STRENGTHENING JUDICIAL INTERVENTION IN ELECTORAL DISPUTES IN NIGERIA

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ABSTRACT

Sustainable constitutional democracy in any society depends largely on an independent courageous and incorruptible judiciary. In Nigeria, disputes often arise from electoral process; whether pre-election or post-election resulting mostly from the attempt by politicians to sideline their political parties’ constitutions or the Electoral Act. By adopting the jurisprudential approach, the paper examined the challenges facing the judiciary as a democratic institution charged with the responsibility of, inter alia - political justice, the foundation of which is free and fair electoral process. The arguments presented in this paper also takes into account the nature of politics in most emerging democracies, in Africa and particularly in Nigeria where electoral process has become a matter of “do or die” affair. The judiciary has a duty of ensuring constitutionalism in the process. However, the judiciary as a democratic institution is faced with enormous challenges; corruption, political interference in the judicial process and indeed, the absence of judicial independence. The central argument in the paper is that, unless the official, judicial and political corruption is tackled, the future of constitutional democracy in the country is uncertain.

Keywords: Constitution, Judiciary, Election, Disputes, Democracy, Electoral Act

1. INTRODUCTION

In a political context, an election is the process through which the electorates directly or indirectly elect their political leaders be it in the executive or the legislature. In many jurisdictions, the choices of the electorate are restricted to only candidates presented or sponsored by their political parties, while in some other democracies; independent candidates are allowed such that the candidates are not presented by any political parties. This is, however, not to suggest that independent candidates are not financed or sponsored by certain individuals or groups such as non-governmental organizations or pressure groups.

The situation in Nigeria is not only dictated by the simple fact that it embraces democracy as a system of governance in which case popular election becomes a necessity. It is also because the constitution provides that the country “shall be a state based on the principles of democracy and social justice.” One of the fundamental elements of democracy is popular election; that is the right to vote and to be voted for. It is through this that the people directly or indirectly participates

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1 See section 14 (1), 1999 Constitution of the Federal Republic of Nigeria (as amended)
in their government. In the wisdom of Mbachu, in a democracy, that Nigeria is, government should not only be acceptable or responsible to the people, political powers (the executive, legislative and judicial) should emanate from the people and, also from the actions of the state and the government must conform to the popular will. This explains the importance of popular election in a democracy such as Nigeria, to confer legitimacy on the government and its actions.

The Constitution, in realization of the need for periodical popular election, makes provisions for election of persons to the offices of the President of the Federation, the Vice-President, Governors, and Deputy Governors. It also provides for election of persons into the two chambers of the National Assembly and the State Houses of Assembly. To ensure effective and efficient conduct of elections, the Constitution further provides for an electoral regulatory body (The Independent National Electoral Commission) at both Federal and state level (State Independent Electoral Commission). The Constitution further provides for and guaranteed a “system of local government by democratically elected local government council.” The use of the phrase “democratically elected” in the provision emphasizes the need for popular participation and freedom to vote and to be voted for in the election throughout the 774 local government councils in the country.

For the purpose of nomination of persons for election to the various offices and the Legislatures, the Constitution provides for a system of control recognizing only registered political parties as agents for nomination of individuals to contest in the elections. For example, it is one of the requirements for election to the office of the President that a person shall not be qualified unless “he is a member of a political party and is sponsored by that political party.” Apart from providing for a system of nomination process for contestants in the elections, this provision underscored the need for and importance of party system in a democratic process. However, the situation in Nigeria is that the political class and their parties have not developed the right democratic culture essential for the emergence of sustainable democracy in the country. Roberts and Benjamin are apposite when they argued that:

The contemporary political behaviour of Nigerians, especially the politicians, is a strong argument, if one was needed, for the lack of a

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3 Section 132 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
4 Section 142, Ibid.
5 Section 178, Ibid.
6 Section 187, Ibid.
7 Section 71, Ibid.
8 Section 106, Ibid.
9 Section 153, 1999 Constitution, Section 14, Part I, Third Schedule to the Constitution
10 Section 153, 1999 Constitution, Section 14, Part I, Third Schedule to the Constitution
11 Section 7, Ibid
12 Section 31 (d), Ibid
13 For the role and importance of political parties, see generally, Olagunju, “Building Party-Based Democracy in Nigeria” In Democracy and Good Governance in Nigeria, Lame & Dabin ed., (Ibadan: Spectrum Books Ltd, 2000) pp. 62-70; Mohammed, A.S. “The Nature and Scope of Intra-Party and Inter-Party Conflict in Nigeria” In Strategies for Curbing Election-Related Political Violence in Nigeria’s North-West Zone, Jega, Wakili & Umar eds. (Kano: CDRT, 2003) pp 111-124; Adebayo, P.F., Political Parties: Formation, Development, Performance and Prospects” In Challenges of Sustainable Development in Nigeria, Ojo, D. ed (Ibadan: John Archers, 2006) pp. 63-71. A studied comprehension of Adebayo’s conclusion on Nigerian political parties, arguing with Nazarene, is that Nigeria is yet to emerge with political parties that would enhance sustainable democracy in the country. This is Quite a legitimate apprehension not because the parties interpret political competitions in terms of “survival of ethnic entities,” but because one, they lack any clear ideology, and two, because they much room for political brigandage.
democratic political culture in the polity in general and within the state when such politicians are in government.\footnote{Nyemutu Roberts, F.O & Benjamin, S. A., “State, Society and Democratic Political Culture” In Meeting The Challenges of Sustainable Democracy in Nigeria, Ajakaiye, D.O. et. al. eds. (Ibadan: NISER, 2002) pp 310}

Without attending a discussion on theoretical foundation of political party which is better for political scientists, it is suffices to remark that the nature of the political society and its economic structure, among other factors,\footnote{Tyoden, S.G., “Party Relationship and Democracy in Nigeria” In Democratization in Africa: Nigeria Perspectives, Omoruyi, O. et al eds. (Benin: Hima & Hima, 1994) pp. 119-122. Author identifies three factors as determinants of inter-party relationship; the struggle for the control of political power, nature of the society and the party system. A cursory look at the three factors in reality may explain reasons for inter-party conflicts in Nigeria.} dictates the of the political parties and their attitude towards contest for control of political power. Whence the political society has a strong democratic orientation, the tendency is for the political parties being such with strong democratic ideals. Nigeria, it may be argued, is yet not a democracy, but democratizing; or better still a society in transition from militocracy to democracy. This may give clues as to why there were little pre and post election disputes in 1979-1983 compared to the volume of disputes and petitions before the various election petition tribunals between 1999 and 2007 and the low level of disputes and petitions before the tribunals arising from the 2011 general election.

Quite certain, because of the nature of the political society and the political parties, the constitution envisage disputes to arise from the electoral process. This is quite legitimate bearing in mind that such disputes are necessary fallout of a relationship, as Tyoden puts it, in which “each party perceives any other in the society as a competitor and therefore as an opponent,” and consequently must be at political-dagger-drawn. So to avoid a repeat of the aftermath of the 1964 Western Regional Parliamentary Election, the constitution provides for a system of not only managing electoral disputes, it provides for settlement of such disputes by the judiciary.

2. NATURE AND CAUSES OF ELECTORAL CRISES

Scholars of the Nigerian democratization process have discussed and identified challenges facing the country’s democratization agenda.\footnote{Tyoden, Op. cit; Olatunji, J.O., “Democratizing Nigeria Through Two-Party System” In Democratization in Africa: Nigerian Perspective, Omoruyi, O. et al eds (Benin: Hima & Hima, 1994); Imuetinyan, F., “Parties and Nomination of Candidates in Nigeria,” Ibid; Orewa, G.O., We Are All Guilty (Ibadan: Spectrum Books Ltd., 1998); Ashafa, A.M., “The Dynamics of Inter-Party Relations in Nigeria’s 4th Republic” In Democracy and Democratization in Nigeria (1999-2001), Jega, A.M. & et al eds (Kano: CDRT, 2002) pp. 14-27} However, the constitution does not only recognize the necessity for a viable party system, it makes it mandatory that only party members that are sponsored by the party are qualified to contest elections to the elective offices in Nigeria. To this extent, the Electoral Act\footnote{Electoral Act, 2010 (as amended). This paper relies on the Electoral Act, 2010 (as amended) and would only refer to the earlier ones where necessary.} provides for a system of internal democracy at the party level in the process of nomination of party members for the purpose of contesting elections.\footnote{See Section 87, Electoral Act 2010 (as Amended), ibid.}

Nomination of candidates to contest elections into public offices makes the process “a purely private and internal affair of the political parties”\footnote{Imuetinyan, F. Op. cit, p. 148. See also, AC v INEC (2007) 30 NSCQR (pt II) 1254 at 1335-1336 where the Supreme Court, per Muhammad, JSC, held that, election is “specially preserved by the statutes to a political party.” The Court went further to hold that, on the clear provisions of Section 32, Electoral Act, 2006, the INEC does not possess the statutory or constitutional power to screen or verify a candidate already nominated by the political party and his name submitted to INEC.} as rightly observed by Imuetinyan.
However, a closer look at the relevant provisions of the Electoral Act holds a hesitant view. Although the party is charged with the responsibility of nominating and sponsoring candidates for elections, the Electoral Act provides for the procedural aspect the provisions of which parties must strictly comply with. Where a political party failed to comply with the relevant provisions of the Act in returning a candidate for an election, such candidate shall be disqualified from contesting the election. The Act provides:

Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.\(^ {20}\)

This shows that though the nomination of candidates is an internal affair of the political party to allow for independence of the parties and to ensure internal democracy, the court has the power of intervention to ensure compliance. Therefore, whether or not a process of nomination for candidates for election is “purely private and internal affairs of political parties” depends exclusively on compliance or non-compliance with the statutory provisions relating thereto. So where there is compliance, it becomes a purely private, internal affair of the political parties, and thus a political question in which case the courts shall lack jurisdiction to entertain any matter arising therefore.\(^ {21}\) Thus, the Electoral Act provides:

Notwithstanding the provision of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, for redress.\(^ {22}\)

Apart from the statutory provisions on nomination of candidates for election, the political parties are at liberty to design their own guidelines for the purpose of regulating, in addition to the statutory provisions, the internal arrangement for nomination of candidates. A good example of the internal regulatory mechanism is the controversial zoning system adopted by the Peoples Democratic Party (PDP).\(^ {23}\) That be as it may, there are many causes of electoral disputes in Nigeria which have been presented as follows:

2.1 NOMINATION AND SUBSTITUTION OF CANDIDATES

One of the sources of electoral disputes in contemporary Nigeria is the nomination of the party’s candidates for election to the public offices. As rightly observed by Imuetinyan,\(^ {24}\) non-compliance with the rules is rampant. A good instance of this can be seen in the Peoples Democratic Party’s controversy over their adopted zoning system. It would appear from the arguments from the pro-zoning and the anti-zoning camps, the pro are constituted mostly by some northern elements in the party and represented by the former Military President, Ibrahim Babangida, former Vice-President, Alhaji Atiku Abubakar, Alhaji Tanko Yakassai and Alhaji

\(^ {20}\) Section 34 (9), Electoral Act, 2010
\(^ {21}\) See generally, Inakoju v Adeleke (2007) 4NWLR (pt. 1025) 423. In this case, the Supreme Court held that impeachment procedure would only become a political question only when it is certain that the legislature has strictly complied with the relevant provisions of the constitution in respect therefore.
\(^ {22}\) Section 34 (10), Electoral Act, 2010 (as amended).
\(^ {23}\) Alli, Y., “PDP, Nwodo, INEC sued in fresh plot to stop Jonathan.” The Nation (Lagos), November 6, 2010, pp 1-2
\(^ {24}\) Imuetinyan, Op. cit, p 153
Adamu Ciroma, in particular. The anti, are composed mostly of those elements in the party who were sympathetic to the emergence of Goodluck Jonathan as the party’s presidential candidate. The controversy almost cost the party its internal strength as the northern elements insisted on zoning which was jettisoned by the pro-Jonathan group only for them to renege when after the general election it was the turn to pick the speaker of the House of Representatives.

The double standard approach to the nomination of candidates is thus, to politicians, part of the game; they are only interested at a particular time in political gain or put in another way, ‘self’, such that these factors determine whether or not to be guided by the rules, even the one made by the parties themselves.

Lack of respect for and brazen breach of the rules of the game in the party primaries can also be perceived in Ararume’s case. Ararume is a member of the Peoples Democratic Party who along with 21 other members of the party on the 14/12/2006 participated in the party’s primary conducted for the purpose of nominating and sponsoring a candidate for the 2007 Imo State governorship election. The result of the primary election shows that Senator Ifeanyi Ararume won by securing 2,061 votes and his closest rival got 1,649 votes.

Quite expectedly on 14 December 2006, the party forwarded the name of Senator Ifeanyi Ararume to the Independent National Electoral Commission (INEC) having scored 2,061 votes. Surprisingly, by another letter dated 18/1/2007 to the INEC, the party substituted Ararume (with his highest votes) with Engineer Charles Ugwu, who scored 36 votes at the primary that was conducted by the party on the 14th December, 2006. It is important to point out that the only reason given by the party in the said letter was that Ararume’s name was submitted in “error” (without an affidavit showing how the error was committed). Although the party is the regulator of its internal affairs, this is not to violate its own rules of the game or any constitutional or statutory provisions. In accordance with the provisions of Electoral Act relating to substitution of a nominated candidate:

A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election; and, Any application made pursuant to subsection (1) to this section shall give [a] cogent and verifiable reasons.

In the instant case, it remains curious that Ugwu who scored 36 votes in the primary was sought to replace Ararume who scored 2,061 votes (37.5%). The curiosity becomes heightened when it is considered that E. Udeogu, who also participated in the party’s primary equally, scored 36 votes (0.48%). It therefore beats imagination that Ararume would be replaced with Ugwu and not Udeogu. The question that begs for an answer is why not Udeogu substituting Ararume, could that also be an error of judgment? Ordinarily, by the party’s Electoral Guidelines for Primary Elections, 2006, a rerun between Ararume and Chief Hope Uzodinma, who scored the

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25 Alli, Y., “Jonathan meets IBB, Atiku, others ahead of Ciroma’s panel’s decision.” The Nation (Lagos), November 21, pp.1-2
26 See fn 23 above
27 Oghodo, J., “PDP retains zoning of political offices.” The Guardian (Lagos), May 12, 2011, pp. 1-2
28 Ugwu v Ararume (2009) 37 NSCQR (Pt II) 1192
29 Ibid, at pp. 1268-1269
30 note that the Act does not require an affidavit, but since the Electoral Act in Section 32 requires and affidavit by a candidate whose name is submitted to INEC by the party, it is a matter of wisdom that any application made pursuant to S. 34 (2) should accompany an affidavit showing in clear terms reasons for change of that candidate whose change is sought by the party.
31 Electoral Ac t, 2006
32 Section 34, Ibid
33 See footnote 29 above, No. 16 on the list
34 Ibid, No. 15
second highest vote (1,649),\textsuperscript{35} in the primary, would have been proper. This not being the case, the motive behind the proposed change of Ararume became suspect and the only reasonable conclusion is that it was the politics of manipulation. This is more so against the background that Ararume was later on the 11/4/2004 expelled from the party having defeated the party at Supreme Court.

Closely related to the Ararume’s was the dispute between Rt. Hon. Rotimi Chibuike Amaechi and the Peoples Democratic Party (PDP).\textsuperscript{36} The disputes were similar in substance except that, in Amaechi’s, the party relied on a supposed indictment of Amaechi by the Economic and Financial Crimes Commission (EFCC). The fact of the dispute was that PDP conducted governorship primaries for River States and Rt. Hon. Amaechi emerged as the winner with the highest total votes 6,527 out of 6, 575 votes. Consequently, on 14/12/2006, Amaechi’s name was forwarded to INEC as the party’s candidate for River State governorship election. Subsequently, in a letter dated February 2, 2007 forwarded to INEC the PDP sought to replace Amaechi with Omehia as the party’s candidate for the 2007 governorship election. The only reason given in the letter was simply that the Rt. Hon. Rotimi Amaechi was “submitted in error.” It is important to note that Onebua never participated in the primaries in which Amaechi polled 6,527 out of the total 6, 575 votes. It would also be recalled that the basis of Amaechi’s name “submitted in error” was that he was indicted by the EFCC and the indictment was accepted by a panel set-up by the Federal Government.\textsuperscript{37} Amaechi denied ever being indicted. The question is not whether or not Amaechi was in reality indicted, but rather, why did PDP wait until 2/2/2007 before raising the issue of Amaechi’s purported indictment? Was the fact of the indictment not known or available to PDP before allowing Amaechi to contest in the primaries? Constitutionally, an indictment is a ground for disqualification from contesting governorship election.\textsuperscript{38} However, the Supreme Court has made a wide pronouncement on this, particularly as regards the meaning, scope and implication.\textsuperscript{39} Therefore, no need exerting energy at this point. It suffices to say that the fact that Amaechi was allowed to participate in the primaries, won and his name duly submitted to INEC as the governorship candidate of the PDP on 14/10/2006 only for the party to seek to replace him with another candidate on the 2/2/2007 raised questions leading to serious litigation.

The above are just a tip of the iceberg considering disputes arising from the nomination of candidates by the political parties for elections; many of the dispute got to the courts for intervention\textsuperscript{40} while some were settled through party’s internal mechanism. Disputes arising from nomination process may not be peculiar to a particular political party. Therefore, it is a mere coincidence that the disputes referred to above arose in the Peoples Democratic Party. It must however be pointed out that the party might have the highest number of pre-election inter-party electoral disputes because of its size coupled with the fact that it controls the federal government, the single largest custodian of the wealth of the nation.

Therefore, the enviable position of the federal government in term of control of the economy makes the contest for political power at the federal level a matter of “do-or-die.” At the state level, contest for the office of the Chief Executive would certainly engender disputes because of the rights and privileges that are associated with the office. The recent knowledge about the scandalous remuneration at the National Assembly is a possibility of disputes arising from election to any of its chambers. It would be recalled that recently, the Governor of Central

\textsuperscript{35} Ibid, No. 2

\textsuperscript{36} See Amaechi v INEC (2008) 33 NSCQR (pt. I) 332

\textsuperscript{37} See, Ibid, at 375-376

\textsuperscript{38} See section 182 (1) (i).

\textsuperscript{39} Amaechi v INEC (Supra) at Pp 409-414

\textsuperscript{40} See for example, Udeh v Okoli (2009) 37 NSCQR 496; Odedo v INEC (2008) 36 NSCQR (Pt II) 919; Bala Hassan v Babangida Aliyu (2010) 43 NSCQR 139; Albert Akpan v Bob (2010) 43 NSCQR 409; Ehinlanwo v Oke (2008) 36 NSCQR 1; Ehuwa v INEC (2006) 28 NSCQR 545; Ezeigwe v Nwawulu (2010) 41 NSCQR 500
Bank of Nigeria, Sanusi Lamido Sanusi cried-out over the portion of the nation’s budget that is being consumed by the National Assembly.\(^4\) Besides, the salaries and allowances of the legislators remain a matter of alarming speculations;\(^4\) they have been claimed to be between \(\text{N} 42m\) and \(\text{N} 48m\), per quarter.\(^4\) Unfortunately, as wide and wild as the speculations are, the National Assembly has refused to inform the electorate whose “interest” they represent the true position on how much the nation expends to keep the members. With these pictures painted, there is wisdom in Tyoden’s assertion that:

> Since the state is the major means of capital accumulation in such societies and considering the prevalence and ubiquity of poverty in such societies, it is not surprising that the struggle for control of the state and its resources take on a life-and-death struggle.\(^4\)

2.2 POLITICS OF OPPOSITION

Another factor propelling electoral disputes particularly at the intra-party level is what Yadudu refers to as “politics of opposition”\(^4\) which means “competition for attention and entitlement to lead the affairs of the society.”\(^4\) In a context, this phenomenon appears to be a driving force or one of the determining factors in the relationship between political parties. Invariably, the higher the velocity of opposition or competition among the political parties, the higher (depending on other variables) the impact on intra-party relationship. So where there is

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\(^4\) Recently, the Governor of Central Bank of Nigeria, Mallam Sanusi Lamido in a paper he presented at the eighth convocation ceremony of Igbinedion University, Okada, Edo State, on the topic: “Growth Prospects For The Nigerian Economy,” said “If you look at the budget, the bulk of government spending is revenue; revenue expenditure. That is a big problem; 25 percent of overhead of Federal Government goes to the National Assembly...” This infuriated the Legislature and on Tuesday, 30 November, 2010 resolved to:

(i) mandate the relevant Committees of the House of Representatives to institute an immediate enquiry into the authenticity of the allegations made by Sanusi Lamido, the Governor of the Central Bank of Nigeria against the National Assembly;

(ii) instruct the CBN Governor to cease forthwith, further utterances and allegations that are capable of ridiculing the integrity, reputation and patriotic loyalty of Members of the National Assembly to the a Federal Republic of Nigeria;

(iii) urge the Hon. Minister of Finance to comply with the provisions of the Fiscal Responsibility Act by ensuring that the budget estimates of the 31 Agencies of Government listed on the Schedule to the Act are attached as part of the 2011 National Appropriation Bill to be presented to the National Assembly by the President; and

(iv) invite the Governor of the Central Bank of Nigeria to appear before the House on Thursday, 2 December, 2010 at 10.00 a.m. to clarify the statements (HR. 34/2010); See the House of Representatives Federal Republic of Nigeria: First votes and Proceedings, Tuesday, 30 November, 2010.

The point Sanusi makes is clear, that percentage of the overhead budget for just a small fraction (National Assembly) of Nigerian population does not augur well for the nation’s economy. All zero down to the fact that the cost of keeping the legislature is on a ridiculous high side. See also, Durojaiye, R., Nigeria legislators: World’s most expensive. [http://www.independentngonline.com/dailyindependent/Article.aspx?id=35738](http://www.independentngonline.com/dailyindependent/Article.aspx?id=35738). Accessed on 20/8/2011


\(^4\) Alli, Y., “N38b loan: Bankole didn’t take my advice, says Clerk.” *The Nation* (Lagos) June 20, 2011

\(^4\) Ibid.

\(^4\) Tyoden, Op. cit, 120

\(^4\) Yadudu, A.H., “Politics of Opposition, Intra-Party and Inter-Party Relations” In *Strategies for Curbing Election-Related Political Violence in Nigeria’s North-West Zone*, Jega & Wakili eds. (Kano: CDRT, 2003) pp. 79-84

\(^4\) Ibid, p.83
moderate or ordinate competition among the political parties the tendency is that the politics of opposition would be at a manacle level such that electoral disputes would be minimal. Conversely, where there is inordinate competition, politics of opposition equally tend to be high and so also the concomitant electoral disputes. This problem of politics of opposition is accentuated by, as rightly pointed out by Jega, greed. As he rightly observed, the problem of greed is not peculiar to only those who want to capture power and use its perquisites but also “those who are aspiring to replace them.”

2.3 POLITICS OF SUCCESSION

Causes of disputes, both inter and intra, are in exhaustive and cannot be discussed entirely in a single paper of this nature. However, the politics of succession must be mentioned here as one of the most devastating causes of electoral disputes in Nigeria. This again has an intrinsic link with greed and the struggle for control of political power. In this instance, the incumbent is either trying to return to power or “anointing” a candidate to succeed him. This was the case between President Olusegun Obasanjo and Vice-President Alhaji Atiku Abubakar. While Atiku was insistent on succeeding Obasanjo, the President who has been locked in a tango with his Vice was not favourably disposed to Atiku succeeding him not only under their Peoples Democratic Party, but also not on the platform of any other political party. Their relationship was so estranged that Alhaji Atiku defected to Action Congress (A.C.) where he emerged as a presidential candidate for the party.

Subsequently, the Independent National Electoral Commission disqualified Alhaji Atiku from contesting the presidential election. The basis of his disqualification by INEC was that the Economic and Financial Crimes Commission investigated Alhaji Atiku as Vice-President and found him culpable of official misconduct. Thereafter, the Federal Government purportedly set-up an administrative panel which indicted Alhaji Atiku Abubakar and that the federal government in a while paper accepted the indictment and gazetted.

It would be recalled that the chairman of the EFCC and INEC are respectfully appointed by the President subject to confirmation by the Senate. As executive president, all executive officials are his personal appointees, notwithstanding confirmation by the Senate. This presupposes that the executive official most often than not have no minds of their own except acting the scripts of their master-president.

To any reasonable mind, the indictment of Alhaji Atiku by the EFCC and the subsequent executive actions including the disqualification by INEC were all part of one and the same design to ensure that Alhaji Atiku was “joking in going about campaigning as a presidential candidate for the April 2007 election,” and in their show of desperation and executive lawlessness Maurice Iwu, the INEC chairman, then, was quoted as having said that “court judgment or no court judgment Atiku remains disqualified.”

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47 Jega, A.M, Ibid, p. 97
48 Ibid.
49 A.C. v INEC (2007) 30 NSCQR (Pt II) 1254
50 For an account of what transpired, see Nwabueze, B., How President Obasanjo Subverted The Rule of Law and Democracy (Ibadan: Gold Press Ltd., 2007) pp. 233-248
51 See section 153, 1999 Constitution
54 Ibid, p 234
The above is a clear manifestation of politics of succession with executive lawlessness as the main tool in the hands of their perpetrators. This problem is accentuated by politics of godfatherism\(^{55}\) such that except the godfather supports an incumbent to rerun the election, he is not likely to win the primary talk less of the electorate, else the hells would be let loose.

Ostensibly from the above and the countries past experience in election crises it would be impossible to entrust settlement of electoral disputes to any institution other than the judiciary. An understanding of the Nigerian political system with the undemocratic political culture pervading the country’s political landscape, there is certainty of disputes. The disputes, most often, are of mixed facts and law such that it would have been the worst, creating crises of far reaching and devastating political consequences, but for judiciary intervention.

3. THE JUDICIARY AND ELECTORAL DISPUTES

Competition, as rightly observed,\(^{56}\) is inherent in men; and it may breed hatred and jealousy even among animals.\(^{57}\) Politically however, stifling competition an opposition is dangerous and may be highly devastating to the political system unless carefully managed by institutional means. The internal mechanism may be appropriate for intra-party affairs; there is great doubt if it will ever work in inter-party disputes.

The country’s political experience calls for a strong independent institutional intervention so that the politicians are not allowed to truncate the relative peace of the state as they had done in the past and still are capable of doing. These provide justification for judiciary intervention in election related disputes in Nigeria as a way of managing the country’s reality of existence as a nation before they reach crisis level.

As a matter of fact, it is not in the province of the courts to determine who should govern or occupy an elective office. It is rather the political right of the electorate, but in contrast, it is and should continue to be the avowed duty and responsibility of the courts to ensure the vitality and credibility of the electoral process by ensuring and enforcing compliance with the excitant rules and procedure. This marks out the necessity for judicial review in the electoral process. Though as put by Nwabueze,\(^{58}\) judicial review brings the courts “into immediate and active relations with party interest and party contests,” the courts cannot be totally aloof notwithstanding the fact that elect petitions “excite such profound passion of apprehension and anxiety among the entire population of a state or nation.”\(^{59}\) The recent crisis of confidence rocking the nation’s judiciary notwithstanding (which crisis is traumatic and destructive of the institution), the choice must be weighed carefully between two options; a state of anarchy precipitated by incompetent adjudication of electoral disputes by non-judicial institutions or a competent adjudication by judicial institutions with assuring vitality and credibility of the electoral process (as we have witnessed in majority of the electoral disputes handled by the courts, especially the Supreme Court). The second option certainly holds more appeal; the purport of this was aptly ventilated by His Lordship, Oguntade JSC, in Amaechi v INEC.\(^{60}\)

This court and indeed all courts in Nigeria have a duty which flows from a power granted by the Constitution of Nigeria to ensure that citizens of Nigeria, high and low get the justice which their case deserves. The powers of the court are derived from the constitution not at the sufferance or


\(^{56}\) Yadudu, op. cit. p. 81

\(^{57}\) An ongoing research by this writer has shown that competition (no opposition is even stronger among animals than men. This can be observes anon the males particularly when it comes to wooing opposite sex


\(^{59}\) Ibid, p. 437

\(^{60}\) Ibid, p.437
generosity of any other arm of the Government of Nigeria. The judiciary like all citizens of this Country cannot be a passive on-looker when any person attempts to subvert the administration of justice and will not hesitate to use the powers available to it to do justice in the cases before it.

The import of this pronouncement is grounded in the fact that irrespective of the sentiment, passion or mood of the people, the courts have the sacred duty of ensuring and maintaining the rule of law and constitutionalism in the society.

3.1 LEGAL FRAMEWORK

Having dealt with the jurisprudence of involvement of the judiciary in electoral disputes, the paper examines the sources of the powers of the courts to deal in electoral disputes. This deals with matter of jurisdiction that is the authority of the courts to adjudicate in electoral disputes.\textsuperscript{61} It would be recalled that prior to 1977, electoral disputes were handled by regular courts. Electoral Decree 1977 introduced the use of Election Petition Tribunals and that has remained with modifications, especially with the coming of the 1999 Constitution of the Federal Republic of Nigeria (subsequently referred to as “the constitution”). Presently, it is the constitution and the Electoral Act, 2010 (as amended) that confer jurisdiction as far as adjudication in electoral disputes is concerned. These legal sources are discussed below:

3.1.1 CONSTITUTIONAL PROVISIONS

Section 285 of the Nigerian Constitution provides amongst others, that: “There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions…”\textsuperscript{62} The provisions concern disputes arising from election to National and State Houses of Assembly and the office of a State Governor or Deputy Governor. No regular court has original jurisdiction in such matters. However, appeals from the Tribunals shall, as of right go before the Court of Appeal,\textsuperscript{63} having final appellate jurisdiction in such matter.\textsuperscript{64} In addition, to its appellate jurisdiction as aforesaid, the Court of Appeal has original jurisdiction to adjudicate in disputes arising from election to the office of President or Vice-President.\textsuperscript{65} The Supreme Court is vested with exclusive jurisdiction to hear and determine appeals from the Court of Appeal in that wise.\textsuperscript{66}

It is important to note that jurisdiction is a complex phenomenon in judicial proceedings it is one thing for a court to have power to adjudicate in a matter, but its cohesive power in that matter may be limited or unlimited.\textsuperscript{67} Therefore, it is crucial to examine the Electoral Act to understand the extent of the cohesive powers of the Election Tribunals. Afterall, the judiciary is a key to the efficiency of democracy as explicitly explained in the \textit{obiter dicta} inter alia:

\begin{quote}
“It is only the Judiciary which can in the final resort and as the last resort translate the dreams of Nigeria, dreams inscribed boldly in her Constitutions, her dreams, for National unity, for domestic tranquillity, for individual
\end{quote}

\textsuperscript{62} Section 285, 1999 Constitution
\textsuperscript{63} Section 246 (1) (b), Ibid
\textsuperscript{64} Section 246 (3); See \textit{Umanah v Attah} (2006) 27 NSCQR 706 at 730-731
\textsuperscript{65} Section 239 (1); See \textit{Dikko Yusuf v Obasanjo} (2004) 16 NSCQR 477 at 500-501
\textsuperscript{66} Section 23 (2) (e); See \textit{Awuse v Odili} (2003) 16 NSCQR 477 at 500-501
\textsuperscript{67} For distinction, see Shehu, A.T. (2006), Op. cit, pp. 66-68
freedom and personal happiness through the full release of our citizens from prejudice and oppression, through the full utilization of all her human and natural resources and potentials, towards the creation of a great Nation characterized not by power alone but by respect for the human dignity and by the assurance of equal justice under the law for all. Just as it was the Supreme Court of the United States that translated and interpreted millions of coloured and black Americans into second class citizens for over half a century, so our own Supreme Court can translate into actuality the noble ideals expressed in our fundamental law and give flesh and blood, in fact life, to abstract concepts like freedom, liberty, equality and give justice, clearly articulated and often reiterated in our constitution” (per. Hon. Justice Umaru Eri)  

3.1.2 ELECTORAL ACT

The Electoral Act is made pursuant to the constitution; hence its provisions must not conflict with the constitution, being the Supreme Law of the land. A close look at the provisions of the Electoral Act shows that the Act deals with pre-election disputes and vests in the Federal High Court or a State High Court the power to hear and determine such disputes, for example, the question as to whether or not any provisions of the Act or the guidelines of a political party has been complied with in the selection or nomination of a candidate of a political party for election.  

On post-election disputes, the Act provide for the mode of initiating election litigation; it provides for complaint by a “petition,” unlike in ordinary civil litigation where a suit may be initiated by originating or a writ of summons depending on appropriate rules of court or statute. The Act also provides for grounds of petition, outside of which the Election Tribunal shall lack jurisdiction. Most importantly, the Act provides for the extent of the cohesive powers of the court; when the Tribunal or the court shall nullify an election, order fresh elections, and when the Tribunal or the court shall declare a candidate as the winner of an election.

From the above, it is clear that as a constitutional democracy, the powers of the court and the Tribunals are limited to the specific grants by the constitution and the Electoral Act. This is to ensure democratic governance, rule of law and constitutionalism. This also shows that Nigeria practices limited governments where the powers of each branch (Executive, Legislature and Judiciary) are limited to the extent granted or permitted by the constitution or statute.

However, the involvement of the judiciary in the electoral process has been a blessing to stabilizing the country’s transition democracy to enable its graduate into sustainable one. Since the emergent of presidential democracy in Nigeria, the judiciary, though without challenges, has played the role of moderator or stabilizer. Election disputes, particularly in a country like Nigeria with varying divisive factors, can lead to political crisis of with devastating consequences, unless properly managed. This is where the role of the judiciary in the adjudication of electoral disputes, so far, is highly commendable. And as rightly concluded by Onyeakagbu, “the courageous

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2 See, Odedo v INEC (2008) 36 NSCQR (Pt II) 929 at 955-956
3 Section 133 (1), Electoral Act, 2010 (as amended)
4 Section 138 (1), Ibid
5 Section 140 (1), Ibid
6 Section 140 (2), Ibid
7 Section 140 (3), Ibid
landmark judgments by the Supreme Court in Peter Obi’s case… and Rotimi Amaechi’s case…, no doubt act as booster…”\textsuperscript{75} This giant stride has been internationally acclaimed by the Under-Secretary and Special Adviser to the United Nations Secretary-General.\textsuperscript{76} The judiciary, barring some challenges, has proved that, all things being equal, is the pillar upon which the future of democracy in Nigeria rests that all stakeholders in the country’s democratization project must protect from being desecrated by partisanship.

4. CHALLENGES AND PROSPECTS

As earlier observed, the judiciary is highly commendable for the ways and manners it has been driving the democracy vehicle in the country towards the sustainable destination. However, it is no doubt that the institution can do better if the political environment in which it operates is a bit more conducive. There are challenges as can be seen below, and obviously with the challenges removed, the judiciary would be the envy of all stakeholders including members of the political class.

4.1 UNDUE DELAY IN DECIDING CASES

One fundamental inhibition with the proceedings in electoral matters is undue delay in concluding cases. A situation where judgment cannot be delivered until almost the tail end of the tenure of an incumbent whose election to the office is being contested is nothing, but encouraging injustice and self help syndrome which is capable of truncating the democratic process. Olagunsoye Oyinlola almost completed the four year tenure before his election was annulled. This means that he, for almost four years, occupied the governors office illegally. And the real winner of the election was for that period denied access to the office he legitimately won. Election is a means of investing legitimacy in the activities of the elected public officials, but where after a period of three years an election is annulled without any legal consequences on the usurper it amounts to a state of illegality, unconstitutionality and official robbery of mandate.

It is a truism that it is better to exercise caution in handling cases for justice rushed is justice denied.\textsuperscript{77} At the same time, it must be appreciated that election petition is in a class of its own class where time is of essence.\textsuperscript{78} The reason for this is not far-fetched; a situation where a person is allowed for whatever reason to illegally occupy an elective office is undemocratic, and by implication, is capable of degenerating into violent crisis between the contestants and their supporters. Also, where a person is allowed to occupy an office illegally for almost the entire tenure, it would send a wrong signal especially when there is no legal consequence beside annulment.

The Electoral Act and indeed the Legislature are quite mindful of the danger in a long period of election litigation, hence the provisions for accelerated hearing of election petitions.\textsuperscript{79} Unfortunately, the Courts and Tribunals still harbour resistance to provisions in the Electoral Act limiting time for hearing and conclusion of election petitions.\textsuperscript{80} Opinions, even judicial, have been somewhat controversial on timing for election petition; there have also been inconsistencies.\textsuperscript{81} However, all the stakeholders including lawyers share in the blame. Sometimes, unnecessary

\textsuperscript{75} Ibid, pp. 22-23


\textsuperscript{77} See, Abubakar v Yar’Adua (2008) 4 NWLR (Pt. 1078) 465 at 537; Gov. Ekiti State v Osayomi (2005) 2 NWLR (Pt 909) 67 at 90

\textsuperscript{78} Peter v INEC (2009)

\textsuperscript{79} See section 142, Electoral Act, 2010

\textsuperscript{80} Ukpo v Adele (2000) 10 NWLR (Pt. 1112) 1 at 80; Obi v Mbakwe (1984) I S.C 325

\textsuperscript{81} See Pam v Mohammed (2008) 16 NWLR (Pt 1112) 1 at 80; Ododo v INEC (Supra) at pp. 967-968
adjournments caused delay. Some counsel may deliberately refuse to appear in court or at the tribunal and give flimsy excuses for their absence, thus constituting clog in the wheel of administration of justice. Such counsels are either ill-prepared for the petition or they take sides with their clients (politicians) to frustrate the petition especially where it is glaring that they have no defence for the petition. Lawyers are ministers in the temple of justice, they don't only have a duty to their clients, they equally have a duty to the court or tribunals to ensure speedy and just conclusion of the petition. The duty of counsel begins with bearing in mind that he has a duty to assist the court in reaching the justice of the matter before the court, within a reasonable time. He must also conduct his case with international best practices; not engaging in sensationalism or political sentimentality, but present his client’s case in the most effective and efficient manner while backing-up with the true positions of the laws of the land and judicial precedents. It would be thus unprofessional to cite an authority when he knows the authority has been overridden by another authority and it is also unprofessional to ask for unnecessary adjournments or engage in spurious and frivolous interlocutory applications.

4.2 THE FAILURE OF THE DOCTRINE OF STARE DECISIS

The lack of adherence to the legal maxim of Stare decisis is another challenge striking the administration of justice in election petitions. Apparently, one of the qualities of a good system of justice is the certainty and consistency of the principles of law; the essence of which judicial precedent is all about. It is a rule of law that decisions in cases with the same or similar character must bear the same or similar results. Once there is inconsistency in the decisions, litigants, their counsel and the public at large lose confidence in the judicial system. God forbids, loss of confidence in the judiciary is the very beginning of a state of lawlessness and anarchy. Litigants, based on judicial precedent should be able to fairly predict the outcome of their litigation.

The recent experiences in the hearing and determination of election petitions have shown that judicial precedent has been thrown to the dogs. It is a sad development that judges would patently depart from precedents; refuse to follow earlier decisions of the superior court and their own even when the cases before them have the same material facts.

4.3 UNDUE POLITICAL INFLUENCE

Judges are humans with their likes and dislikes for any particular thing or institutions, be they political parties. Although, there should be separation of power between the judiciary and the legislature and other organs of government, judges are human beings and they have their sympathy and preferences. This however does not suggest that the judges should do that at the expense of ensuring the justice of any matter before them.

The circumstances leading to the face-off between the Chief Justice of Nigeria, Hon. Justice Katsina Alu and President of the Court of Appeal, Hon. Justice Ayo Salami, is a pointer to the fact that judges should do their jobs within the confines of the courts and the tribunals on the one hand and of the law, on the other hand. Upon the facts as reported by the dailies, the face-off is not unconnected with the arrest, by the CJN, of the judgment of the Court of Appeal in the appeal emanating from the Sokoto State governorship election. It was alleged the CJN action
was predicated on ground of leakage of the judgment, though no copy of the judgment has been reportedly cited anywhere. This is not to suggest that the idea of what the judgment would look like could not leak out. This, if it happens, is patently against the ethics of the profession and the Code of Conduct for Judicial Officers. The fact is that as social beings, the judges may also have their confidants with whom issues arising from matters before them may be discussed in passing. This would also be against the ethics and the code of conduct.

It is important to note that independence of the judiciary does not permit exerting influence or control on a judge on any matter before him. The concept, though may appear fluid bearing in mind the nature of men and the society, dictates that the judges must be free to decide the cases before them based on the totality of the evidence adduced before them without cognizance for any extraneous facts or influence, be it from within or outside of the judiciary. It is more dangerous if influence of any kind would emanate from within the judiciary itself. Once this happens, the public loses confidence in the judiciary and this is capable of precipitating anarchy.

4.4 CORRUPTION

Corruption is a global phenomenon though, it has become a household name in Nigeria, almost becoming part of the cultural system and norm within the institutions of governance including, unfortunately the judiciary. Members of the Akwa-Ibom State Governorship Election Tribunal in 2003 were dismissed from the bench on the allegation of bribery; chairman of the Tribunal, Hon. Justice M.M. Adamu; Hon. Justice D.T. Ahura, Hon. Justice A.M. Elelegwa and Chief Magistrate O.J. Isede. They were found guilty of receiving large sums of money as bribe from the Governor of Akwa-Ibom State. In 2005, Hon. Justice Okwuchukwu Opene and Hon. Justice David Adedoyin Adeniji were found guilty of receiving large sums of money in the Anambra South Senatorial Election Tribunals.

However, Nigeria is rated as one of the most corrupt nations in the World. It may therefore be of no news that the judiciary in Nigeria is one of the most corrupt institutions in the country judging by a recent survey. The implication of a corrupt judiciary to any nation can be very traumatic; it erodes public confidence in the judiciary. Not only this, primarily, it makes justice for sale and bruises independence of the judiciary. It must be noted that bribery is not the only corrupt practices; sometimes gift during ceremonies or picking holiday bills are all forms of corrupt practices that have pervaded governance in Nigeria.

5. CONCLUSION AND RECOMMENDATIONS

The paper examines the role of the judiciary in the resolution of electoral disputes using jurisprudential approach. The paper identified some of the causes of electoral disputes and how the judiciary has responded in the performance of its role as independent, neutral and impartial adjudicator. It is argued that, if the judiciary is to be effective and efficient in the discharge of their duties in the democratic process, the political class must first and foremost see politics as a normal process in which there must be winners and losers. It should not be a matter of “do-or-die.” Politicians should develop the spirit of sportsmanship and place the nation first in playing their games.

84 Ibid
86 Ibid.
87 Ibid.
There must be absolute respect for the rules of engagement and as well encourage the development of appropriate democratic culture. Most of the electoral disputes arose from lack of respect for the rules and the absence of democratic norms; and, the counsels appearing in election petition matters should appreciate their role as complementary to that of the judges. They must imbibe the international best practices; when a case is bad, it is bad and no counsel should engage in unnecessary delay antics to elongate the illegal occupation of offices. The Nigerian Bar Association, as the umbrella body of legal practitioners in the country, should look into the problem with the view to ensuring best practices.

I recommend that the drive to curb corruption in Nigeria, currently being led by the Economic and Financial Crimes Commission (EFCC) should be intensified. The EFCC should avail itself of the powers confer on it by provisions (section 6) of the Economic and Financial Crimes Commission Act to investigate any person whose property cannot be justified by his lawful income. It should also make effective use of informants with assured adequate protection with commensurate compensation. Well meaning Nigerians should also assist the Commission in waging war against corruption by availing themselves of the opportunities presented by the Freedom of Information Act.

It is also significant that the penal sanctions prescribed by the Commission Act should be amended to be proportional to the gravity of corrupt practices in the country. A situation whereby public officials who are found guilty of stealing billions of public funds are sentenced upon conviction to a short term of imprisonment or ended-up in plea-bargains is not only encouraging criminality, it is equally a gross abuse of the sensibilities of Nigerians who are often victims of the corrupt practices. It is sad that many in Nigeria live in affluence and opulence without justifiable means and yet not investigated and indicted. The EFCC needs to take censor of ownership of some of the landed properties in the Government Residential Areas and big cities across the Country. Similarly, ownership of large shares in some of the big and multi-national companies should be properly investigated. These become necessary bearing in mind that the majority of Nigerians are poverty stricken and infrastructures decayed while top government officials (including former captains of public institutions) are in affluence and opulence.