Inokoba and Kumokor (2001: 142) stressed that the perception of democratic government as responsive and responsive government is not

unrelated to the fact that the power of governance, through election, rest essentially with the people themselves; it is through election that the will of the people, which form the basis of democratic government is expressed. And since power is rested in the electorate who supply and withdraw mandate from those who direct state affairs, elected officials are compelled to be accountable to their constituencies. Thus, in order not to be voted out of office, elected officials would as much as possible try to be answerable to the needs and aspiration of the people.

However, it is not in all situations that elections are completely competitive, free and fair, nor are the electorates adequately empowered by established institutions to command compliance and accountability from elected officials devoid of elite manipulation. Yes, elections are conducted but the process in most African countries and Nigeria in Particular has not been without fraud and violence (when compared to elections in developed democracies) such as poor registration process, inadequate and untimely arrival of voting materials, ballot box snatching ,vote buying, declaration of false elections results etc. These irregularities are just manifestation of elite activities in the electoral process which renders democracy loose its vital ingredients. Even though Paki and Inokoba (2006) in Inokoba and Kumoko (2011) argued that an administration that is established through a fraudulent and violent electoral process usually lacks such vital ingredients of democracy. Governments that are instituted through questionable electoral processes, in bid to strengthen their stranglehold on power, tend to be high handed and repressive in nature. This in a considerable way explains why most African states are gross abusers of human rights and why they cannot tolerate dissenting positions and groups. Therefore election is key to democracy. In other words, they are interconnected, interrelated, and interdependent phenomena.

Election Disputes

Election disputes are inherent to elections. Challenging an election, its conduct or its results, should however not be perceived as a reflection of weakness in the system, but as proof of the strength, vitality, and openness of the political system. Therefore the increase in the variety and number of election-related disputes results partly from an increase in public understanding of the redress process. This trend is, however, particularly challenging where the legal systems and electoral administration are still developing. The issue of electoral fraud and the lack of credibility of the

electoral process have been with the Nigerian people for some time. It has more or less become a feature of Nigerian elections. It is rooted in the “do or die” politics practiced by some Nigerian politicians and political parties. Unfortunately, as a large number of those that engage in electoral fraud and irregularities get away with it, it becomes the norm rather than the exception.

This sad history of electoral fraud or rigging has serious implications for our democratic future because the phenomenon is growing rather than declining. As the elections go by, the principal forms of rigging and fraud are increasing and are being perfected in successive elections since 1964, 1965, 1979, 1999, and 2003, 2007, 2011, 2015 and 2019 respectively. The result is that elections have become turning points in which the outcome has been the subversion of the democratic process rather than its consolidation. Not surprisingly, major political conflicts have emerged around rigged elections. The 1983 elections occupy a special place in the history of electoral fraud in Nigeria. Competitive rigging reached its apogee: All sorts of strategies and stratagems including manipulation of the ballot or “rigging” were employed in order to win elections. Each of the opposition parties used its local power of incumbency to retain power or to improve its position vis-a-vis other contenders. However, federal might was used to dislodge state governors in Anambra, Oyo, Kaduna, Gongola and Borno states, reversing the power structure existing before the election when opposition parties had twelve against NPN's seven governors. (Kurfi, 2005-97). The most significant issue in the 1993 election was that emphasis shifted from traditional forms of electoral based manipulation of the ballot to total disregard of the figures collated on the basis of ballot and completed forms. Figures totally unrelated to any results genuine or forged, are simply announced and illegally protected with state power. The emergence of electoral victory by false declaration did not mean that other forms of competitive rigging disappeared. Indeed, the diversity of forms of competitive rigging employed during the 1983 elections has been carefully enumerated by the Babalakin commission of inquiry (FRN, 1986-290).

- 1) Compilation of fictitious names on voters' registers
- 2) Illegal compilation of separate voters' list
- 3) Abuse of voters' registration revision exercise
- 4) Illegal possession of ballot boxes
- 5) Illegal printing of voters' cards.
- 6) Stuffing of ballot boxes with ballot papers.

- 7) Falsification of election results.
- 8) Illegal thumb-printing of ballot papers.
- 9) Voting by under-age children.
- 10) Printing of Form EC8 and EC8A used for collation and declaration of election results.
- 11) Deliberate refusal to supply election materials to certain areas.
- 12) Announcing results in places where no elections were held.
- 13) Unauthorized announcement of election result.
- 14) Harassment of candidates' agents and voters.
- 15) Change of list of electoral officials.
- 16) Box-switching and inflation of figures.

In 2003, Nigeria conducted the second general election since her return to civil politics in May 1999. The 2003 elections were almost as contentious as the 1983 elections. The report from Nigerian observers affirmed numerous reported cases of alleged fraud in many states across the country (Transition Monitoring Group, 2003:120). The European Union Observer Report also confirmed widespread election-related malpractice in a number of states in the Middle Belt, the South east and the South-South (European Commission, 2003:42). The plethora of electoral malpractices such as ballot box stuffing, snatching of electoral materials and smashing of ballot boxes, inflation of votes and other dimensions of electoral fraud and the high incidences of electoral violence once more rekindled the old fears that the basic institutional weakness associated with her electoral system could bring the democratic experiment to grief.

Character of the Nigerian State and Electoral Crisis

The crisis of the electoral system in Nigeria will be better understood if situated within the context of the nature of the political economy of the Nigerian state. The Nigerian state plays a dominant role in the national economy in the face of the underdevelopment of private capitalist enterprise. This throws up the state as a primary instrument of accumulation. As a facilitator of the capitalist development process, the Nigerian state is a major owner of the means of production. Buoyed by the expanded oil revenues of the early 1970s, the state effectively dominated all aspects of the national political economy (Jega, 2000:30). This made the state not only the biggest spender of resources but also the largest employer of labor. As noted by Joseph (1991:56), the expansion of petroleum production and the resultant increased revenues heightened

“the centrality of the state as the locus of the struggle for resources for personal advancement and group security.” Under this circumstance, access to the state becomes a platform for primitive accumulation. Ake (1996:23) captures the immensity and the ubiquity of state power under this situation when he observes that “the state is everywhere and its power appears boundless. There is hardly any aspect of life in which the state does not exercise power and control. That makes the capture of state power singularly important.”

This character of the Nigerian state encourages clientele politics which, according to Huntington, (1997:378) exists “where the state controls opportunities for commerce and a wide range of jobs in the academic, administrative and legal fields.” Within this context, politics means more than competition for political power but assumes the character of a desperate struggle “for positions in the bureaucracy or for access to those who have influence over government decisions.” (Leeds, 1981:353) Issuing from the profitability of state power for primitive accumulation, the struggle for state power is reduced to warfare by factions of the governing elite. In this struggle, commitment to public service and ethics of governance becomes secondary. (Egwu, 2005) Thus, political (state) power does not only represent the license to wealth, it is also “the means to security and the only guarantor of general well-being.” (Ake, 2001:7) It is within this context of the dominant role of the state in the political economy that one can explain the desperation of Nigeria’s governing elite for state power as evident in the brazen manipulation of the electoral process, many times with impunity. This dominant character of the Nigerian state continues to endure even in the face of the prevailing hegemony of the free market regime, which preaches minimalist state intervention and privileges the market as the efficient allocator of societal resources. Put differently, the gradual transformation of Nigeria into a market economy with the attendant disengagement of the state from social provisioning and cutback in public expenditures has not significantly reduced the struggle for the control of the soul of the Nigerian state among the governing elite.

The roles of the Judiciary in Election Disputes in Nigeria Judicial Resolution of Electoral Disputes in Historical perspectives

The Constitution of the Federal Republic of Nigeria vests on the judiciary the power to adjudicate on matters arising between parties. Chapter 1, Part II, Section 6 of the Constitution states as follows:

- (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 subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.
- (4) Nothing in the foregoing provisions of this section shall be construed as precluding:-
 - (a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;
 - (b) the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.
- (5) This section relates to:-
 - (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
 - (k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.
- (6) The judicial powers vested in accordance with the foregoing provisions of this section-
 - (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law
 - (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;
 - (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;

(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law. The judiciary, also known as the judicial system or judicature is the system of Courts which interprets and applies the law in the name of the State. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law or enforce law. The judiciary rather interprets law and applies it to the facts of each case. Though some school of thought believes that the judiciary makes law through judicial activism. It is a jurisprudential school of thought that laws in the statute books are not laws 'strictocensos' until the judicial pronouncements are made on them. This branch of government is often tasked with ensuring equal justice under law. It usually consists of a Court of final appeal (often called the "Supreme Court") together with lower Courts. The judiciary is the guardian of the Constitution and acts as a check on the abuse of the executive and the legislative powers. The Black's Law Dictionary defines the word "Judiciary" as the branch of government responsible for interpreting the laws and administering justice.

The Rule of Law is defined by the United Nation's as "a principle of governance in which all persons, public and private institutions and entities, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated upon, and which are consistent with international human rights, norms and standards"; while the World Bank defines it as "legal – political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions". In the most basic sense, the rule of law is "a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power."

Judicial resolution of electoral disputes has proved to be a sore point in the electoral process in Nigeria.

The Fourth Republic

Nigeria's fourth republic commenced on 29th May, 1999. On that day, Nigeria's military relinquished political power after dominating the country's post-independence experience. General elections were conducted in 1999, 2003, 2007 and 2011. Of all these general elections,

the 2007 general elections however, seem to have put election petitions in top gear as the influx of aggrieved candidates into the courts for reprieve greatly increased, leading to the devotion of the better part of the tenure which the election ushered in to the resolution of election disputes.

During the period under review, some of the disputes were resolved in a reasonably short space of time. However, some others spanned over three years. The petition of Dingyadi against Wamakko of Sokoto State is considered the longest election petition ever entertained by the judiciary in the northern part of Nigeria. It lasted for three years and eight months.

In the south eastern part of Nigeria, the case of **Dr. Chris Ngige v. Peter Obi** has become a reference point in the analysis of the problems and challenges of electoral dispute resolution. Peter Obi the then governorship candidate of the All Progressive Grand Alliance (APGA) filed his case on the 16th day of May, 2003 challenging the declaration of Dr. Chris Ngige as the winner of the election. The tribunal took more than two years to hear all the witnesses and delivered judgement on the 12th day of August, 2005. The appeal came up for hearing on the 23rd day of January, 2006 and judgment was delivered on the 15th day of March, 2006. The petitioner waited for 35 months to receive justice out of a mandate of 4 years. A most interesting scenario also played out in Delta State where after three and half years, Great Ogboru convinced the courts to nullify Delta State's 2007 governorship election.

The south-west has also had its share of delayed resolution of electoral disputes in **Fayemi v. Oni** and **Aregbesola v. Oyinlola** for Ekiti and Osun States respectively. As stated above, the Electoral Act, has made a far reaching innovation by specifying the time limit for concluding electoral disputes and appeals arising there from. The primary aim of adjudication in election petitions should be to ensure as far as humanly possible that the choice of the electorates is given legal backing. While it is important that this should be done as quickly as it is humanly and legally possible, the aggrieved parties should not be shut out by hurrying the proceedings in the name of quick dispensation of justice. This is not to suggest that proceedings should be dragged inordinately. This will create disenchantment with the judicial process. Election petition tribunals should not be "boxed" into a tight corner, where it has to sacrifice justice on the altar of its speedy dispensation. Under the 1982 Electoral Act, election petitions were meant to be concluded not later than 30 days from the date of the elections. The ridiculous situation created by the provisions of sections 129 (3) and 140 (2) of the Electoral Act 1982 was

vividly brought out by Oputa CJ, (as he then was) in **Collins Obih v. Samuel Mbakwe** where his lordship stated thus:

The Electoral Act 1982 did not seem to envisage proper hearing and scrutiny by the courts. Section 119(4) gives a petitioner 14 days after the publication of the result to file his petition. Section 135 gives the respondent 6 days to reply thus making a total of 20 days (where the result is announced on the day of election). Section 139 (1) gives the registrar at least 10 days to fix date of hearing making 30 days. The Supreme Court quashed these provisions in **Unongo v. AperAku** in the following words:- I do not see how a reasonable person will have the impression that a party has had a fair hearing where his petition which has been instituted within the time stipulated by the Electoral Act cannot be concluded because the time available to the court for the petition to be heard will not be sufficient for either or both parties to present their case or will not allow the court at the close of the parties' case sufficient time to deliver its judgement. There can be no doubt that the provisions of section 129 subsection (3) and 140 subsection (2) of the Electoral Act neither allow a petitioner or respondent reasonable time to have a fair hearing, nor give the court the maximum period of 3 months to deliver its judgement after hearing a petition as envisaged by sections 33 subsection (1) and 258 subsection (1) of the constitution respectively.

Accordingly, the provisions of section 129 subsection (3) and 140 subsection (2) of the Electoral Act, 1982 which limit the time for disposing of election petitions by the courts are in my view ultra vires the National Assembly and therefore null and void. Under the military rule, whenever elections were to be conducted, there were provisions in the Electoral Decree prescribing the time limit within which election petitions must be concluded. These provisions were applied by the courts but not without protest from them. The Court of Appeal in **Maikori v. Lere** expressed their dissatisfaction with the provisions of the Decrees imposing a time limit in the following words:

We have heard three election petition appeals today. Pursuant to paragraph 1 (3) of schedule 6 of Decree No. 50 of 1991 an election petition must be heard and determined within one month from the date of filing of notice of appeal. The appeal on this matter was filed on 28 February, 1992. Judgement ought to have been delivered on 29th March, 1992 but yesterday was Sunday and so today is the last day when judgement must be delivered. It seems that the justices of the Court of

Appeal and election tribunals have been strained without exception. It appears the position has not improved from what Aniagolu JSC said in **Ojukwu v. Onwudiwe**(1984) 15 NSCC 172; (1984) 1 SCNLR 247 when he observed:

During the 1983 elections and the petitions that followed all the judges in Nigeria without exception were strained to the utmost by reason of pressure of urgency which the then state of law set out on the judges. All courts seized with election petitions versed round the clock beat the deadline resulting in some court sitting till late hour in the night, and delivering judgement immediately after closure of address of counsel no matter how late it was in the day or in the night. See also (1984) 2 sc. 15 at 88/89

That is exactly what we have done today. Aniagolu JSC says that this is an intolerable burden for the effective discharge of which the judiciary deserved. Justices of the court of Appeal have been moved all over this country, the president of the court leading the team. I am of the view that the law makers ought to look at this rush of the dispensation of justice, particularly in election petition matters afresh. There is need to give adequate time to all courts to hear case in a manner conducive to proper administration of justice without any health hazard to judges. As a result of the defect inherent in the Electoral Act 1982, the Supreme Court rose to the challenges to declare that any provision limiting the time within which election petitions must be determined is unconstitutional. It was therefore, not surprising that the provisions of the Electoral Act 1982 and the Decree became anachronistic with the coming into force of the 1999 Constitution, on the grounds of fair hearing, constitutional time frame allowed for the delivery of judgement and the fear that justice would be sacrificed on the altar of haste. Since then all the subsequent electoral legislations of 2002 and 2006 jettisoned the provisions imposing time limit for the disposal of election petitions. With the coming into effect of the Electoral Act, a new paradigm shift has evolved.

However, despite some landmark decisions of the court during democratic dispensations, it is not impossible to witness the court making pronouncement capable of discouraging the common electorate. Although, it is important to emphasize that no matter the displeasure with which a decision of a competent court of law is viewed, it remains binding on the affected parties until it is set aside, more so when it is a judgment emanating from the hallowed chambers of the Supreme Court. Justice

Oguntade made this clear in his dissenting opinion in the case of *Inakoju v. Adeleke* when he said: It is a necessity to abide by the provisions of our constitution. From time to time in this court, we offer dissenting opinions. The purpose of such opinions is to strengthen our law and the administration of justice ...they are for posterity, lawyers and legal scholars". Having said the above, it is necessary for me to say that the judgment we gave on 7-12 - 06 is the judgment of this court. I have not in my opinion in the judgment derogated from the full efficacy of the judgment. It is a pronouncement from the last court in Nigeria; I enjoin all parties to abide by it.

It will be recalled that when the people were uncomfortable with court's decision in electoral disputes they react in form of violence for instance, the breakdown of law and order in the Western Nigeria after the 1964 general election can largely be attributed to the imprisonment of Chief Awolowo who many of his supporters believe should have been the right leader to govern the affairs of Nigeria but for the decision of the court. Thus, the real test of the judiciary as an agent of peace building and midwife in the resolution of election petition at that time was exposed when the court, election petition tribunal and the Supreme Court were called upon to solve the riddle of what should constitute the two-thirds of 19 states in the celebrated case of *Awolowo v. Shagari and FEDECO*. The decision of the court emphasizes 'substantial compliance' rather than the reasonable meaning of the relevant words of the statute and its admonition for the judgement not to be considered as precedent obviously set a bad precedent for subsequent actions brought before the courts on matter bordering on politics (Falola T. and Ihonvbere J., 1979). One can understand the entire political scenario with the reasoning of Kayode Eso in the case. By and large, the people begin to lack confidence in the judiciary to the extent that its decision lacks potency. So, instead of resulting to court or the supporter of political candidates and parties waiting for the outcome of the court they prefer to do 'justice' by themselves through violence because in view of Falola T. and Ihonvbere. J. (1979) "the judiciary had become terribly corrupt". One can deduce recently that one of the ways in which the member of the public hold the judiciary in low esteem is the spread of skepticism about the past decisions and one or two cases of judicial corruption especially against judges at election tribunal.

The challenges of the annulled June 12, 1993, presidential election further put a great strain on the Nigerian judiciary because of its roles in the nation's electoral process. Regrettably, too, the damaging effect of the many contradictory judgements of the various courts in relation to the annulled June 12 presidential election was unquestionably the last straw in an effort to proffer juridical solution to post-election conflicts in Nigeria's Third Republic. This occurred because the contradictions in the judgement of the courts during the 1993 political or electoral crisis largely hurried the decent of the nation into chaos. In the words of Achike:

Nevertheless, the many discordant pronouncements handed down by the various State High Courts relative to the annulled June 12, 1993 Presidential election must go down in our legal history as the lowest ebb in the confidence in the Judiciary. The pronouncements were as diametrically conflicting and disheartening as if the evil had been let loose to precipitate anarchy within the judicature.

Hence, General Babangida, hiding under the atmosphere of incongruous status of the judiciary in the handling of the June 12 1993 presidential election decided to 'step aside' and constituted an Interim National Government (ING) headed by Chief Ernest Shonekan. Consequently, General Sanni Abacha also took advantage of the court decision declaring the ING as illegal to stage a 'take over' on November 17, 1993.⁷ Ironically, General Abacha, who later became Nigeria's worst dictator, took it upon himself to establish a Panel for the Reformation of the judiciary. He cited as justification the abuses, polarization, corruption and manipulation of the judiciary by previous governments, especially the Babangida's regime (Akinseye, 2009). Alao Aka-Basorun, human rights activist and Former President of the Nigerian Bar Association had cause to argue that ouster clauses in Decrees were illegal but were assaulting justice only because the judges allowed them to tie their hands thereby subverting the rule of law. According to him, it was as if our judges were legitimizing the very instrument of their own castration. Even more disturbing then were the pronouncements credited to key members of the judiciary, for example, the then Chief Justice of Nigeria, Honourable Justice Mohammed Bello expressed discomfiture at judges giving judgment against the military government advising such judges who were uncomfortable with Decrees to resign (Akinseye, 2009). He even went further to express the lamentable view that the judiciary fared better under military rule (Aka Bashorun, 1993).

The above represented hard times for the judiciary. They were periods when the military short-changed the judiciary in its primus place. Thankfully, the transition back to democratic government in 1979 and 1999 gave hope for the judiciary and reinstatement of its full mandate to defending the rights of the citizens and doing justice without fear or executive sabotage through abysmal enactment/legislation of decrees. As a result, if we must address the role of the judiciary in democratic governance in Nigeria, it must be emphasized that judicial independence from both government influence and other interested parties including public opinion, is a constitutional ideal to which the judiciary and indeed every Nigerian must strive. The issues involved concern values fundamental to sustainable democracy in Nigeria and indeed the world. However, Mejulu Kelvin (2010) has said that there is the need to ensure that these machinery and political will do not undermine values fundamental to a democratic society – liberty, the rule of law and the principles of fairness, natural justice, equity and good conscience – values that lie at the heart of the Nigerian constitutional order is an essential duty of the judiciary.

Restoring Stolen Mandates and Tenure

Within the democratic experience so far, the judiciary had equally made reversals of rigged elections, restoring 'stolen' mandates and tenure of political office holders. In *Ngige v. Peter Obi*, the Court of Appeal (Governorship Election Appeal Tribunal) upheld the nullification of the election of Governor Ngige of Anambra State and his replacement with Mr. Peter Obi. In *Osunbor v. Oshiomole*, in an celebrated decision, the Court of Appeal in exercising its jurisdiction as the Governorship Appeal Tribunal sitting in Benin affirmed the decision of the Election Petition Tribunal of Edo State that on 11th of November, 2008 nullified the election of Professor Osunbor of the PDP and declared Comrade Adams Oshiomhole of the AC as the duly elected governor of Edo State. Similarly, in *Agagu v. Mimiko*, the same Court of Appeal equally upheld the decision of the Election Petition Tribunal that nullified the election of Governor Olusegun Agagu and declared Dr Olusegun Mimiko as the duly elected Governor of Ondo State.

The case of *Fayemi v. Oni*, the Court of Appeal reversed the decision of the lower tribunal that declared Governor Oni winner of the 2007 Governorship election in the state. The Appeal Court ordered the removal of Oni from office in order to pave way for fresh elections in ten

local governments of the state. The rerun elections which took place in April 2007 still returned Oni as the elected governor but under controversial circumstances. Fayemi returned to the election tribunal to challenge the election and on appeal, declared winner of the election.

The fact that litigants in election petition are given adequate fair hearing by the court to vent their grievances is enough to calm nerves of anyone or supporters who would have planned to cause postelection violence or conflict. In other words, conflict is rather minimized or prevented after election when the judiciary makes decisions that favour fair hearing not necessarily the wishes of the majority. It is in the interest and promotion of peace and peace building where the court fearlessly sacks incumbent or ruling party for the opposition to take over where the justice of the case demands. It was observed that in the above-mentioned cases where the opposition were declared by the tribunals and court of appeal to have won the election, the people rather rejoiced than protest or resulting to violence.

Timeous Delivery of Election Cases

Time is of essence not just as required by law for the resolution of election petition at the tribunal and appellate courts but also to avoid conflict and violence that can occur from unnecessary delay. The appeal courts and other election tribunals, to a great extent, exercised their discretion in accordance with the dictates of the Constitution and the spirit and letters of the Electoral Act in that unnecessary adjournments from the parties to the petition, particularly the Respondent, were not allowed to defeat the justice of speedy determination of the election petitions in view of the 180 days' time limit. As a result, Election Tribunals more often than not, refused to dance to the tune of the delaying tactics of counsel in granting adjournments. The truth is that the grant of adjournment is a normal thing but when it becomes necessary especially in the face of the current Electoral Act, the Court reserves the discretion to refuse granting it. For example, there are instances where some Respondents' counsel may decide to come late to court with a view to forcing an adjournment on the court.

In the interest of peace, strict adherence to the time stipulated by the Constitution is key. It becomes a factor to determining the response of a common man to the outcome of the decision of the court. The Courts and tribunals have played tremendous role in checkmating this attitude of counsel by refusing adjournment in some cases. Sometimes, at the

hearing stage, where a party to the petition, who had few witnesses had resorted to featuring one or two witnesses per day, the Court have always resented the conduct, and in some cases threatened to close his case for him notwithstanding that the days apportioned to each party to call witnesses were still yet to be exhausted. This portrays the role the tribunal is playing to avoid a situation where the outcome of the court decision is ridiculed or rather turned into an object of debates leading to post-election violence.

CONCLUSION

Elections and democracy are organically, if intricately linked; elections are central to democracy, though not all elections are democratic. It is obvious, as revealed by this work, that the Nigerian judiciary has been fully involved in mediating election disputes, and in the process it has sometimes found itself enmeshed in politics. And as observed by Adamu(2008), when the law mixes with politics, what is, is made to become what not to be: *"The letters of the rule of law will then be subjected to nuances of capricious interpretations, derived from whimsical viewpoints of the same law."* But then, as pointed out by Suleiman (2011), the judiciary and politics have a strong symbiotic relationship all over the world, hence it is difficult to separate politics from the judiciary.

While it is extremely difficult, if not downright impossible, to prove with empirical evidence that judges play or succumb to politics in their adjudication of election matters, it is quite tempting, if not irresistible, to infer that some judicial pronouncements strongly reeked of the foul stench of politics (Kari, 2014).

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