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EXAMINATION OF TIME LIMIT FOR ELECTION PETITIONS AND FAIR HEARING UNDER THE 1999 CONSTITUTION

KUDIRAT MAGAJI W. OWOLABI*

ABSTRACT

Change just for the sake of change is not necessarily good. But change to adapt to situation is survival. Adapt or lose. Ostensibly, due to the need to rein in the undesirous spectra of interminable electoral litigations, Section 285 (6) & (7) of the Constitution of the Federal Republic of Nigeria was amended to introduce time delimitation to election petitions and appeals. Amendment of the 1999 constitution has pegged the filing of petitions to 21 days after election result are declared. The petition shall be heard within 180 days and determined at the lower tribunal, while any appeal arising there shall be disposed of within 60 days. It is improper to hold that the 180 days provided in the constitution is not limited to trials but also de novo trials that may be ordered by an appeal court, considering the slow process of civil litigation in tribunals and courts in Nigeria and numbers of petitions and appeals. While the apparent intention behind this Constitutional amendment was to further the goal of achieving fair trials of electoral disputes expeditiously within delimited periods, these good intentions have taken us on unsavory journeys of unhelpful judicial construction, the end result of which finds justice lying prostrate and crushed in the dust. This article illustrates with decided cases the inconsistency of the two subsections with Section 36 of the 1999 Constitution and the principle of fair hearing. The issue as to whether a specific time span should be stipulated within which election petitions must be concluded has always generated heated and unending debates. The article will examine the application of the right to fair hearing within a reasonable time in Nigeria with respect to election petition cases to determine the extent of its applicability in view of the recent amendments of the constitution and the Electoral Act. This article attempts a critical analysis of a recent Supreme Court of Nigeria's decision that may have profound implications on the behavior of litigants in cases involving electoral disputes and judges who hear these cases. The paper recommends that Section 285 (6) & (7) be amended to take care of retrial of petitions by providing for a separate time limit. Also that the Supreme Court when faced with the interpretation of such constitutional provisions, should adopt a liberal judicial attitude that allows the aggrieved person to be heard rather than a strict interpretation that slams the door of the court against them. The right to be heard is a cardinal principle of justice that ought not to be temper with.

* LL.B, LL.M, BL(Abuja) Department of Law, College of Humanities, Management and Social Sciences, Kwara State University, Malete, Kwara State, Nigeria. Email: kudmagaji@yahoo.com/
kudirat.magaji@kwasu.edu.ng

INTRODUCTION

In this article, the author tried to illustrate with decided cases the inconsistency of the two subsections of 285 and Section 36 of the 1999 Constitution on the principle of fair hearing. The article does not claim to be right or wrong in views on the decisions, but the author will be fulfilled if succeed in stimulating informed debate on the issue.

The courts in Nigeria have inconsistently held, as seen in a plethora of cases at the Supreme Court, and as represented in *Saleh v Monguno*¹ that adjudicators and judges while resolving a dispute should allow both parties to be heard and should listen to the point of view or case of both sides. In *P.D.P v. K.S.I.E.C*² the court heard that fair hearing is in most cases synonymous with natural justice, an issue which clearly touches the basis of our legal system. Once there has been a denial of fair hearing, the whole proceedings automatically become vitiated with a basic fundamental irregularity.³ This becomes very trite in any election petition matter and the issue as to whether a specific time limit should be stipulated within which election petitions must be concluded or not. This has always generated heated and unending debates among Nigerian legal practitioners, jurists, and politician alike.

FAIR HEARING UNDER THE 1999 CONSTITUTION OF THE FEDERAL REUBLIC OF NIGERIA

Despite constitutional provisions relating to fair hearing since 1960, the Nigerian courts followed closely the development in relation to natural justice in the area of administrative law before and after independence.⁴ Section 36 of the 1999 Constitution of Nigeria provides for the right to fair hearing as follows:

In the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

¹ (2003) [1 NWLR [pt 801], 2211.

² (2005) 15 NWLR [pt 948] 24

³ *Ojengbede v. Esan* (2001) 18 NWLR [pt 746] 771

⁴ Mowoe M.M, *Constitutional Law in Nigeria* (Malthouse Law Books, Lagos, 2008) 344; Okpaluba C, *The Right of Hearing in Nigeria* (2nd edn, Matt Madek & Co., Enugu, 1990)32.

Though, the Constitution does not define the phrase 'fair hearing';⁵ this omission notwithstanding substantially incorporates the common law doctrine of natural justice and its components.⁶

Talking about fair hearing in election petition cases, the case of *Paul Unongo v. Aper Aku & Ors*⁷ quickly comes to mind. The Supreme Court stood firm to uphold the constitutional right of fair hearing of the litigant under Section 33 of the Constitution of the Federal Republic of Nigeria 1979 and the supremacy of the constitution at large. The problem in *Paul Unongo's* case arose while considering the provisions of Sections 129 (3) and 140(2) of Electoral Act 1982⁸ which provide that all election petitions in the High Court must be completed no later than 30 days after the election. The Act further provides that appeal from the High Court shall be heard and determined at the Court of Appeal within 7 days of Appeal stands abated in each case. The Supreme Court quashed the provisions of Section 129(3) and 140(2) of the Electoral Act of 1982 and held as follows:

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 sufficiently 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 judgment. 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 judgment 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 (3) and 140(2) of the Electoral Act, 1982 which limit the time for disposing of election petition by the courts are in my view ultra vires the National Assembly and therefore null and void.⁹

The judgment in the above case was given in favor of petition/appellant, but the judgment could not be implemented as the court was unable to grant the consequential order sought. This was because the limitation -of tie prescribed under the Electoral Act 1982. The

⁵ Odeleye D. O., 'The Right of Fair Hearing under the 1999 Constitution of the Federal Republic of Nigeria and under the Indian Constitution' (2013) 5(1), Port Harcourt L.J., 309-326

⁶ Omotosho A. O, *Issues on Constitutional Law* (Bold Technology & Systems Nig Ltd, Abuja, 2001) 44; Ubanyionwu, 'Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria' (2012), NAUJILJ

⁷ (1983) 2 SCNLR 232

⁸ Electoral Act No. 2, 1982

⁹ *Paul Unongo v. Aper Aku & 3 Ors* (1983) 5 NSCC 563, 342-343

Petitioner/ appellant victory became meaningless because the court could not order a retrial having regard to the passage of time within which actions were to have been instituted.

The above was the position of the highest court of the land. Consequently, the Electoral Acts of 2002, 2006 did not contain provisions for time limitation in the hearing and determination of election petitions in Nigeria. The Electoral Act of 2010 jettisoned the provisions imposing time limit for the disposal of election petitions.¹⁰ However, the 1999 Constitution by provision of Section 285 subsection (6) and (7) provides for time limit within which to conclude election petitions proceedings and its subsequent appeal to the Court of Appeal. This new paradigm shift created another problem that has to do with delay in the determination of election disputes.

SECTION 285(6) AND (7) OF THE 1999 CONSTITUTION

Section 285(6) provides thus:

An election tribunal shall deliver its judgment in writing 180 days from the date of the filing of the petition.

Section 285(7) provides further:

An Appeal from the decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.

By virtue of this provision, an appeal from a decision of an Election Tribunal or the Court of Appeal either in an interlocutory proceeding or final decision must be heard by the appellate court and disposed of within sixty days

ISSUE OF LIMITATION OF TIME FOR HEARING ELECTION PETITION CASES

Whereas, it may be argued that fixing time for the determination of Election Petitions may have the effect of checking the excesses and abuses associated with unregulated hearing and the possibility of dragging on cases beyond the duration of time for which the questioned Election was conducted, the pertinent question however, is whether the provisions of section 285(6) of the 1999 Constitution as amended is the panacea to today's dilemma.

It is pertinent to point out that the provisions of Section 285(6) of the 1999 Constitution as amended are not new to our political experience. It was first introduced in the 1977

¹⁰ see Electoral Act, No. 6, 2010, Section 134

Electoral Decree by the then Military Government.¹¹ The same trend ran through our Electoral Laws up till 1982.¹² A critical evaluation of the cases decided under these laws shows clearly that, limitation of time for disposal of Election Petitions contributed in astonishing manner to the "Judicial Aberration" patent in the decisions.¹³

Sequel to the insertion of subsection (6) of Section 285 in the 1999 Constitution as amended, a similar provision, which has now been deleted by virtue of the 2011 amendments to the Electoral Act, was contained in Section 134 of the Electoral Act 2010, which provided in its subsection (2) as follows:

An election tribunal shall deliver its judgment in writing within 180 days from the date of filing the petition.

The above provision of the Electoral Act 2010 has been replicated in the Grundnorm that is the Constitution, by virtue of Section 29 of the first Alteration Act, 2010, which amendment is contained in Section 285(6) of the 1999 Constitution as amended. Again, one is tempted to ask, what mischief do the lawmakers intend to address by the inclusion of Section 285(6) in the Constitution having regard to the provisions of Section 143 of the Electoral Act 2010 which provides that a person returned as elected shall remain in office pending the final determination of his appeal?

Undoubtedly, Section 285(6) of the Constitution will return us to judicial technicalities of yester years.¹⁴ In *Nwobodo v. Onoh*¹⁵, Uwais JSC (as he then was) stated thus:

"Election petitions are by their nature peculiar from other proceedings and are very important from the point of view of public policy. It is the duty of the Court therefore to endeavor to hear them without allowing technicalities to unduly fetter their discretion."

Although it is the wish of all Nigerians that all election petition cases be disposed of as quickly as practicable, but it is unarguable that setting the time limit within which election petition should be concluded is undesirable, impracticable and offends fair hearing. This informed the famous Supreme Court decision in *Paul Unongo v. Aper Aku* above.

¹¹ See part V of the Decree.

¹² See Electoral (Amendment) Decree 1988, Decree 15 of 1979 and Cap 105, Laws of the Federation of Nigeria 1990.

¹³ *Kadiya v. Lar & Ors* (1983) 2 SC 209; *Ojukwu v. Onwudiwe* (1983) 11 SC 118; *Paul Unongo v. Aper Aku & 3 Ors* (1983) 5 NSCC 563; *A.G. Abia & Ors v. A.G. Federation* [2002] 6 NWLR (pt. 763) 264.

¹⁴ *Egolum v. Obasanjo* (1998) 5 SCN 92 AT 143

¹⁵ (1984) SCNLR 1, 92

In history, this is the first time matters relating to court practice and procedure are been made part of the Constitution, in an attempt to remove completely the discretionary power of the court. Apart from the apparent dangers of disallowing a citizen's petition from being heard on account of expiration of the time stipulated for the purpose, it is a piece of legislative Judgment and an intrusion into the judicial powers vested in the judiciary under Section 6 of the 1999 Constitution.

The only known provision, which in the author's humble view is more of practice and procedure in nature in the 1999 Constitution where it provides as follows:

"Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."¹⁶

The above subsection which first featured in the 1979 Constitution created a lot of hardship in the administration of justice. It was for these reasons that subsection (5) was added to Section 294 of the 1999 Constitution to mitigate the hardship and injustice inherent in setting time limit within which a court has to conclude a case or deliver its judgment.

As expected, the problems and unfairness created by the newly inserted subsections (6) and (7) of Section 285 of the 1999 Constitution as applied to the 2011 Election Petition cases are quite astonishing. So many election petition cases were summarily dismissed not on the merit but on the technicalities thrown up by Section 285(6) of the 1999 Constitution as amended. The apparent unfairness is illustrated by the following selected few cases out of many which suffered the same fate to wit:

In *Amadi v. INEC*¹⁷, Onnoghen JSC, in dismissing the Appeal for non-compliance with the 60 days stipulated in Section 285(7) of the 1999 Constitution (as amended), held thus:

"It is not disputed that the appeal was to be heard and determined within sixty (60) days from the date of the delivery of the Judgment by the Election Tribunal. So everyone involved in the matter- appellants, respondent and the Court must beat the sixty (60) days deadline. The Judgment of the tribunal was delivered on 7th October, 2011 and appellants had twenty-one (21) days within which to file their appeal which they did on 28th October, 2011 which was the very last day of the twenty-one (21) days allowed for the filing of the appeal. That apart, appellants did not file

¹⁶ Section 294 of the 1999 Constitution as amended.

¹⁷ [2013] 4 NWLR (pt. 1345) 595, 627-8, para H-D

their appellant's brief until the 25th day of November, 2011 which was ten (10) days to the end of the sixty days from the date of Judgment on appeal. It is therefore very clear that appellants were very tardy in prosecuting the appeal having regard to the time constraint involved.

In conclusion, I find no merit in this appeal which is accordingly dismissed by me.

Also, in *Ugba v. Suswam*¹⁸, Ariwoola JSC, in his lead Judgment held as follows:

...Now to section 285(6) of the Constitution, the provision as stated above is clear and unambiguous. It does not require any special way of interpretation. It requires the election tribunal to deliver its Judgment in writing within 180 days from the date of the filing of the petition... I must say clearly, that there is no violation and no conflict between section 36 and section 285(6) of the Constitution (as amended). There cannot be strict application or interpretation of section 285(6) to now breach or violate or trample on the Constitutional right of an individual to fair hearing."

Again, in *Okadigbo v. Emeka*¹⁹, Peter Odili JSC, in giving judicial backing to Section 285(6) of the 1999 Constitution (as amended), held thus:

...The matter of the alternative reliefs now being sought that is for this court to remit the matter to the lower appropriate trial court. That in clear confrontation to Section 285(6) of the Constitution 1999 as amended as states as follows:

'An Election Tribunal shall deliver its Judgment in writing within 180 days from the date of the filing of the petition.

From that, it needs no special computation that the 180 days had been exhausted a long time ago. The Constitution has clearly made the stipulation and it is not for anyone or even this court to alter or ignore but must follow. The words of the statute are plain, clear and not in any way ambiguous and has not left any room for manoeuvre and so the ordinary interpretation is what it is, and translated to mean that the effluxion of time has made the alternative relief asked for impossible...

Finally, in *ANNP v. Goni*²⁰, Onnoghen JSC again held as follows:

¹⁸ (2013) 4 NWLR (pt. 1345) 427, 458, para H-G

¹⁹ [2012] 11 NWLR (pt. 1311) 237, 269, para C-E

²⁰ (2012) 7 NWLR (pt. 1298) 147, 180, para C-F

the section of the 1999 Constitution (as amended) relevant to the determination of the substantive issue before this court is section 285(6) which provides as follows:

‘An Election Tribunal shall deliver its Judgment in writing within 180 days from the date of the filing of the petition.’

The above provision is very clear and unambiguous and therefore needs no construction or interpretation. The law is settled that in a situation as this, the duty of the court is simply to apply the provision as it exists; that is to give the words their plain and ordinary meaning.

The above being the law, it follows that an election tribunal, in an election petition matter must deliver its decision/judgment/ruling /order in writing within 180 days from the date the petition was filed.

Unarguably, none of the above four cases was decided on the merits, but on the technicality of effluxion of time as stipulated by the hurriedly inserted subsections (6) and (7) to Section 285 of the 1999 Constitution by the National Assembly.

Now in *Ugba V. Suswam* above, the Honourable Justice Ariwoola JSC held that there was no conflict between Sections 36 and 285(6) of the 1999 Constitution as amended. With the greatest respect to the learned Justice, the author disagrees. The Lawmakers did not amend or alter Section 36 of the 1999 Constitution when they amended Section 285 to include subsections (6) and (7). Section 36 it must be remembered is an entrenched provision of the Constitution dealing with fundamental rights of Nigerians. Section 36(1) provides thus:

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

Subsection (6) of Section 285 of the Constitution is a clear violation of Section 36(1) above in so far as it has unreasonably curtailed the reasonable time within which a party is allowed to have his case determined by Court or tribunal. Justice is thus sacrificed on the altar of time.

Nowadays, the progressive position taken by our Courts in the dispensation of cases is that at all times the attainment of justice must be the priority of all Courts as opposed to technicalities, and all judicial discretions must be exercised unfettered and guided by the

consideration of doing justice to all the parties to a dispute. In *Long-John v. Black*²¹, Iguh JSC, delivering the lead judgment of the Supreme Court instructively enunciated thus:

Besides, it has also to be borne in mind that our courts would appear to have deliberately shifted away from the narrow technical approach which characterized some of their earlier decisions and now instead pursue the course of substantial justice... It therefore seems to me that the interest of justice demands that parties, in appropriate cases, should be afforded a reasonable opportunity for their rights to be investigated and determined on the merits so long as the equities of the matter are not defeated and no injustice to the other party is thereby occasioned.

Bearing in mind that the attainment of justice is now the priority of our Courts, the exercise of judicial discretion which depends on facts and circumstances of each case is taken away by Section 285(6) and (7) in so far as the Courts can no longer exercise discretion in favour of a party who for good reasons could not facilitate the hearing of his petition before the expiration of the time stipulated by the subsections.²²

In *Adediran v. Interland*,²³ Hon. Justice Karibi-whyte, while reviewing the judicial powers vested in the Courts under Section 6(6)(b) of the Constitution held thus:

...where the determination of the civil rights... of a person is in issue, any law which imposes conditions is inconsistent with the free and unrestrained exercise of that right,(and) is void to the extent of such inconsistency.

Also in *Ogli Oko Memorial Farms Ltd v. N.A.C.B* ²⁴, Onnoghen JSC while emphasizing the need not to allow speedy trial to defeat justice captured the essence of fair hearing as represented by section 36 of the Constitution thus:

The principle of fair hearing is fundamental to all court procedure and proceedings. Like jurisdiction, the right to fair hearing is both fundamental and a Constitutional right of every party to a dispute who is to be afforded an opportunity to present his case to the adjudicating authority without let or hindrance from the beginning to the end. It also envisages that the court or tribunal hearing a case should be fair, impartial or without showing any

²¹ (1998) 5 SCNJ 68, 81-82, page 87

²² Imam I, 'The Myth of Judicial Activism in Nigeria: Making Sense of Supreme Court Judgments'.
Hppt://www.unilorin.edu.ng/publications/imami/THE%20MYTH%20OF%20JUDICIAL%20ACTIVISM
%20IN%20NIGER%20N0%202.PDF.88

²³ [1991] ALL NLR 98, 115-116

²⁴ [2008] ALL FWLR(pt. 419) 400, 404

degree of bias against any of the parties. Every party must therefore be given equal opportunity of presenting his case.

He further held in the above case as follows:

Even though it is the desire of all involved in the administration of justice to uphold the principle which states that justice delayed is justice denied, it is equally unacceptable to encourage or do injustice in an attempt at speedy dispensation of justice. Justice may be slow sometimes but it will surely arrive at its destination.²⁵

It seems to me difficult to reconcile the general statement of the principle of law of fair hearing in the above cases with the four election petition cases earlier mentioned summarily dismissed on account of effluxion of time stipulated for their determination and conclusion.

As Lord Hardwicke said:

There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.²⁶

The provisions of Section 36 of the 1999 Constitution on fair hearing are sacrosanct and must not be compromised for time. A litigant who is aggrieved and complains to court must receive attention. His case must be heard. He must not be denied on account of time. The result will be self-help and anarchy.

The efforts and energy of the lawmakers should be redirected towards sustenance of INEC to conduct of free and credible elections to reduce the ever increasing number of election petitions rather than making obnoxious laws to impede the smooth administration of justice. Subsections 6 and 7 of Section 285 should be deleted from the 1999 Constitution.

Election petitions are highly sensitive and controversial so much that the process of disposing seems as if the judiciary itself is on trial. The role and place of the judiciary in election petitions centre on the question of whether they should give voice to the choices of the people without bowing and being slavish to the technicalities of the law and the constitution.²⁷ Of recent the Nigerian judiciary has come under severe attack for their handling or mishandling of election petitions. A substantial number of Nigerians have questioned the role of the judiciary as a true arbiter in electoral matters. The next section

²⁵ *ibid*, para 418

²⁶ *The St. James' Evening Post Case* (1742) 2 ATKINS 469, 472:

²⁷ Dabo K, 'Time Limit to determine Election Petitions and Appeal: A Call for Review of Section 285 (6) & (7) of the 1999 Constitution of the Federal Republic of Nigeria.' (2013), 16(1) *Nig Law J.*, 183-198

of this paper therefore examine the problems and challenges associated with election petition in respect of role of judges which individually and collectively have made it such frustrating and fruitless exercise for both petitioners and the democratic enterprise.

THE CASE AGAINST THE JUDICIARY IN ELECTION PETITION

The Supreme Court has no original jurisdiction in election matters.²⁸ Its appellate jurisdiction in election matters is derived from Section 233(2) (e) of the Constitution only in relation to the decision of the Court of Appeal as to whether or not;

- i. Any Person has been validly elected to the office of President or Vice President
- ii. The term of office of the President or Vice President has ceased
- iii. The Office of the President or Vice President has become vacant

Any decision of the Supreme Court from an appeal to it from the decision of the Court of Appeal in this regard is final. On the other hand, Court of Appeal is under Section 239 of the 1999 Constitution vested with the original jurisdiction to the exclusion of any other Court of law in Nigeria with respect to the question as to whether:

- i. Any Person has been validly elected to the office of President or Vice President
- ii. The term of office of the President or Vice President has ceased
- iii. The Office of the President or Vice President has become vacant

The Court of Appeal also has appellate jurisdiction to entertain appeals from the decisions of the National Assembly Election Tribunals and the Governorship and Legislative Houses of Assembly election tribunals on whether:

- i. any person has been validly elected as a member of the National Assembly or of a House of Assembly
- ii. any person has been validly elected to the office of Governor or Deputy Governor
- iii. the term of office of any person has ceased or the seat of any such person has become vacant

From the foregoing above, the Supreme Court has no right entertaining any appeal or application from the decision of the Court of Appeal and or an election petition except in respect of the Presidential election and only where the Court of Appeal by Section 239(1) (a), (b) and (c) has been conferred with original jurisdiction to determine any question as

²⁸ Constitution of Federal Republic of Nigeria 1999, Section 232(1)

to the validity of the appointment of the President and the Vice President; and whether their term of office has ceased.

An appellate Court has to decide whether the decision of a trial Tribunal or Court is right and not whether the reasons for such decisions were right. Thus, if the decision/ judgment of a Tribunal or a trial Court were correct, it will not be liable to reversal merely because it was anchored on a wrong reason. In every case, there is need for the court to consider all relevant evidence before it.²⁹

Until recently there was no time limit on election petition, and inauguration of candidates comes up after disposal of petition. Amendment of the 1999 constitution has pegged the filling of petitions to 21 days after election result are declared. The petition shall be heard within 180 days and determined at the lower tribunal, while any appeal arising there shall be disposed of within 60 days. The numbers of the judges at the tribunal are also reduced from five to three³⁰. It is a matter of common knowledge that the manner in which some judges dealt with election matters causes loss of faith in our judiciary.³¹

Iriekpe observed that many of the judgments delivered by the tribunals and Court of Appeal were below the expectations, thereby denying a lot of petitioners and appellants justice and in some cases, some judges handed vague judgments and denial parties justice on technical grounds rather than on the merit of the case.³² Petitions were sometime struck out on frivolous grounds, flimsiest of excuses and sometimes very ridiculous reasons.³³ For instance, in *Unongo v. Aku*, the petitioner, the gubernatorial candidate of the NPP in the 1983 election in Benue State, challenged the re-election of Mr Ape Aku. The election panel dismissed the petition on the grounds that the petition was filed on a wrong form and that Mr. Aku being an incumbent governor of a State enjoyed immunity, hence could not be sued. The petitioner appealed to the court of Appeal, which held among other things, that the judgment of the lower court was wrong. It however refused to order a re-trial on the grounds that it was time barred as 30days required for determination of election petitions has expired.³⁴

The consequence of this attitude of the court is that, an electoral disputes resolution mechanisms that is slow and technically inclined does not deliver substantial justice and adds to the pains of the people, slows down the entrenchment of democracy. It also

²⁹ Bashorun A, 'The Supreme Court and the Challenges of the 90s' in Akinseye-George Y (ed) *Law, Justice and Stability in Nigeria: Essays in Honor of Justice Kayode Eso* (Opeoluwa Printing Press, Ibadan) 119

³⁰ See Electoral Act, 2011

³¹ Iriekpen D, '2011 Elections: Fears over Judicial Pronouncements,' This Day, December 16, 2010. 23

³² Iriekpen D, '2011 Elections: Fears over Judicial Pronouncements' This Day, December 16, 2010. 23

³³ Ugochukwu B, *Nigeria: Tribunals & the 2003 Elections* (Lagos: Legal Defence Centre, 2014) 61

³⁴ Electoral Act No.2, 1982, Section 142(2) provides that a petition filed before the High Court in respect of any election shall be disposed by the court not later than 30 days from the date of such election and any petition not disposed of shall be time barred and such petitions shall be null and void

corrupts the electoral process and leads people towards alternative and unconstitutional means of resolving electoral disputes.³⁵

The courts have not performed to expectations of Nigerians in the area of speedy dispensation of justice. The snail speed in the disposal of petitions nibbled at and subverted the true intent of the mandate of the people. It also allows riggers and those with dubious mandate to hold onto power. For instance, the law allow the returnee or elected candidate to remain in office pending the expiration of 21 days within which an appeal may be brought.³⁶ In essence, an incumbent will continue to occupy an office even where a court has voided his or her victory while appeal petition subsists.³⁷

Judges handling election matters have also been accused or indicted of insensitive and undisguised partisanship and giving rulings and judgements that at least to the non-legal mind, border on the ridiculous and the absurd. In *Dingyadi v. Wamakko*³⁸ the Court of Appeal found that an issue of multiple nominations touches on the qualification of a candidate to contest an election under the Electoral Act. It is therefore shocking and a mystery that Wamakko, who was found unfit to contest for the election as at the close of nominations in 2007, could be eligible for a run-off of the same elections years later. The ripples of that unique judgment reverberated for years and become the bone of contention in arguably the most acrimonious and embarrassing scandal to have broken out within the leadership of the Nigerian judiciary.

Hence, in *Amaechi v. INEC*³⁹, the Supreme Court affirmed the primacy of political parties in the conduct and contest of elections and stated that, it is the political parties that the electorates do vote for at the election time. However, it went further to declared the candidate (Amaechi) who did not campaign during the elections, whose name was not on the ballot and who nobody voted for as the duly elected governor of River State.

Thus, so far the most shocking of the court judgments was the majority decisions in *Buhari v Ya'Adua*. In the case the INEC conducted elections without proper voters register as stipulated in the Electoral Act. The ballot papers used in the elections had no serial numbers as stipulated by law. Results were announced even before the polls closed. Many results were unsigned and undated. There were no provisions for secret balloting, which is a universal and basic requirement of freedom of choice. And lastly, the electoral

³⁵ Okoye F, 'Do Elections counts?' (Final Report of the 2003 General Elections in Nigeria Abuja: Transition Monitoring Group 2009) 131

³⁶ See Section 138(2) Electoral Act, No, 6, 2010

³⁷ Orbih FO, 'Improving Adjudication Procedure in Election Petitions in Nigeria' (being a paper presented at the Nigerian Bar Association Conference on Review of Performances of Election Petition Tribunals held on 5th March, 2012, Benin, Edo State). 7-8

³⁸ [2008] 17 NWLR (pt. 116) 395

³⁹ [2008] 5 NWLR (pt. 1080)

commission did not provide indelible ink for thumb printing the ballots paper as stipulated by the law.⁴⁰ the Supreme Court however disregarded all the above facts and declared that Ya'Adua was validly elected. Politics rather than law influenced that judgement, as the justices may have considered the social, political and financial implications of cancelling the election and ordering a new one. The court may have sacrificed justice on the altar of political stability like it has always been the case since independence.⁴¹

RECOMMENDATION AND CONCLUSION

It does appear that all that any candidate that is declared winner needs to do, to get away with the mandate, even where it was brazenly stolen, is to file a preliminary objection and follow it through the appellate process. For gubernatorial elections, appeals now go all the way to the Supreme Court, which make it easier to prevent trial for 180 days. Thus by simply holding up the actual trial of a petition, a rigged election will be legalized by a dismissal of the petition on Section 285(6). The judiciary appears to have taken the unfortunate view that it is helpless even to order a fresh trial properly speaking, even where it is obvious that an interlocutory challenge was merely a ploy to let time run against a petitioner. Self help now appears to be the only option for an aggrieved party.

The factor that might be responsible for this inordinate delay is not unconnected with the share mammoth number of petitions filed as a result of the unprecedented irregularities that marred elections. Even if time limit were to be legally enforceable, it is doubtful if the tribunals and the courts would have been able to meet up. In 2009, it was reported a colossal number of 1,299 election appeals were pending in the various divisions of the Court of Appeal in Nigeria⁴². therefore, if unprecedented number of cases is filed like before, the provisions of the laws commanding accelerated hearing and specifying time limit within which judgments are to be delivered might not perform any miracle. Thus, the intimidating number of cases, parties coupled with the complexity and volumes of documents that are tendered at election petitions might make it impossible for the tribunals and the courts to dispose them off as the people and the law might want.

The author therefore recommends that the INEC should always make sure that the elections are properly conducted so that the propensity to go to courts would be reduced when the losers are able to see that they lost fairly and not that they were unjustly rigged out.

It is important to ensure that stiffer penalties are stipulated against the INEC staff and security officers who are proven to have aided in achieving electoral irregularities; and the

⁴⁰ Haruna M, 'Supreme Court Verdict & Judicial Dead End'. The Nation Newspaper, December 17, 2008.
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⁴¹ *ibid*

⁴² The Punch Newspaper of December 8, 2009.

penalties must be enforced. This is because it would be totally impossible for riggers of elections and other perpetrators of electoral crimes to succeed without the active connivance of electoral and security officers, because whatever design, it must be ultimately reflected in the result to be announced by the INEC.

The National Assembly is urged to always consult regularly with the judiciary before legislating on matters which are inherently within the province of the judiciary, such matters like the limitation of time within which to dispose elections petitions. When this is done, it will eliminate completely the embarrassing situation out courts face due to limitations placed over their functions by the legislature. Section 285 (6) and (7) of the constitution should be amended to avoid technicalities at the level of election tribunals which deprive litigants of their right of fair hearing. It is also suggested that Section 285 (6) of the Constitution be amended to take care of re-trial of petitions by providing for a separated time limit