THE JUDICIARY AND NIGERIA'S 2011 ELECTIONS

CENTRE FOR SOCIAL JUSTICE (CSJ)

(Mainstreaming Social Justice In Public Life)

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First Published in December 2012

By

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ISBN: 978-978-931-860-5

Centre for Social Justice

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LIST OF ACRONYMS

ACN	Action Congress of Nigeria
Act	Electoral Act 2010 as amended
ACPN	Allied Congress Party of Nigeria
All FWLR	All Federation Weekly Law Report
APGA	All Progressive Grand Alliance
ANPP	All Nigeria People's Party
CPC	Congress for Progressive Change
CJN	Chief Justice of Nigeria
CTC	Certified True Copy
CSJ	Centre for Social Justice
DDC	Direct Data Capture
ECOMOG	Economic Community of West Africa Monitoring Group
Electoral Act	Electoral Act 2010 as amended
FCT	Federal Capital Territory
FHC	Federal High Court
FWLR	Federation of Nigeria Weekly Law Report
HA	House of Assembly
INEC	Independent National Electoral Commission
JSC	Justice of the Supreme Court
LP	Labour Party
NACOSS	National Association of Computer Science Students
NASS	National Assembly
NBA	Nigeria Bar Association
NCLR	Nigeria Constitutional Law Report

NDDC	Niger Delta Development Commission
NJC	National Judicial Council
NSCC	Nigeria Supreme Court Cases
NWLR	Nigeria Weekly Law Reports
NYSC	National Youth Service Corps
PCA	President of the Court of Appeal
PDP	Peoples Democratic Party
PPN	Peoples Party of Nigeria
SAN	Senior Advocate of Nigeria
SHA	State House of Assembly
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports

Acknowledgement

Centre for Social Justice acknowledges the support of IFES/USAID towards the research and publication of this Report.

FOREWORD

The practice of monitoring election petition tribunals or other bodies performing judicial or quasi-judicial function is of great importance to the strengthening of the democratic process. Monitoring exercises of such nature are known to produce desirable outcomes – which include reinforcing a sense of decorum in the judicial officers, litigants and other court users. Tribunal monitoring is a confidence-building tool, which directly or indirectly, has a bearing on the incidence of electoral violence. People under observation are known to comport themselves well, and the moment citizens are convinced that they will get justice at the tribunals, they will be more disinclined to resort to self-help and post-election violence.

It was against this background of seeking to deepen the democratic culture in Nigeria that the International Foundation for Electoral Systems (IFES), using a grant from the United States Agency for International Development (USAID), commissioned the Centre for Social Justice (CSJ) to monitor and document the lessons from the proceedings of the election petition tribunals constituted to hear and determine petitions arising from the 2011 general elections in Nigeria. It is the hope of IFES that the lessons and recommendations from the monitoring exercise, the report of which has been compiled into this work **"The Judiciary and Nigeria's 2011 Elections"** would bequeath a lasting legacy of peace, prosperity and a strong democracy to the Nigerian people.

On behalf the USAID Mission in Nigeria and IFES Nigeria, whilst commending the Centre for Social Justice (CSJ) for a thorough job, I present to you this report titled "The Judiciary and Nigeria's 2011 Elections."

Carl W. Dundas
IFES Nigeria Country Director

CHAPTER ONE

Introduction

1.0 MONITORING ELECTION PETITION ADJUDICATION

Law plays a central role in the design and management of elections. The Judiciary through the election tribunals is the last hope of the citizen and electoral contestants in the bid to guarantee free, fair and credible elections. Election Tribunals are fundamental to the promotion and protection of democratic values and act as legal bulwarks for defending the vote and mandate of the electorate. The ventilation of the right to vote and to be voted for and resolution of conflicts arising from electoral contests are some of the duties vested in the judicial arm of government. It is therefore a fundamental aphorism that the effectiveness of the courts in resolving election disputes contributes in no small measure to the consolidation of democratic values in Nigeria. Effective interpretation and adjudication of election disputes also strengthens the rule of law.

Election disputes are not just civil claims ventilating the rights of private individuals. They are claims and questions of wider significance to the integrity of our constitutional democracy and the political stability of Nigeria. They also bother on the collective interest of society to be governed by a democratic government founded on the will of the people and expressed in periodic and genuine elections. Although free and fair elections are best guaranteed by the legal and legitimate conduct of the election management body, security agencies, other government agencies, political parties, candidates and the larger civil society, the courts have become the last resort considering the winner-takes-all approach to Nigerian electoral contests. The challenge is to use law as an instrument of social engineering to resolve democratic conflicts in the overall interest of society.

As a prelude to the 2011 elections, the political party primaries organised by various parties recorded a plethora of court cases and the Independent National Electoral Commission (INEC) complained of being overwhelmed with court orders from different aspirants restraining it from recognising a candidate or mandating it to recognise a particular candidate. As morning shows the day and from previous experience, it was therefore not surprising that election petitions were harvested in good number after the 2011 elections. It is imperative however to acknowledge that the 2011 elections, although not perfect, was a departure from the elections of 2003 and 2007. It was better organised and acknowledged as free, fair and credible by local and international observers.

A number of scandals emanated from the adjudication of election disputes in the past including the one involving the former Chief Justice of Nigeria (CJN), Katsina Alu and the former President of the Court of Appeal (PCA), Ayo Salami. The allegations levelled against the former CJN by the former PCA border on attempts to subvert justice, intervening and getting the Supreme Court to arrest the delivery of

judgment in the Sokoto State gubernatorial election petition that clearly should have ended at the Court of Appeal[1]. Allegations have also been raised against the former PCA to wit; that he set up and chose appeal tribunal members for predetermined ends not favourable to a particular political party. There were allegations of communications between sitting judges and counsel appearing before them in election cases. The established case of different panels of the Court of Appeal arriving at different decisions in cases with similar facts also did not portray the courts in good light.

Previous efforts in monitoring the work of election tribunals by IFES and the Legal Defence Centre had led to a number of recommendations which after implementation by the authorities have improved the electoral adjudication system. Against the background of the foregoing, it was imperative that civil society engaged the resolution of electoral conflicts through monitoring and reporting on the work of the tribunals and courts. This was borne out of the need to make the tribunals and courts more transparent, accountable and to deliver justice according to the law.

1.1 MONITORING AND PROJECT ACTIVITIES

The overall goal of the project leading to this report is to contribute to transparent, free, fair and credible resolution of electoral disputes in accordance with the 1999 Constitution as amended, Electoral Act 2010 as amended and other relevant laws. The specific objectives are:

- Build the capacity of 37 Election Tribunal Observers on how to carry out effective monitoring of the Tribunals established to deal with challenges arising from the elections;
- Deploy monitors and conduct monitoring of the work of the Election Tribunals across the 36 States and the Federal Capital Territory;
- Document the outcome of the monitoring in an analytical report.

Centre for Social Justice organised a two day workshop for chosen tribunal monitors. The first focus of the training was to make the monitors understand the legal framework for election dispute resolution. Effective monitoring can only be done from an informed position of the laws and policies guiding the work of tribunals and the appeal tribunals. This involved analyzing the amended 1999 Constitution, the Electoral Act 2010, and other relevant laws. The second focus of the training was on the tribunal process and techniques for data gathering. It also reviewed interview techniques. The third focus was on the monitoring forms and checklists which were reviewed to ensure that participants understood how to use them to gather the required information including number of petitions filed and the nature of the allegations for requesting that the election be voided or the petitioner be declared the

[1] *Alhaji Muhammadu Maigari Dingiyadi & PDP v INEC & 2 Ors* (2010) 4-7 S.C. (Part 1), at page 76.

winner of the elections. The fourth focus of the training was on the objective criteria for the evaluation of the work of the tribunals using quantitative and qualitative analysis. The core issues were the resources available to the tribunal for the discharge of their duties, conduciveness of the venues, the process employed by the tribunals including best practices in fair hearing and substantial compliance with the enabling laws, timeliness of proceedings, the role of INEC, security of tribunals, witnesses, litigants and their counsel, openness and access including cost of justice, corruption and bias, etc. Generally, the training provided answers to the questions: Why do we seek to monitor? What are the monitoring points? How do we monitor? When do we monitor? CSJ chose participants for the training who eventually became monitors from the list of previous personnel who had worked with the Legal Defence Centre in previous monitoring exercises as this ensured that monitors built on their previous experience to deliver quality monitoring reports. Persons with legal or paralegal background were prioritised in the selection of monitors.

Monitors were deployed as soon as the tribunals commenced their work. One monitor covered one state. They attended and observed tribunal and court sessions and appeals from the courts of first instance and submitted periodic reports of their monitoring activities. They obtained certified true copies of court processes and judgements. Project staff from Centre for Social Justice were also occasionally involved in the monitoring exercise. The project conducted interviews with counsel, candidates, security personnel and other stakeholders involved in the tribunals to elicit more detailed information relating to specific aspects of proceedings where they were involved. The project also monitored reports in the print and electronic media on the conduct of the electoral proceedings before the tribunals and the courts. Further, the project reviewed reported cases arising from appeals on the judgements of the tribunals.

However, there were difficulties in gathering information in some states as the tribunal secretaries insisted on the monitors getting an introduction letter from the President of the Court of Appeal before they could get access to the tribunal records, failing which they refused to cooperate with the monitors. Our application to the former PCA, Justice Ayo Salami was overtaken by the disagreements he had with the former CJN, Justice Katsina Alu, and CSJ did not get that official letter of introduction for the monitors. This to an extent hampered information gathering and thus the progress of the project.

1.2 THE REPORT

The Report is divided into seven chapters and an appendix. Chapter one introduces the project out of which this report is generated. It describes the reasons for the project and the methodology adopted. Chapter Two provides the background information and the underlying legal and political events prior to 2011 elections. The events include the establishment of the Electoral Reform Committee and its

recommendations, amendments to the Constitution and the enactment of a new Electoral Act, registration of voters, party primaries to select candidates. Also the post presidential election violence was reported. Chapter Three is on the establishment and jurisdiction of the tribunals. It reviewed relevant sections of the Constitution, Electoral Act and judicial precedents on the subject matter. Issues such as the appointment procedure and quorum of tribunals, locus and grounds for bringing election petitions, tribunal resources and the secretariat and sitting venues of the tribunals were reviewed.

In Chapter Four, the Report reviews the tribunals in action starting with the Court of Appeal which was the Presidential Election Petition Tribunal. It reviewed the decisions that came out of the Court of Appeal and the appeal to the Supreme Court. The work of the tribunals at the state level was the focus of other parts of the chapter reviewing the work of Gubernatorial Election Petition Tribunals and the National and State Houses of Assembly Election Petition Tribunals. Chapter Five dwelt on the trend of appeals from the decisions of the tribunals. It noted the conflicting positions of the Court of Appeal in matters having the same facts.

Chapter Six is on the effectiveness and fairness of the tribunals. It reviewed the need for a new jurisprudence and used the parametres of openness, the time for filing and determining petitions, the ascendancy of technicalities, the burden and standard of proof, performance and conduct of lawyers and judges as the parameters to measure fairness and effectiveness. Other parametres used were security at the tribunal venues and corruption.

Chapter Seven is on conclusions and recommendations. The recommendations include the need to amend the time frame provisions of the Constitution to exclude weekends, public holidays, court vacations and periods of strike in the computation of the time for the trial and judgement in petitions and appeals. In appeals, it is also recommended that time should not start to run until the records and judgement has been compiled and transmitted to the appellate court. The burden of proof needs to be revisited considering the hardship imposed on petitioners. The recommendation of the Electoral Reform Committee to shift the burden of proof from the petitioners to INEC to show, on the balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate is imperative. Continued training for judicial officers and the support staff is recommended for future tribunals whilst the issue of enhanced security and appropriate sitting venues is to be explored. Judges need the support of competent judicial assistants for research purposes especially in consideration of the limited time frame provided by the Constitution.

CHAPTER TWO

Legal and Political Background to the 2011 Elections

2.0 BACKGROUND

The Constitution of the Federal Republic of Nigeria 1999 (as amended) prescribes a four-year term for elected public officers[2]. The enabling provisions of the Constitution sets the time frame for conducting elections into various political offices and the time frame is known four years ahead of the election. After the 2007 election, it was therefore expected that all government agencies that have roles to play in election would prepare and take steps to ensure free and fair polls in 2011. Considering the inadequacies found in the enabling law and practice after the 2007 election, which were adjudged by local and international observers as the worst in Nigeria's history, there were expectations that the Constitution and the Electoral Act would undergo amendments before the 2011 election. Thus, INEC was expected to widely consult with stakeholders, review their operations and come forward with proposed amendments to the Electoral Act while the National Assembly was expected to expeditiously review and approve amendments or enact a new law for the President's assent.

Nigeria's electoral history, especially since the return to civil rule in 1999, has been dominated by certain issues which frequently precipitate tension and directly or indirectly affect the result of the polls. In the past, such issues had related to recognition and registration of new political parties, registration of voters, nomination of party candidates and funding of INEC. It has also become the norm that every election will be preceded by the passage of a new Electoral Act.

The establishment of the Electoral Reform Committee headed by Justice Uwais by former President Umaru Musa Yar'Adua and its recommendations raised the hope of Nigerians for improvements to the electoral system. The acknowledgement by the former President that the 2007 election was not credible created the public perception that the time for change had come. The terms of reference given to the Committee were as follows:

> (a) Undertake a review of Nigeria's history with general elections and identify factors which affect the quality and credibility of the elections and their impact on the democratic process.
>
> (b) Examine relevant provisions of the 1999 Constitution, the Electoral Act, and other legislation that have bearing on the electoral process and assess their impact on the quality and credibility of general elections.
>
> (c) Examine the roles of institutions, agencies and stakeholders in shaping and impacting on the quality and credibility of the electoral process. These should include Government, Electoral Commissions, Security Agencies, Political Parties, Non

[2] See sections 64 (1), 105 (1), 135 (2) and 180 (2) of the 1999 Constitution.

Governmental Organisations, Media, General Public and the International Community.

(d) Examine electoral systems relevant to Nigeria's experience and identify best practices that would impact positively on the quality and credibility of the nation's electoral process.

(e) Make general and specific recommendations (including but not limited to constitutional and legislative provisions and/or amendments) to ensure:

(i) A truly independent Electoral Commission imbued with administrative and financial autonomy;

(ii) An electoral process that would enable the conduct of elections to meet acceptable international standards;

(iii) Legal processes that would ensure that election disputes are concluded before inauguration of newly elected officials; and

(f) Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of governments.

(g) Make any other recommendations deemed necessary by the Committee.

The Committee made far reaching recommendations on the reform of the electoral system. Some of the recommendations include that INEC should be re-organized and re-positioned to ensure its independence and professionalism in the conduct of elections in the country. The 1999 Constitution should be amended to ensure that INEC becomes truly independent, non-partisan, impartial, professional, transparent, and reliable as an institution and in the performance of its constitutional functions. In this respect, the funding of INEC should be a first-charge on the Consolidated Revenue Fund of the Federation. The judiciary should ensure prompt resolution of election-related disputes by increasing the number of election petition tribunals and consolidating petitions. The Electoral Act 2006 should be amended to shift the burden of proof from the petitioners to INEC to show, on the balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. The procedure for producing evidence before tribunals should be re-examined in order to speed-up the hearing of electoral cases. Specific rules of procedure should be made for election petitions. New laws are needed to curb the mounting and increasing impunity with which politicians have breached existing electoral laws. In this respect, the Committee called for the establishment of the Electoral Offences Court.

Further, the reconstitution of INEC and the appointment of Professor Attahiru Jega as the chairman of INEC raised hopes of a new dawn in the management of elections in Nigeria. Professor Jega, a political scientist served on the Uwais Committee and has a background in political science and the academia, with a reputation for leading noble causes and speaking out against military dictatorship. In

his leadership of the election management body, Nigerians hoped for a departure from the putrefaction of the Maurice Iwu led INEC.

2.1 AMENDMENT OF THE CONSTITUTION

The Constitution was amended thrice in the run up to the 2011 elections. However, only the First and Second Alterations are relevant to this report. The First Alteration had a lot of impact on the electoral system as it sought to rectify a number of challenges that had beset the system in the past. Section 69 of the Constitution was amended to make the process of recalling a member of the Senate or House of Representatives more difficult and cumbersome. It added a provision for the verification of the signatures of those seeking recall by INEC before a referendum is held. Whether this amendment cures any defect in existing law is debatable. It appears to be more of a self serving exercise by the legislature. The initial provision for recall of legislators has not been fully tested and this amendment can at best be deemed anticipatory of possible future abuses of the provision.

The time for election to the National Assembly in section 76 of the Constitution was amended to read that it shall hold on a date appointed by INEC in accordance with the Electoral Act. The amendment also states that it shall hold not earlier than one hundred and fifty days and not later than one hundred and twenty days before the expiration of their tenure. The words three months and one month in subsection (2) of section 76 were substituted with ninety days and thirty days respectively. Apparently, the amendment for not earlier than 150 days and not later than 120 days were meant to give adequate time for the resolution of election disputes before the beginning of the tenure of the new legislators.

Section 81 (3) of the Constitution was amended and the funding of INEC became a first line charge and a statutory transfer. Thus, the amount standing to the credit of INEC in the Consolidated Revenue Fund of the Federation shall be paid directly to it. Further, section 84 of the Constitution was amended by adding a new subsection (8) which reads that the recurrent expenditure of INEC, in addition to the salaries and allowances of the Chairman and members shall be a charge upon the Consolidated Revenue Fund of the Federation. These amendments gave INEC the much needed financial autonomy and independence to plan and execute its activities without going cap-in-hand to the authorities in the executive arm of government. The funding of INEC in the 2003 and 2007 elections left much to be desired. Appropriated funds were not fully released and the releases were not on time to facilitate implementation of key activities.

Sections 135 and 180 of the Constitution were amended by the insertion of subsections (2A):

> *In the determination of the four year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in the office before the date the election was annulled, shall be taken into account.*

This amendment sought to cure the mischief in the system where persons earlier sworn in but had their elections annulled, upon winning the re-run election lay claim to a new tenure which does not take cognisance of the period they spent in office before the annulment of the their election. However, this amendment seems superfluous on the basis of the Supreme Court judgement in *Marwa & Anor v Nyako & 9 Ors*[3]. Essentially, the Supreme Court (in this case filed before the amendment of the Constitution, but considered after the amendment) arrived at the same position, curing an anticipated mischief, in the interpretation of the original constitutional provisions that were amended by this constitutional alteration. The central issue for the determination of the Court was:

> *When does the four year tenure granted vide section 180 (1), (2) and (3) of 1999 Constitution to State Governors begin to run; is it when the Governors first took their respective oaths of allegiance in 2007 or in 2008 when they took their second oaths of allegiance and office following their winning the re-run election ordered by the courts as a result of the nullification of their earlier election.*

The Supreme Court per Onnoghen, JSC held that:

> *..it is clear that I am of the view that Section 180 (2A) of the 1999 Constitution (as amended) is not relevant to the determination of the issue under consideration as the intention of the framers of the Constitution of assigning four years tenure to the Governors is clear from the language used in Sections 180 (1), (2) & (3) and 182 (1) (b) of the 1999 Constitution. At best, the said Section 180 (2A) can be described as a classification of what is, by the deployment of the tools of constitutional interpretation, obvious and attainable as demonstrated in this judgement. The 1999 Constitution has no room for self succession for a cumulative tenure exceeding eight years.*

Section 156 of the Constitution was amended to provide that members of INEC shall not belong to a political party. Section 160 of the Constitution was amended to grant INEC full powers to make its own rules and regulate its internal procedure without approval from the President. Section 228 of the Constitution was amended by deleting subsections (a) and ()b) and substituting them with powers of the National Assembly to make laws for guidelines and rules to ensure internal democracy within political parties, including the power to make laws for the conduct of party primaries, party congresses and party conventions. It also conferred powers on the National Assembly to give INEC powers to ensure the observance of internal democracy including the fair and transparent conduct of party primaries, party congresses and party conventions. This provision sought to cure the mischief in the practice of the parties that circumscribed internal democracy wherein the party leadership equated itself to the party. The results of party primaries were overruled and aspirants who actually won were substituted with the selected cronies of the party leadership.

Far reaching amendments were made to section 285 of the Constitution. Section 285 (1) of the Constitution was altered by the establishment of National and State

[3] (2012) 1 S.C. (Part 111)

Houses of Assembly Election Tribunals. New subsections (5) to (8) were provided as follows:

> *(5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections.*
>
> *(6) An election tribunal shall deliver its judgement in writing within 180 days from the date of the filing of the petition.*
>
> *(7) An appeal from the decision of an election tribunal or court shall be heard and disposed of within 60 days from the date of the delivery of judgement of tribunal.*
>
> *(8) The Court in all appeals from election tribunal may adopt the practice of first giving its decisions and reserving the reasons therefore to a later date.*

The above alterations especially (5), (6) and (7) sought to regulate the time limit for the filing and disposal of election petitions. This is coming against the background of the endless litigation syndrome experienced after the 2007 elections and the need to speed up the adjudication of election petitions. A situation where persons occupied offices for upwards of two to three years before the cases challenging their election were concluded had done great disservice to the administration of justice and the public's perception of the quality of justice. The case of *Ngige and Obi*[4] where Chris Ngige spent two years eleven months before the tribunal came to the conclusion that he was not the winner of the election easily comes to the fore. In *Ogboru v Uduaghan*[5], Governor Uduaghan almost completed his four year tenure before the court ordered for a re-run election and thereafter, a re-elected Uduaghan spent three months in office before he emerged again as the candidate of the Peoples Democratic Party for the 2011 election. *Fayemi v Oni*[6] also took three and half years through the courts before the final decision of the Court of Appeal annulling the election of Oni as governor of Ekiti State.

It was therefore imperative to constitutionally fix a time frame for the initiation and conclusion of proceedings in election disputes. A time frame for disposal of election cases would not have been achieved by a statutory provision considering the Supreme Court decision in *Unongo v Aku*[7] where the court held that a similar provision in sections 129 (3) and 140 (2) of the Electoral Act of 1982 constituted an unjustifiable interference by the legislature with the judicial functions of the courts and was therefore in breach of the doctrine of separation of powers. As such, the Supreme Court struck it down as unconstitutional, null and void. However, as shall be shown in the later parts of this report, the implementation of this amendment also has its drawbacks. It will be recalled that there was a time limit for the conclusion of

[4] (2006) 14 NWLR, (Part 999).
[5] (2011) 12 S.C. (Pt.11) 37 or (2011) FWLR (Pt.577) 650.
[6] (2010) 17 NWLR (Pt.1222) 326
[7] (1983) 2 SCNLR 332.

electoral proceedings in the rules for the conduct of elections in 1999 but these were relaxed in 2003 and 2007 leading to unending election disputes[8].

Item (F) (paragraph 14) of the Third Schedule to the Constitution was also amended to introduce inter alia the requirement of non partisanship for members of INEC whilst paragraph 15 (c) expanded the monitoring role of INEC in relation to political parties to include conventions, congresses and party primaries. Although INEC before the amendment had general duties to monitor the organisation and operation of political parties, including their finances, the amendment sought to place emphasis on issues pertaining to the governance and internal democracy of political parties.

The Second Alteration to the Constitution changed the time for all categories of federal elections from not later than one hundred and twenty days to not later than thirty days. The alterations established in each state of the Federation, an Election Tribunal to be known as the Governorship Election Tribunal which shall to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor. Subsections (7) and (8) of section 285 of the Constitution were furthered amended to read:

> *(7) 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 judgement of tribunal or Court of Appeal.*
>
> *(8) The court in all final appeals from an election tribunal or court may adopt the practice of first giving its decisions and reserving the reasons therefore to a later date.*

The appellate jurisdiction of the Supreme Court was enlarged by its final power to determine whether any person has been validly elected to the office of the Governor or Deputy Governor under the Constitution. Hitherto, appeals in governorship cases terminated at the Court of Appeal[9]. Apparently, there was a groundswell of public opinion that in previous elections, the Court of Appeal did not discharge its appellate duties consistently and a number of conflicting judgements arose from various divisions of the Court of Appeal.

2.2 A NEW ELECTORAL ACT

The Electoral Bill as submitted by the executive to the legislature was the product of nationwide consultations involving major stakeholders in the electoral process. The new Electoral Act that rolled out of the legislature and assented to by the President

[8] See Basic Constitutional and Transitional Provisions, Decree No. 6 of 1999.
[9] This was achieved through a substitution of section 233 of the Constitution and section 24 of the First Alteration Act.

contained some new provisions. Some of the provisions were controversial and contentious. For instance section 140 (2)[10] provides:

> *Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest number of votes at the election was not qualified to contest the election, the tribunal or court shall not declare the person with the second highest votes as elected, but shall order a fresh election.*

Following this provision, the Action Congress of Nigeria, one of the registered political parties in Nigeria instituted a suit to challenge this provision at the Federal High Court. Justice Okeke held that the subsection was null and void and inconsistent with the constitutional provision which gives powers to the court to make declarative injunctions[11]. Another section that attracted undue criticism is section 87 (8). It provides as follows:

> *A political appointee at any level shall not be a voting delegate at the Convention or Congress of any political party for the purpose of nomination of candidates for any election.*

This section removed the issue of automatic delegates from the conduct of party primaries. Again, the amendment was also challenged by the Action Congress of Nigeria (ACN) in the same case[12]. The judge however upheld section 87 (8) of the Act which bars political appointees at any level from voting as delegates at political party conventions or congress for the purpose of nominating candidates for election, saying that it was necessary so as to provide a level-playing field for all contestants. The judge stated that:

> *It is my considered opinion that section 87 (8) must remain because if elections must be free and fair, all parties must be on the same level playing ground. If you want to take political appointment, you must know the implication that as a political appointee, you will not be able to act as delegate in party primaries.*

Nigeria's Vision 20:2020 acknowledged that the process for selecting party candidates has not been transparent as internal democracy is yet to be fully entrenched in the political parties[13]. Section 87, subsections (1) to (5) of the Electoral Act sought to delineate the procedure for nomination of candidates of political parties and thereby strengthen internal democracy in the political parties. The provisions are as follows:

> *87. (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.*
>
> *(2) The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries.*

[10] Electoral Act 2010 (as amended)
[11] See This Day, Friday, July 1 2011 at page 6.
[12] Ibid.
[13] Vision 20:20 at page 71.

(3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outline below –

(a) in the case of nomination to the position of Presidential candidate, a political party shall –

(i) hold special conventions in each of the 36 States of the Federation and Federal Capital Territory, where delegates shall vote for each of the aspirants at designated centres in each State Capital on specified dates.

(ii) a National Convention shall be held for the ratification of the candidate with the highest number of votes.

(iii) the aspirant with the highest number of votes at the end of voting in the 36 States of the Federation and Federal Capital Territory, shall be declared the winner of the Presidential primaries of the political party and the aspirants name shall be forwarded to the Commission as the candidate of the party after ratification by the national convention.

(b) in the case of nominations to the position of Governorship candidate, a political party shall, where they intend to sponsor candidates:

(i) hold special congress in each of the Local Government Areas of the States with delegates voting for each of the aspirants at the congress to be held in designated centres on specified dates.

(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular State;

(c) in the case of nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly, a political party shall, where they intend to sponsor candidates –

(i) hold special congress in the Senatorial District, Federal Constituency and the State Assembly Constituency respectively, with delegates voting for each of the aspirants in designated centres on specified dates;

(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party;

The provision of section141 of the 2010 Electoral Act was also struck down by the court[14]. The section provides as follows:

> *An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.*

The National Assembly had hinged section 141 on the ground that prior to the amendment; there had been heated debates whether the Supreme Court was right when it declared Rotimi Amechi as the duly elected Governor of Rivers State[15] when he did not contest in the April 2007 general election. However, this provision raises new posers; was there a real mischief that it sought to cure? The decision in Rotimi Amechi's case, from the Supreme Court's perspective, was based on the calculated attempt of the Peoples Democratic Party to undermine judicial authority and also to affirm that it is the political party that presents candidates since the Constitution and Electoral Act made no provisions for independent candidacy.

The challenge of nomination of candidates has been a vexed issue for political parties in Nigeria. Political parties lacking in internal democracy had in the past arbitrarily substituted winners of primaries with losers. Indeed, flying the flag of a political party was at the discretion of the party hierarchy irrespective of the results of party primaries. Flying the flag of the party was reserved for the highest bidder who could grease the palms of the party leadership. The former locus classicus that supported this mischief was the case of *Chief P.C. Onuoha v Chief R.B.K Okafor & 2 Ors*[16] where the Supreme Court held per Obaseki JSC as follows:

> .....*the real question must be whether the matter in dispute now before this court on appeal is justified. It is clear to me that the expressed intention of the Constitution... and the Electoral Act 1982 is to give a political party the right freely to choose the candidate it will sponsor for election to any elective office or seat in the legislature and in the instant appeal a seat in the House of Senate of the National Assembly. The exercise of this right is the domestic affair of the NPP guided by its constitution. There are no judicial evidence or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore, unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question, which the Courts are not qualified to deliberate upon and answer. The judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the political party to answer the question. It is, therefore, my view that the matter in dispute brought before the Court is not justiciable,"*

Section 34 (2) of the 2006 Electoral Act provided that a political party that intends to substitute its candidate shall give a cogent and verifiable reason and this must be done at least 60 days before the election. Except in the case of death, no

[14] Justice Okechukwu Okeke's judgement in the case filed by ACN, supra.
[15] *Amaechi v INEC* (2008)1 S.C.(Pt.1) 36; (2008) 5 NWLR (Pt.1080) 227
[16] (1983) N.S.C.C. 494.

substitution or replacement was allowed after 60 days to the election. Despite the clarity of this provision, a number of cases went up to the Supreme Court for the interpretation of this section. In *Odedo v INEC*[17], the appellant contested the House of Representative primaries under the platform of PDP. The appellant won after scoring the highest number of votes at the election. His name was submitted to INEC as the PDP candidate for Idemili North and South Federal constituency, Anambra State. He was later substituted with Obinna Chidoka who scored 6 votes against the appellant who scored the highest number of 397 votes at the party primaries. The appellant challenged this substitution at the Federal High Court where the court ruled against him. He appealed to the Court of Appeal. The Court of Appeal in its majority judgment of 2 to1 dismissed his appeal. He further appealed to the Supreme Court which allowed the appeal and declared him the duly nominated candidate of the PDP[18].

The National Assembly in passing the 2010 Act amended section 34 of the 2006 Act through section 33 of the 2010 Act[19] which provides as follows:

> *A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 32 of this Act, except in the case of death or withdrawal by the candidate*

This section brought to an end the disputations as to whether the proffered reasons for a candidate's removal were cogent and verifiable. Political parties can no longer substitute their candidates arbitrarily except in the event of death or voluntary withdrawal by the candidate.

The Electoral Act also provides in section 133 (1) the procedure for challenging the return of an election:

> *No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.*

In subsection (3) (a) and (b) of section 133, the election tribunal shall be constituted not later than fourteen days before the election and when constituted, open their registries for business, seven days before the election. This provision is to ensure that the tribunals are ready for the business of adjudicating electoral disputes even before the petitions are filed. This would facilitate conclusion of petitions within the 180 days timeline. Section 134 of the Electoral Act repeats the provisions of section 285 (5) to (8) of the Constitution. Considering that the Constitution has covered the field, the provisions are of doubtful legal validity as it adds nothing to the body of electoral laws. This is based on the decision of the Supreme Court in *Attorney*

[17] (2008) 7 S.C page.27
[18] See also *Agbakoba V INEC* (2008) 12 S.C.(Pt111) 171
[19] Electoral Act 2010

General, Abia v Attorney General Federation wherein Kutigi JSC (as he then was) noted that[20]:

> *where the provision in the Act is within the legislature powers of the National Assembly but the Constitution is found to have already made the same or similar provision, then the new provision will be regarded as invalid for duplication and or inconsistency and therefore inoperative.*

After the passage of the 2010 Electoral Act, attempts were made to amend the new Act. On 11th December 2010, the Senate listed in its Order Paper the presentation and consideration of the report of its committee on INEC on the Electoral Act 2010 (Amendment) Bill 2010 (SB447). The bill sought to amend the Electoral Act 2010 to, among others provide adequate time for INEC to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties. While on its face value, the Bill appeared to have good intentions as it sought to facilitate the performance of the duties of INEC. However, there was a controversial clause that sought to make members of the National Assembly automatic members of the National Executive Committees (NEC) of their various political parties. That singular clause drew wide condemnation from the public who viewed it as self-serving. The law makers later abandoned this clause as it was not reflected in the Act when it was eventually amended.

However, one important amendment to the 2010 Electoral Act was in section 9 (5)[21] through the removal of the 60 days time limit for the registration of voters. By the original provisions, the updating and revision of the register of voters shall stop not later than 60 days before any election covered by the Act. Before this amendment, INEC would not have registered all eligible voters if the original provision had stayed.

2.3 REGISTRATION OF VOTERS

Section 9 of the 2010 Electoral Act empowers INEC to compile, maintain and update on a continuous basis, a National Register of Voters. Registration of voters is the bedrock of any election because it determines those eligible to vote and to be voted for and underpins logistics arrangements for the election including the number of ballots, polling booths and electoral staff to be hired. Voters' registration was scheduled for November 1 to 14, 2010 but was moved after INEC requested for extension of the elections and the National Assembly altered the Nigerian Constitution to allow for the shift[22].

The 2011 voters' registration was the first of its kind in Nigeria to the extent that it used Electronic Data Capture machines for the capture of data, unlike previous exercises that were done manually. About 132,000 Direct Data Capture machines were used in the registration of voters nationwide. The registration commenced on

[20] (2002) 6 NWLR (pt763) 264 at 369 paras F-G
[21] Electoral Act 2010
[22] See Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010; .Act No.1 by sections 5 and 10.

January 15 2011 and ended on February 12, 2011 after a two weeks extension. Three firms got the contract to supply 132,000 Direct Data Capture machines, namely Zinox Technologies Limited - 80,000 units at $1,771.73 per unit. While Messrs Haier Electrical Appliances Corp Ltd was awarded 30,000 units at $1,699.60 per unit and Avante International Technology Incorporated got 22,000 units at $1,699.60 per unit; which brings the total figure to about N34.5 billion.

There were a number of challenges experienced in the 2011 Voters' Registration exercise and they are detailed below.

(A) Inadequate Capacity Building for the National Youth Service Corps Ad-Hoc Staff: The first two days of the voters registration exercise suffered a setback due to some obvious challenges linked to the inability of INEC to organize capacity building for the National Youth Service Corps (NYSC) ad-hoc staff used for the registration exercise. Initially, the rumour mill indicated that INEC would deploy members of the National Association of Computer Science Students (NACOSS), numbering over 5,000 nationwide to assist in the management of the DDC machines for the exercise. Also, the DDC machines, the technology backbone for the exercise had a shaky start in some areas due to the inability of INEC personnel (NYSC ad-hoc staff) to install the machines appropriately.

(B) Slowness of the Direct Data Capture Machines: Reports from the field pointed out that the DDC machines were slow in capturing voters' data. The slow operations resulted in delay in registering voters as it could take 30 to 40 minutes to register a single voter. Computer experts, however, attributed the slowness of the machines to the kind of operating system that was installed in them. The DDC machines made use of Linux operating system. INEC had adopted a Linux software technology, which experts say is slower than Oracle and many others and calibrated it to achieve high quality finger prints. But that led to slowing down of scanning and entire registration process in many centres at the beginning of the process. The finger prints of most voters with hard and coarse palms were not easily captured by the scanner.

(C) Theft of Direct Digital Capture (DDC) Machines: In the first instance, there was theft of the DDC machines at the Lagos Airport where about 20 DDC machines were stolen. It was also observed that in some local areas, DDC machines were snatched from NYSC ad-hoc staff.

(D) Inadequate Electric Power Supply: The DDC machines make use of electricity and in most local areas where the supply of power was inadequate, it only relied on the provided back up battery which sometimes ran down during the registration exercise. Communities and individuals had to make alternative provisions to power the machines. *"We took our own money to buy generators so that people would not*

queue," says Murisuku Ojukon, the traditional ruler of Aja in Lagos State. *"If you wait for the federal government to help, you will be stranded.*"[23]

(E) The Use of Former Polling Booths for the Voter Registration Exercise: The use of former polling booths for the voters registration exercise was indeed a challenge. The number of persons that were to be registered in some cities out-stripped the provision made for their registration. Thus, many people spent days before being registered. About 120,000 polling booths were made available which was the old provision. This provision was unable to take care of the increase in population and development of new sites. In order to register, people had to travel far distances and during the elections, this disenfranchised some voters since the electoral law provides that a voter can only vote where he registered.

(F) Inadequate DDC Machines at Registration Centres: "In some areas, you have one machine for thousands of people. They come out as early as 4am to queue," says Francis Onahor, a member of Reclaim Naija, an activist group that had set up a live online map of troubled spots[24]. This was so common in most registration points. The number of machines provided was indeed inadequate to meet up with registration exercise.

(G) Double Registration: There were incidences of double registration by some of the electorate.

Despite all these challenges and the fact that there is room for improvement, INEC was able to register voters for the 2011 general elections.

2.4 POLITICAL PARTY PRIMARIES AND SELECTION OF CANDIDATES

Democracy is about giving people the opportunity to choose their leadership. This is not to be restricted to general elections alone. Political parties are the vehicles for democratic contest within the Nigerian jurisdiction. They sponsor candidates for elections. But how do these candidates emerge? What is the process for constituting the leadership of the party? Who is the party that sponsors these candidates - the executive committee members, the leader(s) of the party or the generality of card carrying members? In accordance with democratic norms, political parties are bound to give their members the opportunity to choose candidates to fly the flag of the party at various elections. Essentially, a party that lays claim to being democratic must provide avenues for internal democracy in the conduct of its affairs. The lack of internal democracy in political parties and the imposition of candidates had been the bane of the current political dispensation. The lack of internal democracy had led to

[23] Daily Times Nigeria February 4, 2011

[24] Daily Times Nigeria February 4, 2011 by Shyamantha Asokan

the failed attempt by the legislature to make provisions in the Electoral Act to elevate all legislators into the membership of the National Executive Councils of the respective political parties.

Section 87 (1)-(5) of the Electoral Act laid down the procedure for the nomination of candidates by political parties. It is by direct or indirect primaries. Section 31 (1) of the Act provides that every political party shall not later than 60 days before the date appointed for a general election under the provisions of the Act, submit to the Commission in the prescribed form the list of the candidates the party proposes to sponsor at the elections. This report will now review the different sets of primaries conducted by the political parties, especially those primaries that were hotly contested.

(A). Presidential Primaries

PDP presidential primaries are usually keenly contested. As the ruling party, there is an unwritten assumption that whoever emerges from the primaries is half-way through becoming the President of the Federal Republic of Nigeria. It is also apparent that there is no real opposition to the party's hegemony at the national level. PDP presidential primaries are typically cash-and-carry affairs with an overriding tilt in favour of incumbents; the only rule is that there are no rules; delegates 'eat' from all camps, and keep their options open till the last minute. This can make it a most frustrating exercise for candidates, requiring an endless supply of cash, often denominated in dollars. Further, the governors who are leaders of the party at the state level influence the list of delegates from their states and as such determine to a great extent which candidate receives the votes from a state. The contest was between Dr Goodluck Jonathan, the incumbent President, Alhaji Atiku Abubakar, a former Vice President and Sarah Jibril.

Before the primaries, there was a lot of apprehension that the party might implode along regional and sectional lines. Prominent members of the party from the northern part of Nigeria alleged that the constitution of PDP provided for rotational presidency which meant that candidacy for the presidency from the PDP will be rotating between the North and the South. Aspirants from the zone came together and elected a consensus aspirant in the person of Alhaji Abubakar Atiku who flew the flag of the zone in the presidential primaries. Goodluck Jonathan won the primaries. Alhaji Atiku lodged a protest with INEC. The gravamen of Atiku's protest bordered on issues of uncertainty, unfairness, secrecy, non-disclosure of vital information and outright breaches of the PDP constitution. The details include:

- The composition of the National Convention Committee, which had the overall mandate of planning and executing the primary election programme, was not made public until 72 hours before the convention. This violated Paragraph 7 (b) of the P.D.P Electoral Guidelines 2010. Similarly, the identities of members of the screening

committee were also not released until 72 hours before the screening of presidential aspirants on 11 January 2011.

- The ground rules governing the primary election ought to have been agreed upon and signed by all the parties involved, and such an agreement should not only be binding on all parties, but should also have been published and widely advertised in the print media. This is stipulated in Paragraph 8(b) of the P.D.P. Electoral Guidelines 2010. The agreement on the special convention ground rules would have been one major way to ensure that the primary election process was objective, impartial, fair, just and not programmed to produce a predetermined end. But the PDP leadership refused to be guided by these basic democratic norms.

- With 48 hours to the primary, the Atiku Campaign Orgamization was still completely in the dark about such crucial issues as the venue/location for the accreditation of delegates; the number of its officials who were entitled to special passes; the security arrangement for such a huge political undertaking; the nature and context of the voting method to be adopted; the number and arrangement of ballot boxes; the nature of ballot papers to be used, and if they had any special identification; mode of counting the ballot papers; and the announcement of results. This is contained in Paragraph 8(b) of the Party Electoral Guidelines 2010 but was not followed.

- The list of delegates who would vote at the primary election ought to have been published and widely advertised in the print media prior to the primary as spelt out under Paragraph 8(b) of the P.D.P. Electoral Guidelines 2010, so as to forestall the list either being tampered with or its integrity being substantially compromised. But the list of delegates was sighted for the first time by members of the Atiku Campaign while voting was in progress. The list of delegates is crucial to the successful conduct of any primary election. It is as important as the list of Nigerian Voters which the INEC is required by law to publish before the conduct of the general election.

- The unacceptable situation in some states where delegates were barred from meeting Atiku Abubakar on the directive of the governors. Such states included Jigawa, Ebonyi, Abia, Kaduna and Akwa Ibom. It was clear that PDP state governors were under intense pressure from the presidency not to allow Atiku Abubakar to meet the delegates from their states.

- The absence of the comprehensive delegate list aided the manipulation of the election process in favour of President Jonathan. It was also curious to observe that supplementary names were presented at the accreditation venue and purportedly endorsed by the respective States PDP Chairmen. This violated Section 122 of the Electoral Act 2010. The lists of delegates used for the elections had therefore been doctored before the issuance of ballot papers which resulted in over voting and in some cases issues of unaccounted votes. For example, sixteen Plateau State House of Assembly members who decamped to Labour Party with Deputy Governor Pauline Tallen were replaced with some other people by Governor Jonah Jang and they were allowed to vote as delegates. A delegate from Anambra State was shocked that as a former governorship candidate that he could not recognize most of those who presented themselves as delegates from the state. He actually sent away 20 fake delegates from the state contingent. Vehement protest from Alhaji Shehu Garba, the

Deputy Director-General of Atiku Campaign for mobilization, led to the disqualification of 26 persons who had showed up as Bauchi State delegates and were in fact being processed to vote.

- Delegates were also not accorded their independence to make their choices as in most cases; State Governors led their delegations and directed the filling of the ballot papers by their appointed aides for President Jonathan. A close associate of Governor Akwe Doma of Nasarawa, Alhaji Walid Jibrin, was seen filling the ballot papers for all the delegates from the state. Governor Sule Lamido of Jigawa State nearly came to blows with the former Action Congress Chairman in Kaduna State, Alhaji Aliyu Yahaya, when he was challenged over his over-bearing attitude towards the delegates. Governor Lamido was ordering Jigawa State delegates to fill Jonathan's name on the ballot papers. In Osun State, Youth Minister Akinlabi stood at the entrance of the polling station coercing delegates to vote for Jonathan and he was seen live on television. In Adamawa State, a close associate of Governor Murtala Nyako instructed delegates to vote for Jonathan or risk being dealt with by the state government when they returned home. Similarly, Defence Minister Adetokunbo Kayode was very visible around the polling station for Ondo State, directing delegates to vote for Jonathan and threatening to punish those who voted for Atiku. The Katsina State Commissioner for Local Government Councils was seen filling ballot papers for delegates in favour of Jonathan. This equally violated Section 122 of the Electoral Act 2010.

- No special congresses were held anywhere in the country for the purpose of electing the 774 special delegates who voted in the primary. Names of presidential functionaries, including Ministers and Advisers, as well as trusted aides of state governors were merely compiled and passed off as national delegates. These were the people who were used to do the dirty jobs during the primary election. They worked closely with state governors to whip delegates in line and in some cases they actually filled ballot papers for delegates. This negated the provisions of Part II (A) (i) of the P.D.P. Electoral Guidelines 2010.

- Names of State Working Committee members, Local Government Chairmen, etc were changed days to the primary election and known supporters of the President were allowed to vote in place of those disenfranchised statutory delegates.

- Accreditation of delegates was done in secrecy at state liaison offices in Abuja. The Atiku Campaign was deliberately denied access to these locations. In fact, state governors imprisoned delegates against their will at these locations throughout the night before the primary and used buses to convey them to the venue of the convention the following day.

- Delegate tags were deliberately designed without a mark of identification so that anybody could get a hold of it and vote as delegates. This action contravened Paragraph 8(d) of the Electoral Guidelines 2010.

- President Jonathan doled out seven thousand dollars to each of the delegates, thus using financial inducement to make them vote for him.

However, no action was taken by INEC on the protest. If these complaints are true, the implication is that the PDP primaries fell short of the requirements of the Electoral Act and the PDP constitution.

In the Congress for Progressive Change, it was reported that the party endorsed General Muhammadu Buhari as its presidential candidate while the Action Congress of Nigeria chose Nuhu Ribadu as its presidential candidate. There was no report of any voting talking place at any level – local government, state and federal in the ACN, rather two other aspirants[25] were prevailed upon to step down for Nuhu Ribadu and thereafter his candidature was ratified by a voice vote. Did the other aspirants step down on their own volition or were they forced to step down? When questioned on why ACN imposes candidates, the chairman of the party, Chief Bisi Akande had this explanation:

> *The British democracy is the oldest in the world and you cannot see political parties there conducting primary elections before choosing their candidates. They do it by picking competent hands that are trustworthy in the judgment of the party. So, we believe that election under a democratic setting is when we are contesting with other political parties during polls. If election within our party is what you are trying to describe as internal democracy, then we reject such idea. Can we impose when we are contesting against PDP? The Party knows what people want. But we can do something within our party if the leadership of the party feels that that is the best thing. This is because it is the leadership of the party that understands the manifestoes of the party and knows what the people really want. This is not a matter of an individual but the party. Nobody should accuse ACN of imposition because that is our style. Anyone that is not comfortable with that should go and contest in another political party. So if you see anyone carrying placard around, he is wasting his time. We know the efforts we made before the party became what it is today and where were they when we were making the efforts. It is when they saw that the party is popular that they were attracted to it and we don't expect them to come and hijack the party because of their dirty money."*

It is doubtful if the CPC and ACN complied with the provisions of section 87 of the Electoral Act in the selection of their presidential candidates. There were no direct or indirect primaries and no special conventions in each of the thirty six states of the Federation. Chief Bisi Akande's response is self explanatory - a number of individuals within the top hierarchy of the party just decided on the candidate and thereafter publicly presented him to Nigerians and INEC.

(B). Legislative Primaries

In many states of the Federation, two candidates emerged from a single constituency claiming to be the rightful candidate of a party. However, the parties had clear guidelines and regulations that will be used to determine the authenticity of a primary. In some instances, these parallel primaries were the result of the factionalisation of a party. The Supreme Court in *Emeka v Okadigbo & 4 Ors*[26], declared Lady Margarie Okadigbo, as the validly nominated candidate of the PDP in Anambra North Senatorial zone and as such the winner of the senatorial election conducted by INEC in the zone. Justice Bode Rhodes-Vivour who read the lead

[25] Former Sokoto State Governor, Attahiru Bafarawa and Mallam Seidu Malami.
[26] (2012) 7 S.C. (Part 1).

judgement held that Lady Okadigbo emerged winner of the primaries conducted by the legally recognised faction of the party. The court further held that the Appellant John Emeka who instituted the suit did not have *locus standi* since he did not participate in the primaries. The facts leading to the suit and the decision were that while Lady Okadigbo and others participated in the primaries conducted by the National Executive Committee of PDP as detailed in the PDP Electoral Guidelines, the appellant participated in an illegal primary conducted by the State Executive Council of the PDP which was a nullity.

In Anambra South senatorial district, the PDP allegedly conducted two parallel primaries with Andy Uba and Nicholas Ukachukwu emerging from the parallel primaries[27]. Nicholas Ukachukwu brought an action praying the National Assembly Election Tribunal to declare him the winner of the election because it was him, rather than Uba that was the candidate of PDP in the election. The request by Ukachukwu was actually not strange, but such request could only be granted if and only if he could prove that he was the lawful candidate of PDP; and that the party in choosing him as candidate had relied on the relevant provisions of existing laws and guidelines of the Party. But the tribunal held that the case was a pre-election matter, which under the law, the tribunal lacked the jurisdiction to entertain.

The PDP in an effort to resolve its pre-election challenges in Anambra State through its National Working Committee constituted a nine-man committee headed by the former Governor of Imo State, Ikedi Ohakim to resolve the crisis arising from the senatorial elections in Anambra State. It took the decision during a meeting with party members from Anambra State over disputed senatorial primaries in the state. The committee was later dissolved as it could not achieve its aim of restoring peace in the party.

The protracted litigation between Eseme Eyibo and Dan Abia over the authentic candidate of the PDP in Eket/Esit /Ibeno/Onna Federal Constituency in Akwa Ibom State was decided by the Supreme Court. Justice John Fabiyi who read the lead judgement held the Eyibo's inauguration was illegal and should not have taken place and ordered Eyibo to vacate the seat for Dan Abia. The Court stated that:

> *The first respondent (Eseme Eyibo) by his own showing has not proved that his purported nomination as the candidate of the PDP complied with the mandatory provisions of the PDP Electoral Guidelines because no electoral panel attended the venue where his supporters assembled to pass a resolution for his affirmation and that he was accepted by the PDP as the consensus candidate for the Eket/Esit /Ibeno/Onna Federal Constituency. The mandatory result sheet form code was not filled and none was shown. The Electoral Guideline is very clear, no result shall be upheld as valid until it has been entered in the appropriate Form PDP004/NA designated for it.*

[27] *Ukachukwu v Uba* reported in Thisday, 24th August, 2011 at page 21

In the Anambra State APGA primaries, allegations and counter-allegations reigned supreme. In Anambra South Senatorial zone, former member representing Ihiala federal constituency, Chuma Nzeribe, was allegedly imposed on the people by APGA, leaving one of the top contenders for the seat, Professor Nonso Mojekwu, frustrated. In the North, Senator Joy Emodi was declared winner amidst protests by her opponents led by Mike Areh. Chinedu Emeka, former Deputy Governor withdrew from the race after seeing the way things were going. It was the same story in the central senatorial zone where the former Minister of Information and Communications, Prof Dora Akunyili won.

In the PDP senatorial race in Imo State, Osita Izunaso of Orlu zone lost to Hope Uzodinma while Chris Anyanwu lost her Owerri zone ticket to Mrs. Kema Chikwe, a former aviation minister. However, Chris Anyanwu decamped to APGA which gave her a ticket to contest the senatorial seat. In Benue State, the Senate President, David Mark, beat his rival, Lawrence Onoja, also a retired military general, for the third consecutive time to win the Benue South PDP senatorial ticket. Mark scored 1,680 votes against Onoja's distant 317 at the PDP senatorial primary. Onoja and Akume have joined the ACN. In the PDP senatorial race in Kaduna, Caleb Zagi (PDP Kaduna South) lost the senatorial ticket to Esther Nenadi Usman, a former finance minister; while Mohammed Kabir Jibrin lost the Kaduna central PDP ticket to Abubakar Amisu Marago. Alhaji Makarfi retained his senatorial ticket.

In Ondo State, the ruling Labour Party had a consensus arrangement which obviously did not go down well in some quarters. Hence there was an outbreak of violence in the primaries for the State House of Assembly in Ondo State in Oba-Akoko in Akoko South West local government and Owo council areas of the state and decampment by key party members to other parties. A lawmaker representing Akoko South West constituency 2, in the Assembly, Mr Abiodun Ogunbi, was allegedly beaten and rushed to the emergency unit of the Federal Medical Centre, Owo, for medical attention. The crisis was caused by alleged substitution of delegates list by the party hierarchy who wanted to impose candidates on the party.

(C). Gubernatorial Primaries

In *Emenike v PDP & 3 Ors*[28], the appellant who was a gubernatorial aspirant in Abia State did not take part in the primaries organised by the National Working Committee of the PDP in accordance with the PDP Electoral Guidelines. Rather, he took part in an illegal and unauthorised primary organised by the State Executive Committee of the PDP. In a suit where he requested the courts to declare him the duly elected gubernatorial candidate of the PDP, the Supreme Court held that the subject matter disclosed no reasonable cause of action and was liable to dismissal since the appellant had no locus standi and therefore could not invoke the jurisdiction of the

[28] (2012) 5 S.C. (Pt.1)

court under section 87 of the Electoral Act. Both the appellant and the Abia State Executive Committee of the PDP knew that their action and conduct violated the basic rules of their party.

In Ebonyi State, the incumbent governor, Martin Elechi, got the ticket with a total of 634 votes out of the 638 authenticated votes. Four votes were voided. Apparently, this result looks too good to be true. Governor Elechi, while accepting the result called for greater support to enable the PDP win the 2011 governorship election in the State. Before the primary, a former Minister, Ambassador Frank Ogbuewu who was interested in the gubernatorial seat on the platform of PDP withdrew from the race. In Zamfara State, formerly an ANPP state, the major challenge of the PDP ruled state was the factionalisation of the party into 'old' and 'new' PDP which in the governorship primary produced two candidates. The state governor, Mahmud Aliyu Shinkafi, emerged the candidate of one faction while a former Minister of State for Information and Communications, Alhaji Ikra Aliyu Bilbis, was elected as the candidate of the other faction. Governor Shinkafi polled 576 votes to defeat his challenger, Alhaji Ikra Aliyu Bilbis who had 43 votes. At the parallel primary, Bilbis defeated the governor by 687 votes to 17. Of course, the primary won by the incumbent was the one recognised by the leadership of the party.

In Jigawa State, Governor Sule Lamido picked the ticket for a second term forcing his predecessor, Governor Ibrahim Saminu Turaki, out of the party as he decamped to the ACN. The automatic ticket factor played out for Governor Babangida Aliyu who was the sole candidate for the PDP gubernatorial primary in Niger state. Aliyu polled 1029 votes out of the total 1049 votes cast. The governor was exhilarated when he was giving his acceptance speech. He thanked the delegates adding that "there is internal democracy in Niger State and we have done it without any rancour". The battle for the political soul of Kwara State pitched the godfather of Kwara politics, Dr Olusola Saraki against his governor son, Dr Bukola Saraki. Dr Olusola Saraki quit the ruling PDP alongside his associates for the ACPN which immediately gave its governorship ticket to Senator Gbemi Saraki. The godfather had insisted in foisting Gbemi Saraki as the governorship candidate of the PDP.

In Plateau State, Governor Jonah Jang got the endorsement of his party to run as the governorship candidate. He was the only aspirant in the party, as other contestants including his deputy, Pauline Tallen, had all defected to the Labour Party. These gubernatorial aspirants, including their loyalists seeking re-election into the House of Assembly did not participate in the screening of aspirants and House of Assembly primaries held in the state on the PDP platform because the Labour Party in the State had concluded the harmonisation of the state executive of LP between the old members and the new ones joining the party. The gubernatorial aspirants of PDP that joined the Labour Party were Pam Dung Gyang; John Alkali; Dr Danladi Atu; Mr Chris Giwa; Mr. Damishi Sango and Sir Fidelis Tapgun, and the deputy governor, Mrs Pauline Tallen. Apparently, the gubernatorial aspirants decamped

because they did not believe the PDP would offer them a level playing field in the contest.

In Ogun State, the Governor Daniel faction and the Jubril Martins-Kuye faction of the PDP picked different candidates in the parallel primaries of the PDP. Mr. Gboyega Isiaka was the candidate of the Daniel group and Gen. Idowu Olurin emerged from the Martins-Kuye faction. However, the governorship candidate of the Martins Kuye faction was the one recognized by the National Executive Committee of the PDP. The former governor of Nasarawa State, Aliyu Doma picked the ticket for a second term. Doma's main challenger, Alhaji Tanko Almakura defected to the Congress for Progressive Change (CPC). In all, 571 delegates voted at the primaries, the governor got 556 while 14 votes were voided.

In Akwa Ibom State, the incumbent, Chief Godswill Akpabio defeated other contenders to emerge the gubernatorial candidate of the ruling PDP. For the Action Congress of Nigeria (ACN), sevens aspirants including the former minister of state for the Federal Capital Territory (FCT), Senator John James Akpanudoedeghe jostled for the party's governorship ticket. Senator John James Akpanudoedeghe won the ACN ticket. The race for the Bauchi State Government House was between the incumbent Governor Isa Yuguda and Senator Baba Tela. But Yuguda got the ticket to run again amidst protest by Tela that the governor had pocketed all the delegates that voted at the polls. President Jonathan was among the delegates that picked Governor Timipre Sylva to fly the PDP flag in the Bayelsa gubernatorial race. Mr Timi Alaibe, a former Managing Director of Niger Delta Development Commission (NDDC) defected from the PDP to the Labour Party (LP) to contest the governorship election in Bayelsa State. However, the gubernatorial election could not hold because of a court decision.

Governor Gabriel Suswam of Benue State won the PDP gubernatorial race. The governor had long before the contest properly positioned himself and had the endorsement of the delegates. Defeating his opponent, Mr. Terver Kahki, was therefore expected. Kano state was largely an ANPP state although the PDP was battling for the soul of the state. Some members of the PDP were not satisfied with the result of the primary and left the party to take refuge in the Congress for Positive Change (CPC). Former minister of defence, Alhaji Rabiu Musa Kwankwaso won the PDP ticket. Kwankwaso, who was governor of Kano State between 1999 and 2003 won with a total of 1,555 votes. He defeated retired Col. Habibu Idris Shuaibu who scored 89 votes, Senator Muhammad Bello who got 71 votes and Alhaji Kabiru Kama Kasa who did not get any vote.

The immediate past Accountant General of the Federation, Alhaji Ibrahim Dankwambo defeated eight other aspirants to emerge the flagbearer of the PDP in the governorship election in Gombe State. Dankwambo polled 400 votes in the primary to beat his closest contender, Dahiru Biri, who scored 32 votes. Abdulkadir

Hamma Sale, another contender had 19 votes while the National Publicity Secretary of the PDP, Professor Rufai Ahmed Alkali, came fourth with 13 votes. Farouk Bamusa, Alhassan Mohammed Fawa, Bala Magaji and former ECOMOG commander, Major General Timothy Shelpidi, scored 7, 4, 3 and 1 votes respectively. Ten invalid votes were voided.

In Lagos State, Governor Raji Fashola finally got the nod to contest for a second term in office by the party. The endorsement was done after the ACN's National Executive Council met in its Lagos secretariat. Tinubu raised Fashola's hand in front of thousands of party loyalists, who had painstakingly waited to see the end of the political speculations. The PDP elected Dr. Ade Dosunmu after polling 431 votes of the 846 votes cast by the delegates. Others in the race were Tokunbo Kamson who polled 182 votes and the former Minister of State in the Ministry of Interior, Demola Seriki who polled 120 votes. Former Deputy Governor in Lagos, Otunba Femi Pedro, gathered 104 votes, while Qudus Folami got eight votes and Babatunde Gbadamasi got five votes.

In Adamawa State, a governorship aspirant on the platform of the PDP, Brigadier General Buba Marwa (rtd) left the party after alleging he was the target of the cancellation of the result of the December 28 ward congresses. According to the result announced by the chairman of the electoral committee, Alh. Aminu Salihu Yakudima, incumbent Governor, Murtala Nyako picked the PDP governorship ticket after polling 847 of the 874 total votes cast at the primary, while the former chairman of the party, Chief Joel Hamman Joda Madaki, scored 26 votes. Governor Danbaba Suntai of Taraba State won his second term ticket at the Jolly Nyame Stadium, Jalingo polling 609 votes out of the total 693 votes cast by delegates. Four aspirants contested against Suntai. Mohammed Tumba Ibrahim got 44 votes, Abdulrazeez Ibrahim got 25 votes and Jibrin Bello, one vote, while 10 votes were certified invalid. In Kaduna State, the incumbent state governor, Patrick Ibrahim Yakowa, emerged the PDP standard-bearer for the 2011 governorship election in the State. He polled 904 votes. Other aspirants defeated by Yakowa were Alhaji Suleiman Hunkiyi, Shuaibu Idris Mikati and Hajiya Mairo Habib.

The emerging trend showed that despite the provisions of the Electoral Act, the party apparatus still manipulated the primaries. In many instances, the aspirants did not have equal opportunities to canvass for the support of their party members. Virtually all the parties used indirect primaries in the selection of their candidates. The fault line was always in the way and manner delegates were selected or elected. Apparently, delegates list could be altered without getting the mandate of the rank and file of the party. Essentially, whoever had the sympathy of the party officials at any level stood a better chance of winning the primaries. Incumbents were also highly favoured.

After the conclusion of the party primaries, some aspirants who were not happy with the conduct of the primaries went to court to challenge the outcome of the primaries alleging that the primaries did not comply with the party regulations or Electoral Act. Others accepted the outcome with equanimity. However, in some states, more than one candidate from the same party purportedly contested the general election for the same position in the same constituency.

2.5 POST ELECTION CRISIS

The atmosphere was charged with violence immediately after the presidential election in the northern parts of the country. Some aggrieved party members took the law into their hands. Arson, murder and destruction of properties were recorded on a very large scale leading to the inauguration of a panel of enquiry by the President. People were killed because they belonged to another ethnic or religious group. Members of the National Youth Service Corps serving in the affected states were easy victims for the murderers. This raised the stakes for the tribunals resolving election disputes because there were fears of further possible outbreak of violence.

CHAPTER THREE

Establishment, Jurisdiction and Activities of the Tribunals

3.0 THE LAW AS IT IS

Election Petition Tribunals in Nigeria are the creation of the Constitution. They were specifically created under section 285 of the 1999 Constitution of the Federal Republic of Nigeria as amended. Section 285 of the Constitution creates the National and State Houses of Assembly Election Tribunals which shall to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly or any person has been validly elected as a member of the House of Assembly of a State. The section also establishes another election tribunal known as the Governorship Election Tribunal which shall to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. Instead of the Court of Appeal being the final court, appeals in governorship petitions now progress to the Supreme Court as the final appeal court. A learned commentator raised the poser as to the reasons informing the decision to give the name "tribunals" to electoral dispute resolution courts. He considered the name a misnormer and a hangover from the military era[29].

By section 239 of the Constitution, the Court of Appeal to the exclusion of any other court of law in Nigeria has original jurisdiction to hear and determine any question as to whether any person has been validly elected to the office of the President and Vice President; the term of office of the President or Vice president has ceased or the office of the President or Vice President has become vacant.

Section 285 (7) of the Constitution states that an appeal from a 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. However, Section 134 (3) of the Electoral Act provides that an appeal from a decision of an election tribunal or court shall be heard and disposed of within 90 days from the date of the delivery of the judgment of the tribunal. The 90 days provision of the Electoral Act is inconsistent with the constitutional provision and the Constitution being the grundnorm and the supreme law, it is null and void. Section 134 (4) is also null and void for contradicting section 285 (8) of the Constitution for while the Constitution states that the court in all ***final appeals*** from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date, the Electoral Act provision missed out the word

[29] *The Performance of Election Petition Tribunals in the North Central Zone* (Page 2) being a presentation by J.S Okutepa (SAN) at the Nigerian Bar Association Conference on the Performance of Election Petition Tribunals.

"final" before "appeals". Section 1 (3) of the Constitution provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void[30].

The Electoral Act provides in section 133 (1) the procedure for challenging the return of an election:

> *No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.*

A petition is presented when it is actually brought by the petitioner or his counsel, if any, named at the foot of the petition to the secretary or registrar of the tribunal for filing, coupled with the payment of filing fees and obtaining a receipt for same and payment of security for costs[31]. It is very important for filing fees to be paid. Failure to pay filing fees renders the petition invalid and same shall be struck out as it will be deemed not to have been filed at all.[32] The Electoral Act specifies the persons who can present election petitions. Section 137 (1)[33] provides that an election petition may be presented by a candidate in an election and a political party which participated in the election. Any person who was a candidate at an election may file a petition challenging the conduct of the election itself or its result. Thus, it is expected that such a person should be the one who lost the election as there seems to be no reason why the winner of an election should file a petition challenging his return. However, an election petition can be filed on the ground that the petitioner or its candidate was validly nominated to contest the election but was wrongfully excluded from contesting[34].

The petition must indicate the status or capacity in which the petitioner is presenting the petition. This is to determine whether he has a locus to bring the petition as provided under the Act. Thus, in *Egolum v Obasanjo*[35], the Court of Appeal and Supreme Court refused to entertain a petition filed by a petitioner who did not contest the presidential election and was not even fielded by any political party but still filed a petition. The Court held that the petitioner had no locus standi to invoke the jurisdiction of the courts.

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[30] *See Osun State Independent Electoral Commission & 3 Ors v Action Congress & 4 Ors* (2010) 12 S.C (Pt.IV)108

[31] See Paragraph 2 and 3 of the Rules of Procedure for Election Petitions in the First Schedule of the Electoral Act in furtherance of sections 140 (4) and 145 (1). See also *Ozobia v Anah* (1999) 5 NWLR (PT.60) 1

[32] *Ezeani v Okosi* (1999) 3 NWLR (Pt.596) 623 para. 3

[33] Electoral Act 2010

[34] Section 138 (1) (d) of the Electoral Act

[35] (1999) 7 NWLR (Pt.611) 423

The Electoral Act provided four grounds upon which an election may be questioned. Section 138 (1) provides that:

> *An election may be questioned on any of the following grounds, that is to say-*
>
> > *(a) that a person whose election is questioned was at the time of the election not qualified to contest the election;*
> >
> > *(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*
> >
> > *(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or*
> >
> > *(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*

Under the first ground, a person is not qualified to contest an election if he is caught within the provisions of the 1999 Constitution that spells out the grounds of disqualification[36]. These grounds are basically the same except for variation in age as a qualification for persons contesting election into the various offices. Generally, under the various constitutional provisions, a person is not qualified to contest an election if;

- he is not a citizen of Nigeria; candidates for presidential and governorship elections must be citizens of Nigeria by birth[37]
- he has been elected to such office at any two previous occasions (applicable to presidential and governorship candidates only);
- he is adjudged a lunatic or a person of unsound mind;
- he is under a death sentence or a sentence of imprisonment for an offence involving dishonesty or fraud;
- within a period of less than ten years prior to the election, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the code of conduct;
- he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;

[36] S.137 for presidential election, S.182 for governorship election, S.66 for National Assembly election and S.107 for the House of Assembly election
[37] Sections 131 and 177 of the 1999 Constitution

- he is employed by the public service of the Federation or a State and he does not resign, withdraw or retire from such employment thirty days before the date of the election;

- he is a member of any secret society;

- he has presented a forged certificate to the Independent National Electoral Commission.

In addition to the above grounds for disqualification, the Constitution also provides that a person contesting for an election must be a member of a political party and is sponsored by that political party[38]. In determining whether a person in public service has resigned, withdrawn or retired at least thirty days before the date of election, it has been held that the relevant conditions of service relating to the mode of resignation, withdrawal or retirement must be complied with[39]. In *Mbukurta v Abbo*[40], it was held that a person on leave of absence was still in the employment of his employer for the period of the leave and had not met the requirement of the resignation, withdrawal or retirement.

Membership of a secret society is also a ground for disqualification of a candidate at an election. The Constitution defines a secret society in the following words:

- "*secret society" includes any society, association, group or body of persons (whether registered or not)-*

- *that uses signs, oaths, rites or symbols and which is formed to promote a cause, the purpose or part of the purpose of which is to foster the interest of its members and to aid one another under any circumstances without due regard to merit, fair play or justice, to the detriment of the legitimate interests of those who are not members;*

- *the membership of which is incompatible with the function or dignity of any public office under this Constitution and whose members are sworn to observe oaths of secrecy; or*

- *the activities of which are not known to the public at large, the names of whose members are kept secret and whose meetings and other activities are held in secret*[41]

The Supreme Court in interpreting a similar provision under the 1979 Constitution[42] in *Registered Trustees of AMORC V Awoniyi*[43] held that any organization, that

[38] See section 221 of the Constitution.
[39] *Mele v Mohammed* (1999) 3 NWLR (595) 425
[40] (1998) 6 NWLR (PT.554) 425
[41] See the interpretative section 318 Constitution of the Federal Republic of Nigeria 1999.
[42] S.35 (4)
[43] (1994) 7 NWLR (Pt.355) at page 154; (1994) 7-8 SCNJ (390) at 419

practices occult, uses secret signs, secret passwords, secret handclaps and teaches that Jesus Christ was a member of secret societies and an advocate of occult teachings is a secret and satanic society.

An election may be challenged on grounds of corrupt practices or non-compliance with the provisions of the Electoral Act. An allegation of corrupt practices like bribery, forgery or falsification is criminal and so proof beyond reasonable doubt is required[44]. One of the circumstances for challenging election under this ground is over-voting. By section 53 (2) and (3) of the Electoral Act, where there is over-voting i.e. the votes cast exceed the number of registered voters in a constituency or polling booth, the result shall be nullified and there shall be no return made until a fresh election has been held in the affected areas[45].

Further, the Electoral Act goes further in section 139 (1) to provide as follows:

> *An election shall not be liable to be invalidated by reason of non compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that non compliance did not affect substantially the result of the election*

To prove non compliance and that the non compliance substantially affected the result of an election is almost an impossibility when considered against the background of the evidential presumption that official acts of government institutions have been properly conducted until the contrary is proved[46]. Thus, election results are deemed by law to be correct until the contrary is proved. This hurdle is so difficult to cross when the section is understood in its proper context. Not only must the petitioner show that the election was not conducted in compliance with the Act, he must go further to demonstrate that non compliance substantially affected the result of the election to justify its nullification[47]. How can any candidate or political party prove this when virtually, all the information needed to prove this is in the hands of INEC that tends to collaborate with the respondent against the case of the petitioner? Apparently, it was in recognition of this great difficulty that the Uwais Electoral Reform Committee recommended that the Electoral Act 2006 should be amended to shift the burden of proof from the petitioners to INEC to show, on the balance of probability, that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. This recommendation did not scale through the legislative hurdle and the incidence of the burden of proof remained with the petitioner.

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[44] *Anazodo v Audu* (1999) 4 NWLR (Pt.597)111

[45] Subsection (4) of the section permits INEC, if satisfied that the result of the election will not be substantially affected by voting in that area where the election is cancelled, to direct that the return of the election be made.

[46] See section 168 (1) of the Evidence Act, 2011.

[47] See *Buhari v Obasanjo* (2005) 7 S.C. (Pt.1) 1; *Buhari v INEC & 4 Ors* (2008) 12 SC (Pt.1)

3.1 CONSTITUTION OF TRIBUNALS AND APPOINTMENT OF MEMBERS

In subsection (3) (a) and (b) of section 133, the election tribunal shall be constituted not later than fourteen days before the election and when constituted, open their registries for business, seven days before the election. The word used is "shall" which is construed in appropriate circumstances as mandatory in the interpretation of statutes[48]. J.S. Okutepa, (SAN) in reviewing the performance of the tribunals in the North Central Zone stated that this provision was obeyed in the breach as some of the tribunals were constituted after the elections and or reconstituted after the elections were conducted with new members. He cited Benue State as a case in point. He went ahead to doubt the legality or constitutionality of setting up a tribunal after elections or even the jurisdiction of the appellate courts to order retrial before a new panel is set up after the statutory deadline.

As prescribed in the Sixth Schedule to the Constitution, members of the tribunals were appointed by the President of the Court of Appeal. The National and State Houses of Assembly Election Tribunal is constituted by a chairman and two other members[49]. The chairman of a tribunal is a Judge of a High Court, while the other members were appointed from among judges of a High Court, Khadis of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or other members of the judiciary not below the rank of a Chief Magistrate[50]. The chairman, and other members of the National and State Houses of Assembly Election Tribunal were appointed in accordance with the Constitution by the President of the Court of Appeal in consultation with the Chief Judges of States, the Grand Khadi of the Sharia Court of Appeal of States or the President of the Customary Court of Appeal of States as the case may be.[51] Whilst the President of the Court of Appeal consulted the aforementioned, the ultimate responsibility for selection lay with him. The President of the Court of Appeal exercised the same powers in respect of the appointment of members of the Governorship Election Tribunals[52]. Their composition was the same as the National and State Houses of Assembly Election Tribunals. The quorum for the tribunals is stated to be the chairman and one other member[53]. The advantage of having only judicial officers in the panel to determine electoral disputes is that they will be amenable to discipline by the National Judicial Council as they are bound by their judicial oath and the Code of Conduct for Judicial Officers.

However, there were attempts at preventing the President of the Court of Appeal (PCA) from performing the statutory function of empanelling these tribunals. The Peoples Democratic Party, Osun State Chapter approached a Federal High Court in Abuja asking for an order restraining Justice Salami from performing the statutory

[48] *Achineku v Ishagba* (1988) 4 NWLR (Pt.89) 411; *Ogidi v The State* (2005) 1 SC (Pt.1) 66.

[49] Paragraph 1 (1) Sixth Schedule to the 1999 constitution.
[50] Ibid, paragraph 1(2)
[51] Ibid, paragraph 1(3) of the Sixth Schedule to the 1999 Constitution.
[52] Sixth Schedule, Paragraph 2.
[53] Section 285 (4) of the 1999 Constitution as amended.

functions of the office of the PCA pending the determination of the suit challenging his eligibility to constitute the tribunals. The party claimed to have been at the receiving end of Salami's appeal panels, with two governors of the party in Osun and Ekiti states sacked from office. This did not deter the PCA from performing his duties[54].

There were unconfirmed media reports that the National Judicial Council (NJC) accused judges of lobbying for appointment as members of election petition tribunals, disclosing that some of them had served on the tribunals for eight consecutive years[55]. The Tribune stated that:

> *The Council's disclosure, which was contained in a memo sent to all Heads of Court, both federal and state judiciary, by the Chief Justice of Nigeria and Chairman of the Council, Justice Aloysius Katsina-Alu, also stated that many judges turned a blind eye to a backlog of abandoned cases they had and scampered after tribunal appointment. The memo, dated January 10, 2011 with reference No NJC/CIR/HOC/1/51, directed all the Chief Judges of States and the Federal Capital Territory (FCT) as well as Grand Khadis and Presidents, Customary Court of Appeal to recommend judges and khadis under their jurisdiction that had never participated in the exercise on rotational basis. He also directed that if any list had been compiled and sent to the President of the Court of Appeal, Justice Ayo Isa Salami, before the memo, the recommendation exercise should be revisited. The list initially sent to Justice Katsina-Alu by Justice Salami was said to have triggered the decision of the Council to guide the recommendation process but Salami was said to have stuck to his gun by refusing to act upon the final list sent from the states fulfilling the directive of the Council[56].*

In accordance with the tradition established in previous election dispute resolution since the return to civil rule in 1999, the selected judges were posted to states other than where they were originally serving. This was done to ensure that the judges are not part of the bias of the local politics so that they can perform their jobs more dispassionately. However, this has been queried on the grounds that there is no evidence to show that judges will perform better if they are adjudicating in states other than where they perform their original duties[57].

A learned commentator believes that the composition of an election tribunal by three Judges mystifies electoral dispute resolution[58]. He therefore seeks the demystification of election petitions and queries as follows:

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[54] This was reported in *The Truth* - Online newspaper of Monday March 28 2011.
[55] The Nigerian Tribune of Wednesday March 30 2011.
[56] Ibid.
[57] Ferdinand Oshioke Orbih, (SAN) in *Improving Adjudication Procedure in Election Petitions in Nigeria* (Page 21) being a paper presented at Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals - page 20.
[58] Ibid, at page 21.

If a High Court Judge sitting alone is given exclusive jurisdiction to determine commercial disputes involving billions of naira, criminal jurisdiction to sentence a human being created by God to death, civil jurisdiction to determine the actual parentage of a child whose paternity is in issue; why can't such a judge be clothed with jurisdiction to determine a simple question (in our humble opinion) of whether or not a member of a State House of Assembly or of the National Assembly was validly elected?

The commentator further argues that three judges per tribunal for 36 states will involve 108 judicial officers reassigned for the 180 days duration of the election tribunals. This will mean that litigants in civil and criminal cases in the original courts from where these judicial officers were re-assigned will suffer unnecessary delay in their pending cases[59]. The suffering of litigants is further aggravated by the fact that some states ended up with two or three election petition panels. In the Court of Appeal, some divisions of the Court could hardly form a quorum to hear both the election petition appeals and other matters they are supposed to deal with due to this reassignment[60].

There were no reported complaints on the posting of judges on the election tribunals. The former Chief Justice of the Nigeria, Justice Katsina-Alu while swearing in the first batch of 110 members of the panels on March 21 2011, warned them against corrupt practices. He advised them to shun corruption and that the National Judicial Council would not hesitate in dismissing any erring member from the judiciary if found wanting[61].

3.2 GENERAL TRIBUNAL RESOURCES

The 2011 tribunals continued with the improvements introduced for the 2007 tribunals. The National Judicial Council (NJC) specifically ordered the members of the election petition tribunals not to accept accommodation offers, logistics support and gifts from state governors and warned of dire consequences that would follow if the order was disregarded. To this end, the NJC set aside about the sum of N2

[59] Ibid at page 20.
[60] Ibid at page 22.
[61] The CJN further told the tribunal judges: "*Attempts will no doubt be made by unscrupulous persons to corrupt, influence and/or coerce you into taking wrong decisions. This you must resist at all cost. You must act in accordance with the dictates of the oath which you have just taken as well as your good conscience. I am confident that you will not fail the nation at this crucial moment of our nascent democracy and our effort to build a nation on the principle of the rule of law, justice and fair play. Finally, I want to warn you the Chairmen and Members of the Election Tribunals that you are under the scrutiny of the eyes of the litigants that will come before you, as well as members of the general public. Any substantiated complaint of impropriety against you will go before the National Judicial Council and you will pay dearly for such. It is, therefore, up to you to work honestly, diligently and with integrity. Let your conscience guide you according to the oath that you have just taken".*

billion for the tribunals[62]. CSJ was informed that the tribunals operated with the cooperation of their host judiciaries. State Chief Judges identified the court sites for the operation of the tribunals and assigned them accordingly. For the welfare of tribunal staff, they were better treated in 2011. Prior to 2011, tribunal personnel were put in hotels with funds for their feeding paid directly to such hotels. The arrangement was slightly reviewed in 2011. The said personnel were put in hotels but received a daily allowance for feeding and transportation.

3.3 TRIBUNAL SECRETARIAT

The secretariat of the tribunal facilitates the timely and proper adjudication of petitions. By Paragraph 3 (2) of the First Schedule to the Electoral Act, the secretary of the tribunal is to receive the petition for each respondent and ten other copies. He shall compare the copies of the petition received with the original petition and certify them as true copies once he is satisfied that that they are true copies of the original. Paragraph 4 sets out the content of an election petition and in sub-paragraphs (6) and (8), an election petition which fails to comply with sub-paragraphs (5) and (7) shall not be accepted for filing by the secretary. The word used is "shall" which in interpretative parlance is mandatory. Thus, the secretary to the tribunal needs to see the list of witnesses which the petitioner intends to call in proof of his petition, written statements on oath of the witnesses and the copies or list of every document to be relied on at the hearing. By Paragraph 7, the secretary causes notice of the presentation of the election petition to be served on the respondents, posts on the notice board of the tribunal, a certified true copy and sets aside the copies for the members of the tribunal. The secretary fixes the time for the appearance of the respondents. The secretary also takes charge of documents and exhibits to be used at the trial and maintains their safe custody throughout the trial.

All the foregoing duties of the secretary require some high level of appreciation of the law regarding election petitions. These duties are not merely administrative but also quasi judicial. Indeed, it may require the ethics and dispassionate hard work of the legal practitioner to diligently perform this task. It was reported that in some states in the North Central zone, the secretaries performed their jobs in the breach[63]. In one instance, copies of the petitions served on the respondents and signature of petitioner's witnesses were different from the original in the tribunal file. The secretary was reported to have little or no knowledge of his duties and virtually jeopardised the effective performance of the tribunal and he had to be changed. Petitioners, respondents and the tribunal had to openly complain of the poor quality services rendered by the secretary before he was changed[64]. In another instance, it

[62] See nigeriaelitesforum.com, http/www.zimbo.com/Nigeria+Today/articles/T-k3pi2t2lw/NJC+advises+April+2011+election+tribunal+judges

[63] *The Performance of Election Petition Tribunals in the North Central Zone* (Page 7) being a presentation by J.S Okutepa (SAN) at the Nigerian Bar Association Conference on the Performance of Election Petition Tribunals.

[64] Ibid.

was reported that the secretary to a tribunal took everyone by surprise and released exhibits tendered at the tribunal to the petitioner while the petition was still pending and this was done without the knowledge and leave of the tribunal[65]. It is therefore recommended in the light of the foregoing that:

> *Serious training is required for secretaries of future tribunals that are to be set up. The tribunal secretaries must be legal practitioners of considerable practice. They must be lawyers who are of great credit both in learning and character and who must be above board. They must avoid bias and partisanship in any shade[66].*

It was reported that tribunal registrars demanded incredible sums of money for the compilation and transmission of records of appeal from the tribunal to the Court of Appeal. In *Hon Stanley Ohajuruka & Ors v Theodore Orji & Anor*[67], counsel to the petitioner revealed that the registrar to the tribunal demanded and obtained one million, two hundred thousand naira for compilation of records of appeal. In the same case, the registrar of the Court of Appeal in Owerri demanded and obtained the sum of eight hundred thousand naira to compile and transmit the records from the Court of Appeal to the Supreme Court. The uncontrolled and overbearing powers given or allowed the tribunal secretaries to charge un-receipted huge sums of money from appellants to compile records is amazing[68].

In Anambra State, in the second legislative tribunal led by Justice Y.A. Adesanya, there were unresolved allegations that the assistant secretary to the tribunal smuggled in some documents into the records of the court in *Njideka Ezeigwe & PDP v Chinwe Nwabelli*[69]. The tribunal asked the assistant secretary to explain what happened under oath which she did, denying the allegations. The petitioner sent a petition against the tribunal to the Court of Appeal President. The petition was later transferred to another panel.

Some tribunals retained bailiffs and clerks from outside jurisdiction and they were unfamiliar with the terrain thereby slowing down the service of processes. In other instances, it was reported that in the North Central zone:

> *The process servers were openly demanding for gratification before doing the job. In some states, it became increasingly clear that the process servers had fixed an unofficial fee for service of process and any party desiring service of his process must meet their demands or risk the frustrating experience. Deposits paid by litigants*

[65] Ibid at page 9.
[66] Ibid at page 9.
[67] EPT/AB/G/5/2011 and Appeal No. CA/OW/EPT/51/11
[68] See G.C Igbokwe in *Performance and Work of the Election Tribunals i*n the South East Zone presented at the Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals - page 8.
[69] Petition No. HA/23/2011.

were not used for the purpose they were to be used. Open demand for money for service of processes became the order of the day before these tribunals[70].

In the South West, it was reported that most of the tribunals had no access to well equipped libraries and judicial assistants to do their research in considering arguments and giving judgements and rulings. In some cases, the tribunal members had to travel from their states of domicile to their tribunal work stations with their libraries at great costs and inconvenience to them[71]. Reports from other zones indicated a similar experience.

A special resource of the tribunals which the Electoral Act sought to limit was the orders the tribunals could make when they come to the conclusion that the candidate returned did not win the elections. Section 140 (2)[72] had provided as follows:

140 (2): "Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected, but shall order a fresh election.

By section 141;

An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.

The Federal High Court sitting in Lagos in the suit brought by ACN[73] held that the legislature has no power to limit the inherent powers of the courts granted by section 6 of the Constitution and as such these provisions were declared null and void. Also, in the case of *Congress for Progressive Change and Anor v INEC and Anor*[74] the Federal High Court sitting in Lafia Nasarawa State, declared Idris Yahiza Yakubu the winner of the House of Representatives seat when he did not actually participate in the election as there was an attempt to substitute his name with that of Emmanuel Ombugadu. The same decision was reached by the court in the case of *CPC and Solomon Ewuga v INEC*[75]. By implication, the courts have demonstrated once again that the legislature has no power to limit its inherent powers granted by the Constitution.

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[70] *The Performance of Election Petition Tribunals in the North Central Zone*, supra.
[71] *Performance of Election Tribunal in the South West* (page 3) by Babatunde Ogala being a paper presented at the Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals
[72] Electoral Act 2010.
[73] Ibid.
[74] Suit No FHC/LF/CS/18/2011

[75] Suit No FHC/LF/CS/17/2011

3.4 SITTING VENUES OF THE TRIBUNALS

Conducive environment is necessary for the proper functioning of the tribunals. Most of the tribunals had public power supply supported by a standby generator; air-conditioning and fans, good lighting arrangements and functional toilets. However, the Imo and Zamfara National and State Houses of Assembly Tribunals had only fans and no air-conditioners. The tribunal rooms in Delta State were reported to measure 50 feet by 50 feet while the second measured 70 feet by 70 feet. They were reported to have been refurbished by the Chief Judge of the State before their conversion to tribunal venues.

The Governorship Tribunal in Borno State was moved to Abuja due to security challenges. It commenced sitting at the F.C.T High Court, Wuse Zone 5, Abuja. It was later relocated to a Magistrates' Court hall at Wuse Zone 2, Abuja which could not accommodate all the counsel. The tribunal venue in Nasarawa was reported to be too small for its purposes. The venue could comfortably take twenty litigants and ten lawyers. The venue could not therefore accommodate the number of lawyers appearing in the cases and court attendees who came to witness the trials. The seats were not enough for lawyers and some lawyers were compelled to wait outside the court until those inside finished their case. The tribunal was not connected to the national grid and power was supplied with a generator which broke down and delayed the hearing of petitions. There was no air-conditioning and functional toilets in the tribunals in Nasarawa State.

The Bayelsa and Rivers National and State Houses of Assembly Tribunals lacked air-conditioners and it was observed that the rooms were relatively small. The Cross River and Anambra National and State Houses of Assembly Tribunals lacked air-conditioning and the functionality of the toilets was in doubt. Rivers had two legislative tribunals and one governorship tribunal. The Lagos State legislative tribunal was reported to suffer from epileptic power supply and sometimes had to adjourn proceedings especially when the generator set did not function well. The Ekiti legislative tribunal had no air-conditioning and public address system. The tribunals were all equipped with modern secretarial gadgets like computers but the judges still had to record in long hand which made their work quite laborious. It was reported that in the South West, some tribunals had to sit in ill-equipped court rooms without electronic recording devices. They had no recorders and in a lot of cases, they also had to share the chambers of a single judge without books and even sometimes sharing tables[76].

[76] *Performance of Election Tribunal in the South West* (page 3) by Babatunde Ogala being a paper presented at the Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals, March 2012 in Benin.

CHAPTER FOUR

Tribunals in Action

4.0 PRESIDENTIAL PETITIONS

There were two major petitions filed before the Presidential Election Court that held in the Court of Appeal, Abuja Judicial Division. The first one was the petition of the Hope Democratic Party against President Goodluck Jonathan and others. The said petition was withdrawn by the petitioner on the 27th May, 2011. However, on the 27th June, 2011, the petitioner filed a motion to relist the case. The Court of Appeal while dismissing the application held that it was an abuse of court process for the petitioner to attempt to relist the action after it had withdrawn it. After the dismissal, the Court of Appeal was left with one petition involving the *Congress for Progressive Change (CPC) v INEC & 42 Ors*[77].

The CPC petition initially appeared to be making haste slowly. There were doubts as to whether the petition would be concluded before the statutory 180 days deadline. Preliminary issues and objections occupied a greater part of the time of the Court of Appeal including adjustments to personnel following the retirement of the President of the Court of Appeal, Justice Ayo Salami who had been presiding over the petition. The Acting President of the Court of Appeal, Justice Dalhatu Adamu, redeployed a member of the Presidential Election Tribunal, Justice Mohammed Garba.

The CPC petition sought the following reliefs:

- That it may be declared that the election and the return of the 3rd and 4th Respondents who where sponsored by the 5th Respondent is voided by corrupt practices and substantial non-compliances with the relevant provisions of the Electoral Act, 2010 (as amended).

- That it may be declared that the 3rd and 4th Respondents who were sponsored by the 5th Respondent were not duly elected in respect of Kaduna, Sokoto, Nasarawa, Kwara, Adamawa, Abia, Akwa Ibom, Enugu, Cross River, Rivers, Ebonyi, Bayelsa, Delta, Imo, Anambra, Benue, Lagos, Plateau Sates and Federal Capital Territory, Abuja.

- That it may be determined that the 3rd Respondent did not fulfill the requirements of Section 134 (2) of the Constitution of the Federal Republic of Nigeria with regards to –
  (a) Scoring the highest number of votes cast at the election and

  (b) Mandatory one quarter of the votes cast at the election in each of at least two third of all States in the Federation and in the Federal Capital Territory, Abuja.

[77] Petition No. CA/A/EPC/PRES/1/2011

- A declaration that the Presidential election for the office of the President held on the 16th day of April, 2011 did not produce a winner as contemplated by the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

The petition inter alia alleged non accreditation of voters, rigging, printing of fake ballot papers, multiple voting, sharing of money to presiding officers, arbitrary allocation of votes in different parts of the country and non supply of election materials. The Court of Appeal, in a unanimous judgment held that President Jonathan was validly elected having secured one quarter of the votes cast in two thirds of the States in the Federation in compliance with section 134 (2) of the Constitution. Justice Kumai Akaahs said CPC failed to discharge its burden of proof even on the balance of probability.

> *From whichever angle this petition is looked at, it is clear that the burden of proof of the allegations contained in the petition be they criminal or for substantial non compliance rested with the petitioner. The petitioner did not discharge this burden to warrant rebuttal evidence to be adduced by the 1st set of respondents. Also since the petitioner did not allege that elections did not hold, the 1st set of respondents could not be saddled with any onus to prove that the election actually took place. The petitioner did not discharge the burden of proof even on the balance of probability. Upon a dispassionate scrutiny of the pleadings and the totality of the evidence adduced, any reasonable tribunal will discern that the allegations of crime are inexorably connected or tied to the allegation of non-compliance. Almost all the paragraphs of the petition are replete with allegations of corrupt practices such as rigging, inflation of votes which was done with the tacit connivance of the 1st respondent, sharing of money to presiding officers who assisted in multiple thumb printing and allocation of votes to the 5th respondent with a view to conferring undue advantage on the 3rd and 4th respondents...The petition fails in its entirety and it is hereby dismissed*[78]*.*

The Court of Appeal further held that:

> *The party seeking nullification of an election must rely on the strength of his case and not on the weaknesses of the respondents. Before a petition can succeed on the grounds of non compliance, the petitioner must prove that non compliance with the Electoral Act took place and that it affected the result of the election.*

On appeal to the Supreme Court, it upheld the decision of the Court of Appeal and held inter alia[79]:

> *That in defiance of section ...139 (1) of the Electoral Act 2010 (as amended); the Appellant in presenting its case adopted the stance of passing the buck. It brought all allegations amounting to non compliance and retreated, expecting the 1st respondent*

[78] At pages 47- 48 of the certified true copy of the judgement.
[79] *C.P.C. v INEC & 41 Ors* (2011) 12 SC (Pt.V), at pages 94 and 96.

INEC to provide the necessary and relevant material evidence to establish its case. By force of law, the Independent National Electoral Commission has the duty of conducting elections. Besides the constitutional provisions, it is guided by the Electoral Act 2010 (as amended) and the election guidelines and manual issued for its officials in accordance with the Act. These documents embody all steps to comply with in the conduct of a free, fair and hitch-free election. A party seeking nullification of an election must succeed on the strength of his own case and not on the weakness of the respondent's case. This is so in that failure of the adversary to call evidence will not relieve the party from satisfying the tribunal by cogent and reliable proof or evidence in support of the petition.

That where an allegation was made that an election was invalid by reason of non-compliance with the provisions of section 139 (1) of the Electoral Act, 2010 (as amended), the section vested an election tribunal or court entertaining an election petition with the power to decide from the evidence tendered before it in such case whether the alleged non-compliance was substantial enough to invalidate the election. The emphasis is not on whether those acts of non-compliance are of criminal or civil nature, but on whether the election was conducted substantially in accordance with the principles of the Electoral Act and that non-compliance did not substantially affect the result of the election. The petitioner must not only assert but must satisfy the court that non-compliance affected the result to justify the nullification.

The decision of the Supreme Court brought back echoes of the recommendation of the Uwais Electoral Reform Committee to shift the burden of proof from the petitioners to INEC to show, on the balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. Requesting a petitioner to prove that non compliance took place and that the non-compliance substantially affected the result of the election is such a high hurdle that cannot be scaled at the presidential election level. Even to prove non-compliance at this level is a herculean task. In the words of a learned commentator[80]:

..the sheer number of witnesses and documents required to prove electoral malpractice especially in presidential elections is considerable indeed. Tayo Oyetibo SAN has opined that the perennial failure in presidential election petition is due to this factor. In his words: 'The simple reason is that for you to be able to prove electoral malpractice, you need to hire a lorry load of witnesses and documents to establish that even such malpractices adversely affected the outcome of the election. Of course, the number of lorries to be involved has to line up from Abuja to Mina in Niger State.'.

[80] Ferdinand Oshioke Orbih, (SAN) in *Improving Adjudication Procedure in Election Petitions in Nigeria* (Page 21) being a paper presented at Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals - page 41.

Any system where you need to have trailer loads of documents and witnesses that can take up the entire length of the road from Abuja to Mina in Niger state must be inherently defective and therefore in need of urgent reforms.

The correct interpretation of section 285 (7) of the Constitution was also an issue in the presidential petition. At the Court of Appeal, a preliminary objection challenging the competence of the petition was raised by the Respondents and overruled by the Court. On appeal at the Supreme Court in *PDP & 2 Ors v CPC & 41 Ors*[81], the appellants filed and perfected their appeals within the prescribed time before the Supreme Court went on annual vacation in July 2010. By the time the Supreme Court came back from vacation, the 60 days provided by section 285 (7) had elapsed. The Supreme Court held as follows:

That it is settled that in interpreting a constitutional provision, the court should adopt a broad approach to the process. Also settled is the principle that where the words of the Constitution or statutes are plain, clear and unambiguous, they must be given their natural, ordinary meanings as there is nothing, in effect to be interpreted. In that case, the words must be given their plain or natural meanings, as there is nothing to interpret.

That it is also settled law that the provisions of the Constitution of the Federal Republic of Nigeria are supreme and have binding force on all authorities and persons throughout the Federal Republic of Nigeria and that any other law which is inconsistent with its provisions is void to the extent of the inconsistency as the constitutional provision must prevail over such Act or law.

The words used in the provisions of Section 285 (7) of the 1999 Constitution (as amended) are clear, unambiguous and simple and straight forward. They are not subject to any interpretation at all and they are to be given their natural meanings. The natural meanings of the words in Section 285 (7), ibid, are that appeals from a decision of an election tribunal or the Court of Appeal in election matter shall be heard and determined within sixty (60) days from the date the judgment or decision appealed against was delivered, by the trial or Court of Appeal.

That is clear that by the use of the word "shall" in Section 285 (7) of the 1999 Constitution, the framers of the Constitution meant to make and did make the provision mandatory as it admits of no discretion whatsoever. It means that the sixty (60) days allotted in Section 285 (7) of the 1999 Constitution (as amended) cannot be extended even for one second as the decision of the appellate court must be rendered "within" sixty (60) days of delivery of the judgment on appeal.

That the sixty (60) days allotted in section 285 (7) of the 1999 Constitution (as amended) includes Saturdays, Sundays and Public holidays as well as court vacations because if it was the intention of the framers of the Constitution to exclude these days, they would have so stated in clear and unambiguous terms. The only exception may be where the last day of the sixty (60) days happens to be Sunday or

[81] (2011) 10 S.C. 53

public holiday then the action contemplated in Section 285 (7) of the 1999 Constitution (as amended) can be completed on the next working day.

That the absurdity in not applying the natural and plain meaning of the words in Section 285 (7) of the 1999 Constitution (as amended) can be seen in the computation which makes an appeal against the decision delivered on 14th July, 2011, to remain valid up to 14th December, 2011. That would defeat the purpose of the provision which is clearly aimed at curtailing the inordinate delays arising from election matters to the embarrassment, not only of the legal profession in particular but, the nation in general. The intention of the drafters of the Constitution being to stop the practice of unnecessary delays in election matters, it is the court's duty to ensure compliance with the law by doing what is needed within the time frame.

It may be difficult; in fact it is very difficult, but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box.

This decision of the Supreme Court appears not to accord with the interests of justice and objectivity. First, the Court agreed on the need for a broad approach to interpreting constitutional provisions, yet it held that there is nothing to interpret because the words are clear and unambiguous. Relying on the supremacy of the constitution, it included Sundays and Public holidays in the calculation of the time and declared that it would be absurd if the plain and natural meanings of the words in section 285 (7) are not applied. However, it also appears absurd that an appellant who perfected his appeal and was waiting on the court to proceed simply had his appeal lost forever because the court went on vacation and Sundays and public holidays were included in the calculation of time. If this was the correct interpretation of the subsection, then the Supreme Court was bound to sit on Sundays and Public holidays and their right to go on vacation would not trump the constitutional right of the appellants to have their case heard. What happened to the appellants' right to fair hearing? A constitution should be interpreted as a holistic document and interpretations should not set one provision of the constitution against another provision. Thus a harmonious interpretation of the whole section 285 of the Constitution and the constitutional right to fair hearing would have produced better results - that is, the reconciliation of the rights of an aggrieved candidate to seek judicial remedy and the need to limit the time it takes to conclude an election petition. This harmonious interpretation is not only possible but plausible in the circumstances.

It is common knowledge that the courts do not sit on Saturdays, Sundays and Public holidays. It is not possible that the framers of the Constitution contemplated the computation of time to include these days. Such an approach to interpretation as adopted by the Supreme Court works injustice and reduces public confidence in the administration of justice. Insisting that the Constitution must state everything in black and white (for instance, specifically excluding Saturdays, Sundays and Public holidays) is to reduce the Constitution to a voluminous novel. It is also an attempt to

portray and reduce the judicial function to that of a programmed robot which is under automatism and has no discretion of its own to infuse common sense and reason into its job schedule.

4.1 TRIBUNALS IN ACTION IN STATES

The activities of the tribunals as reported by our field monitors show that while some tribunals in some states had a good number of petitions filed before them, others had few cases or no case to adjudicate upon. The report as submitted by our observers show that in Abia State, twenty-six petitions were filed out of which seven challenged the outcome of the State House of Assembly polls, nine for House of Representatives, five for Senate and five for governorship. Out of the twenty-six petitions, seven were dismissed at the preliminary stage and eighteen went on a full trial.

The challenge of concluding petitions within the time allotted by section 285 of the Constitution came out strongly in *Hon Stanley Ohajuruka & Ors v Theodore Orji & Anor*[82]. The facts show that the petition was filed on 26th May 2011 against the declaration of Theodore Orji as the winner of the Abia State gubernatorial election. The tribunal heard and dismissed the petition within the 180 days time frame and the notice of appeal was filed on 16th November 2011. The Court of Appeal gave judgement on December 23 dismissing the appeal but postponed the reasons of the judgement. The petitioner filed a further appeal to the Supreme Court. The Court of Appeal gave the reasons for the judgement on January 24 2012, 32 days after dismissing the appeal. The notice of appeal was filed within the statutory period but could only contain the omnibus grounds. When the appellant finally got the judgement, he had only 28 days left for the Supreme Court to hear and determine the appeal. The appellant brought a motion to file additional grounds of appeal which was granted on 9th February 2012 and on the 14th of February, the Supreme Court granted accelerated hearing of the appeal and abridged the time within which respondents were to file their briefs of argument. The Supreme Court set the matter down for hearing on February 20th which was a day before it would lapse. On that day, the Supreme Court could not hear or determine the appeal and the appeal lapsed forever[83]. This is clearly a case where the petitioner suffered injustice on the altar of the technical provisions of the law and this is a petitioner who showed due diligence in the presentation of his petition and the subsequent appeals.

The above petition at the trial stage was faced with unnecessary challenges from INEC which failed to produce needed documents. The tribunal stated:

[82] EPT/AB/G/5/2011 and Appeal No. CA/OW/EPT/51/11.

[83] Ferdinand Oshioke Orbih, (SAN) in *Improving Adjudication Procedure in Election Petitions in Nigeria* (Page 21) being a paper presented at Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals - pages 30-31. See also G.C Igbokwe in *Performance and Work of the Election Tribunals i*n the South East Zone presented at the same Conference.

> *The tribunal wishes to note with dismay the attitude of the 3rd Respondent in these proceedings. INEC showed inexplicable reluctance and tardiness in responding to the terms of the subpoena duces tecum served on the Resident Electoral Commissioner (REC) for Abia State. The REC produced only some of the several documents listed in the subpoena but failed, refused and neglected to produce the others. Proceedings were delayed for several hours on the excuse that the documents were on their way to the tribunal from INEC zonal offices across the state. Up till the close of proceedings, the documents had never arrived. To say the least, this conduct is unbecoming of an independent public institution funded with tax payer's money and whose conduct should always be unimpeachable and beyond reproach..*[84]

For the tribunal to have lamented this way and failed to take action based on this failure and refusal is to encourage future disobedience of the command to produce documents. Specifically section 167 (d) of the Evidence Act is very relevant here[85]. It states that:

> *The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common cause of natural events, human conduct and public and private business, in their relationship with the facts of the particular case, and in particular, the court may presume that-*
>
> > *(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.*

The conduct of INEC could only mean one thing, a conspiracy to subvert the ends of justice between INEC and the Respondent who they returned as the winner of the election. There is nothing inexplicable about the refusal, it was very well planned and executed.

In Adamawa State, a total of six petitions were filed, out of which two were for the State House of Assembly, two for the House of Representatives and one for the Senate However all the petitions were dismissed. The petition filed before the Governorship Election Petition Tribunal was also dismissed. In *Markus Natina Gundiri & 2 Ors v Rear Admiral Murtala H. Nyako & 5 Ors*[86]*,* the petitioners brought their petition on the following grounds:

- That the 1st Respondent was not duly elected by majority of lawful votes cast at the election.

[84] G.C Igbokwe in *Performance and Work of the Election Tribunals i*n the South East Zone presented at the Nigerian Bar Association Conference on the Review of the Performance of Election Petition Tribunals - page 8.
[85] Ibid at page 9.
[86] Petition No: EPT/ADS/GOV/01/2012

- That the election in many but not all the polling units and wards of eleven out of twenty one local Government Areas of Adamawa State was invalid by corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended).

The petitioners prayed the court for an order nullifying the election and return of the 1st and 2nd Respondents as Governor and Deputy Governor respectively of Adamawa State in respect of the election held on 4th February, 2012. They claimed to have scored the majority of the total number of lawful votes cast at the election and are constitutionally entitled to be returned as Governor and Deputy Governor. However, the Tribunal held that the petitioners failed to discharge the burden of proof placed upon them by the law and that the election was conducted in substantial compliance with the Electoral Act, 2010 (as amended).

In Akwa Ibom State, thirty-four petitions were filed. Twenty-two challenged elections into the State House of Assembly, five for the House of Representatives and four for the Senate and three for the governorship. Out of the thirty-four, twenty-two were struck out at the preliminary stage while the remaining ones went on full trial.

Anambra State had the highest number of the petitions filed in 2011 elections. The State had a total number of sixty-eight petitions. Forty challenged elections into the State House of Assembly, twenty-two for the House of Representatives and six for the Senate. There was no gubernatorial election in Anambra State as it was held in 2010 due to the Supreme Court judgment interpreting the four year tenure of elected public officers in *Obi v INEC*[87]. Out of these petitions, thirty-four were struck out on the specious reason of non-joinder and the remaining thirty-four went on full trial. However, the Court of Appeal reversed most of the decisions and returned them for retrial. The highlight of the cases returned by the Court of Appeal for retrial was the case involving the former Minister of Information Prof. Dora Akunyili[88]. The legislative tribunal fixed December 6 as the commencement date for the retrial of the petition filed by Prof. Dora Akunyili and her party, the All Progressives Grand Alliance against the election of Dr. Chris Ngige as the senator representing Anambra Central senatorial zone in the April general elections. The tribunal headed by Hon. Justice Pat Onajite-Kuejubola, gave the date of the commencement of the trial of the petition after it dismissed an application by Ngige praying the tribunal to dismiss the petition of Akunyili on the grounds that the statutory 180 days given for the trial of the petition had elapsed. It will be recalled that the Court of Appeal in Enugu had ordered the tribunal to try the petition on the merit. The tribunal had earlier thrown out the petition of Akunyili because she failed to file Form TF008 that was needed for the commencement of the pre-trial activities of the petition. However, the petition was among the petitions dismissed by the tribunal based on the Supreme Court decision

[87] (2007) 7 S.C. 268 or (2007) 11 NWLR (Pt. 1046) 565
[88] Petition No. EPT/AN/NAE/SE/26/2011

on 180 days interpreting section 285 of the Constitution.

Again, Anambra State had a peculiar case. While other states had two legislative panels, Anambra had four panels working on the legislative petitions. Panel 1 led by Justice Bwala had earlier been dissolved by the President of the Court of Appeal on the persistent allegations of corruption and partisanship. The allegations came mainly from the All Progressive Grand Alliance which alleged that the panel was compromised with the sum of N90 million.

In Bauchi State, a total number of twenty-two petitions were filed, out of which eight were for the State House of Assembly, eight for House of Representatives, four for the Senate and two for the governorship. However, three of the petitions were dismissed at the preliminary stage while the remaining nineteen went on full trial. At the end of the trial, the tribunal upheld the petition in *Yakubu Mohd Ahmed & Anor v Ibrahim Angale & 2 Ors*[89] by declaring the petitioner winner of the State House of Assembly election for Bauchi Central Constituency and directed INEC to revoke the certificate of return earlier granted to the respondent and issue same to the petitioner. The tribunal in reaching this conclusion ordered for the recount of the votes cast during the election. The tribunal relied on the case of *Agbaje v Fashola*[90] and held that:

> *A tribunal has a right and indeed a duty to compute or collate results where such results have been inflated and wrongly computed. However, such right and or duty arises only when there is absolute proof that there was inflation of votes cast and or wrong computation of result.*[91]

In this case, the fourth defence witness, the author of the false result Exhibit B1-B4 confirmed in evidence in court that he actually changed the result as he was under pressure.[92] It was on this evidence that the court held that falsification has therefore been proved in the petition. Again, in *Hon. Hamza M. Gawo & Anor v Hon. Idi Shehu Tiyin & 5 Ors*[93] the tribunal also upheld the petitioners' claim and declared the petitioner the winner of Warji Constituency for the House of Assembly seat. In reaching this decision, the tribunal stated as follows:

> *By the pleadings of both parties before us, while Hon. Idi Shehu Tiyin (1st Respondent) scored the highest number of votes ... Hon. M. Gawo (1st Petitioner) scored the second highest number of votes... We hereby hold in the final analysis as follows:*

[89] Petition No: NA/SHA,EPT/BAU/14/2011
[90] (2008) ALL FWLR PT.443 R 14 at 138
[91] See the unreported CTC of the judgment in petition no: NA/SHA,EPT/BAU/14/2011, delivered on 12th of November, 2011 at pg 42. See also *Adun v Osunde* (2003)6 NWLR PT.847-643
[92] Ibid at page 44
[93] Petition NO: NA/SHA/EPT/BAU/17/2011.

That the 1st Respondent, Hon Idi Shehu Tiyin was at the time of the election not qualified to contest the election having not been educated up to at least School Certificate level or its equivalent and did not submit to INEC as required by law evidence of having been educated up to at least School Certificate level or its equivalent. That the election of Hon. Idi Shehu Tiyin as member representing Warji Constituency in Bauchi State House of Assembly is nullified pursuant to Section 138 (1)(a) and 140 (1) of the Electoral Act 2010 as amended. That the 1st Petitioner Hon. Hamza M. Gawo is hereby declared the winner of the election held on the 28th April, 2011 having scored the second highest number of votes at the election.

Section 140 (2) of the Electoral Act 2010 as amended provides as follows; "where *an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected, but shall order a fresh election".* Flowing from above, the petitioner ought not to have been declared the winner since the word "shall" used in the statute is mandatory. However, the Federal High Court sitting in Lagos presided over by Hon. Justice Okechukwu Okeke in the case filed by Action Congress of Nigeria had earlier declared this section 140 (2) of the Electoral Act 2010 (as amended) null and void.[94] The position of the courts in respect of section 140 (2) of the Electoral Act is a welcome development. There is no basis for the legislature to restrict or forbid the tribunal from making necessary pronouncement after its findings. This position has been upheld by the Court of Appeal in its recent decision in *Kabiru Abdullahi & Anor v Tukur Mohammed Besse & 2 Ors*[95]

In Bayelsa State, twenty-four petitions were filed, out of which nineteen were for the State House of Assembly, three for House of Representatives and two for the Senate. Two of the petitions were dismissed at the preliminary stage while twenty-two went for full trial. Benue State had thirty-six petitions filed before the election tribunals sitting in the State. Twenty were for the State House of Assembly, ten for the House of Representatives, four for the Senate and two for the governorship. Two of the petitions were dismissed at the preliminary stage while the remaining ones went for full trial. Some of the petitions went on appeal and the Court of Appeal ordered some retrials. The governorship petition in the State was remitted for retrial.

Steve Ugbah, ACN's governorship candidate in Benue State, and John Akpanudoedehe, his Akwa Ibom counterpart, won appeals brought before the Supreme Court, challenging the decision of the Court of Appeal which dismissed their petitions on the grounds that the pre-hearing notices were not properly filed. The Supreme Court on Monday, November 14 2011, ordered, the governorship election petition tribunals sitting in Benue and Akwa Ibom states to retry the cases filed by the Action Congress of Nigeria, ACN, and its candidates in the two states.

[94] See THISDAY Friday July 1 2011 page 6
[95] Unreported - Suit No: CA/S/EPT/HA/8/2011.n

This was in *Ugba & Ors v PDP & Ors*[96] *and Udoeghe & Ors v Akpabio & Ors*[97]*.* The Supreme Court in the two rulings stated that the application required under paragraph 18 (1) of the First Schedule to the Electoral Act (pre-hearing session and scheduling) can be made either by letter, or ex-parte motion or by motion on notice, the matter being purely an administrative act and not judicial or quasi-judicial. Essentially, election petitions should not be dismissed on mere technicalities. The ruling finally put to rest the controversy as to whether pre-hearing notice should be by way of *ex-parte* motion or by a mere letter. The *Ugba* and *Udoeghe* decisions of the Supreme Court followed the earlier judgement in *Abubakar & 2 Ors v Nasumu &5 Ors*[98]. The issue had polarised the judiciary and the tribunals gave different interpretations. The Court of Appeal did not help matters. Different divisions of the Court also gave divergent interpretations[99].

The Supreme Court was very right in this matter particularly when paragraph 53 (1) of the First Schedule to the Act[100] is considered:

> *Non-compliance with any of the provisions of this Schedule, or with rules of practice for the time being operative, except otherwise stated or implied,* ***shall not render any proceeding void****, unless the Tribunal or Court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended or otherwise dealt with in such manner and on such terms as the Tribunal or Court may deem fit and just.*

Ugbah challenged the declaration of Gabriel Suswam as the governor of Benue State on the grounds that his (Suswam) election was fraudulent and marred by irregularities, while Akpanudoedehe on the other hand challenged the victory of Godswill Akpabio, governor of Akwa Ibom State, alleging electoral irregularities. However, the order of the Supreme Court in the *Ugba* and *Udoeghe* petitions were all made in vain as the time limitation in section 285 of the Constitution caught up with both cases and they were eventually struck out. But should the Supreme Court be making orders in vain? The strict construction of the time limitation amounts in this case to punishing a litigant for the mistakes in interpretation of the law by the Court of Appeal. It would have made eminent sense if the 180 days started running afresh upon a Supreme Court order for the case to be heard on the merits by the tribunal. The attempt to cure the mischief of an endless timeframe in electoral disputes cannot rightly be remedied by the denial of fair hearing to petitioners through no fault of theirs.

In Borno State, twenty-four petitions were filed, out of which, nineteen challenged the results declared in respect of the State House of Assembly election, four for the House of Representatives and two gubernatorial election petitions. There was no

[96] (2011) 11-12 SC (Pt.1), 90.
[97] (2011) 11-12 SC (Pt.1), 101.
[98] (2011) 11-12 S.C. 1.
[99] Jos and Enugu Divisions of the Court of Appeal.
[100] Electoral Act 2010 as amended

petition for the Senate. Due to security challenges in the State, the tribunal was forced to shift its venue to Abuja. However, there was a twist in the Borno Governorship Election Tribunal, as the Acting President of the Court of Appeal, Justice Dalhatu Adamu, dissolved the Borno State Governorship Election Tribunal a few minutes before the panel would deliver judgment in the petition brought by the Peoples Democratic Party (PDP) and its standard-bearer, Mohammed Goni, challenging the victory of Governor Kashim Shettima of the All Nigeria People's Party (ANPP) in the April 26 governorship election[101].

The tribunal was billed to deliver judgment in the petition on Thursday, as its jurisdiction would expire on a Sunday, going by the 180 days rule in the 2010 Electoral Act (as amended). The Zone Two Magistrates' Court, Abuja, venue of the tribunal was filled to capacity with supporters and party faithful who had arrived as early as 7.00 a.m. waiting to know who would carry the day. All counsel in the matter, as well as journalists were already seated, awaiting the arrival of members of the panel when the secretary of the tribunal came in to announce the dissolution. According to him:

> *I have been directed by the Registrar of the Court of Appeal to inform you that this tribunal has been dissolved and so will not be sitting today. We shall all wait for further directives.*

All efforts to get the Acting President of the Court of Appeal to give reasons informing the dissolution of the tribunal were unsuccessful, as he was said to be too busy to attend to anybody. The Supreme Court had earlier vacated an interim order made by the Court of Appeal sitting in Jos, restraining the tribunal from delivering judgment in the petition filed by the PDP and Goni. The Court of Appeal made the order as requested by the petitioners, who were denied same by the tribunal. The petitioners had requested that the tribunal should go back to the pre-hearing stage of the proceedings, after it had concluded hearing and fixed judgment date. The governor subsequently headed for the apex court, asking that the order of the Court of Appeal be set aside and the tribunal be allowed to deliver its judgment. Agreeing with the governor, the Supreme Court held that no lower or higher court had the power to interrupt the proceedings of an election petition tribunal in the face of the 180 days specified by the Electoral Act for the conclusion of any election petition. Consequently, the five-man panel headed by Justice Walter Onnoghen ordered all the parties in the petition to return and continue with the proceeding of the tribunal from where they stopped. Governor Shetima had, in his appeal SC/332/2011, asked the apex court to set aside "an interim order stopping the trial tribunal from proceeding to deliver its ruling earlier slated for September 20, 2011.

Governor Shettima faulted the decision of the Justice Adamu to dissolve the tribunal sitting in Abuja, a few minutes before it was billed to deliver its verdict. Shettima said

[101] Petition No. BO/EPT/GOV/2011.

the dissolution of the panel by Justice Adamu amounted to a flagrant breach of the order of the Supreme Court contained in its decision on Goni's interlocutory appeal delivered on October 31, 2011. However, reason prevailed and the tribunal was eventually allowed to deliver its judgement which went in favour of the respondents.

Cross River State had twenty-seven petitions filed before its tribunals. Sixteen were for the State House of Assembly, eight for the House of Representatives and three for the Senate. In *Patrick Agbe v Prof Benedict Ayande & Ors*[102]*,* the petition was withdrawn by the petitioner on the 4th of July 2011 and was accordingly struck out by the tribunal. Also on the 15th of July, 2011 the petitioner in the *Hon. Ibangha Alfred Ajogbor v John Owan Enoh & Ors*[103] withdrew his petition. This was consequent upon a motion dated 13th July 2011 in which the petitioner on his free volition asked the tribunal to strike out his petition. Similarly, the following petitions have been struck out for incompetence and lacking in merit[104].

On the 15th July 2011, the following petitions were struck out on the grounds of want of competence and non-compliance with the statutory provisions of sections 86, 88, 89, and 90 of the Evidence Act and paragraph 53 (2)and (3) of the First Schedule to the Electoral Act 2010 as amended. The petitioners failed to state the full names, identity, occupation and residential addresses of the witnesses. The petitions were *Ekeng Iwatt Effiom & Anor v Joseph Archibong Bassey & Ors*[105], *Francis Edet Ekpenyong & Anor v Okon Edem Ephraim & Ors*[106] and *Mr. Asuquo Ekpo Ada & Anot v Willson E. Ekpeyong*[107].

Following the gubernatorial election held on 25th February 2012 in Cross River State, the petition, *Action Congress of Nigeria & Anor v Independent National Electoral Commission & 3 Ors*[108] was filed to challenge the outcome of the election at the Governorship Election Petition Tribunal sitting at Calabar. The petitioners prayed the tribunal to grant the following reliefs namely:

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[102] Petition NO: EPT/CR/SEN/3/2011

[103] Petition NO: EPT/CR/NA/7/2011.

[104] They were petition numbers EPT/CR/SA/1/2011 - *Mkpanam Obo Bassey Ekpo & Anor v Ngim Okpo Kanu & Ano*r; EPT/CR/SA/3/2011 - *Hon. Joseph Effiong Etene v Savious Okon Nyong & Ors*; EPT/CR/SA/6/2011 - *Barr. Ayim Simon Okpokam v Hon. Uguge Patrick Akpak & Ors;* EPT/CR/SA/7/2011 - *Mr. Chris-Valentine Ogar Eneji Daniel & Ors v Ajor Idagu Agaji & Ors*; EPT/CR/SA/8/2011 - *Hon. Okon Nyong Effiom & Anor v Hon. Effiom Etim Okon & Ors*; EPT/CR/SA/10/2011 - *Otu Bassey Ukpenetu v Mfawa Ofegobi & Ors*; EPT/CR/SA/12/2011 - *Godwin Enu Bisong & Anor v Ernest Osang Eki & Ors*;` EPT/CR/SA/13/2011 - Ray *Apie Nandi & Anor v Jacob Otu Enya & Ors*; EPT/CR/SA/14/2011 - *Prince Celestine Awor & Anor v Hon. George Oben Etchi & Ors*; EPT/CR/SA/15/2011 - *Odey Iyama & Anor v Rt. Hon. Agbiji Mbeh Agbiji;* EPT/CR/SA/17/2011- *Hon. Fabian Okpa v Chief Alex Irek & Anor*; EPT/CR/NA/2/2011 -M*r. William Ballantyne v Hon. Essien Ekpeyong Ayi & Ors;* EPT/CR/NA/5/2011: *Ojong vs Christopher Sunday Etta & Ors;* EPT/CR/NA/6/2011: *Mr. Wabbily Nyiam (ANPP) v Dr (Mrs) Rose Oko & Ors* and; EPT/CR/NA/8/2011- *John Opau Odey v Francis B. Ada & Ors*.

[105] EPT/CR/SA/4/2011.

[106] EPT/CR/SA/5/2011.

[107] EPT/CR/SA/16/2011.

[108] Petition No: EPT/CR/GOV/1/2012

- *That the 3rd Respondent did not conduct congress/primaries for Governorship election of 25/2/2012 in Cross-River State in accordance with the Electoral Act and the INEC Time Table/ Guidelines released on 31st January, 2012.*

- *That the Fourth Respondent was not nominated nor validly nominated by the Third Respondent or any political party for the Governorship election of 25/2/2012 in Cross-River State as required under Section 87(1) and Section 138 (1) (a) of the Electoral Act, 2010 (as amended).*
- *An order disqualifying the 4th Respondent as candidate at the last Gubernatorial election of 25th February, 2012 in Cross-River State and from standing or contesting by virtue of section 138 (1) (a) and (b) of the Electoral Act,*

- *An order declaring the second petitioner as the validly elected candidate with lawful majority votes.*

- *An order declaring the second petitioner as the winner of the election of 25th February, 2012 and should immediately be issued with the certificate of return by the first and second Respondents, and sworn in as the validly elected Governor of Cross-River State or in alternatively, an order disqualifying the 4th Respondent as a candidate and order fresh governorship election.*

The petition was brought inter alia upon the following grounds; the declaration of the 3rd and 4th Respondents on 26/2/2012 by the 1st and 2nd Respondents as winner of alleged election held on 25/2/2012, was predicated on conspiracy between Respondents and upon allocation of unlawful votes to 3rd and 4th Respondents; that the election of 25/2/2012 or declaration of 4th Respondent as elected on 26/2/2012 was not held or declared substantially in accordance with the provisions of the Electoral Act; and that the 4th Respondent was not validly nominated as candidate and was not qualified to contest as Governor of Cross River State, etc. On the issue of nomination of candidate, the tribunal held that it is only members of the same political party and perhaps those who contested the primaries that can challenge same before the tribunal. The tribunal also held that the petitioners' prayer to be declared the winner of the election and sworn in as the validly elected Governor of Cross-River State was unsuccessful. At page 41 of the judgement, the tribunal stated as follows:

> *The said election in our view was conducted in substantial compliance with the provisions of the Electoral Act ... and whereupon, he the 4th Respondent emerged as the returned winner with the lawful majority of votes cast at the election. The petition, in its entirety is hereby dismissed as lacking in merit"*

Ebonyi State had twenty-six petitions filed before it. Thirteen were for the State House of Assembly, six for the House of Representatives, three senatorial petitions and four for the gubernatorial election. Out of these petitions, four were dismissed at the preliminary stage while the remaining ones went on full trial. Three petitions were filed in Ekiti State made up of two State House of Assembly petitions and one House

of Representative petition. The three petitions were dismissed for non compliance with the provisions of the Act. Enugu State had a total number of eleven petitions filed before the election tribunals sitting in the State. The petitions were made up of four State House of Assembly petitions, four for the House of Representatives, two challenging senatorial elections and one gubernatorial election petition. Out of these petitions, nine were disposed of at the preliminary stage leaving only two which went on full trial. In Edo state, eleven petitions were filed. The petitions were made up of six for the State House of Assembly, four for the House of Representatives and one for senatorial election. Our monitor in Gombe State reported that ten petitions were filed in Gombe State. Seven of them were for the State House of Assembly, two for the House of Representatives and one gubernatorial petition.

In Imo State, forty-five petitions were filed made up of twenty-four State House of Assembly petitions, twelve for the House of Representatives, five senatorial petitions and four gubernatorial petitions. There were allegations that the ruling party in the State, the All Progressive Grand Alliance was trying to cause mayhem. According to a statement issued by the State Publicity Secretary of the PDP Chief Blyden Amajirionwu[109], he alleged that the planned violence was aimed at creating "disaffection between our party, the public and particularly the judges hearing the case." Twenty four petitions were dismissed based on either non-compliance with the provisions of the Electoral Act or lack of diligent prosecution on the part of the petitioners. There were fears that the legislative tribunal may not meet up with the 180 days deadline given to tribunals to finish adjudication of petitions. These fears and speculations were later proved right as the following petitions were dismissed based on the ground that the time provided for their hearing had elapsed. They are the following petitions: *Amb. Dr. (Mrs.) Kema Chikwe & Anor v Senator Chris Anyanwu & 2 Ors*[110], *Barr. Harrison Anozie Nwadike & Anor v Sir Chukwudi Victor Onyereri & Ors*[111] and *Dr Kemdi Opara & Anor v Hon. Bethel Amadi & Ors*[112].

The tribunal also dismissed the petition of *High Chief Ibe MFR & Anor v Hon Igbokwe R.U. Nnanna & 2 Ors*[113]. In this case, the petitioner had prayed the tribunal to declare him the winner of the election conducted in the Ahiazu/Ezinihite Mbaise Federal Constituency of Imo State. The grounds for the prayer includes that the election did not take place in some wards. The tribunal in dismissing this petition relied on the case *Ogboru v Uduaghan (2011)*[114] which held inter alia as follows:

> *In petitions where nonvoting is the pivot of the petitioners' case, in order to succeed, such petitioners are under obligation to call voters from each of the polling booths in the affected constituency or area as witness. Such witnesses would tender their*

[109] Posted by Dapo Akinrefon on November, 4th 2011, www.thisdaylive.com
[110] EPT/IM/NASS/SN/04/2011.
[111] EPT/IM/NASS/HR/08/2011.
[112] EPT/NASS/HR/11/2011.
[113] Unreported case in petition NO; EPT/IM/NASS/HR/09/2011
[114] (2011) ALL FWLR (Pt 577) 650 at 703.

voters cards and testify that they did not vote on the day of the election. From there, it would be ascertained whether they were accredited or not.

Based on the reasons adduced above, the tribunal dismissed the said petition because the petitioner did not call as many voters as possible to prove his case. It is imperative to note that the petitioner who called about twenty voters had done well and the tribunal ought to have placed reliance on the documentary evidence before it to ascertain the veracity of the petitioners claim than to dismiss the petition as it did.

In Jigawa State, nine petitions were filed. Two challenged the results in the State House of Assembly, five for the House of Representatives, one for the Senate and one gubernatorial petition. One of the petitions was struck out at the preliminary stage, while the remaining eight went into full trial. At the end of the trial, the remaining eight petitions were dismissed. In delivering its judgment in the case of *Yusuf Muhammed Haruna & Anor v Muhammed Kanil Ahmed & 2 Ors*[115]*,* the tribunal held at page 29 of the judgement as follows, while relying in the case of *Agbaje v Fashola*[116]

> *In proving falsification of result in an election petition, it is basic that there should be in existence at least two results of which one is genuine while the other considered falsified. The onus of producing the said two results is invariably on the petitioner and not on the respondents. Mere assertion that the figures in the result of an election were falsified is not sufficient to sustain an allegation of falsification of election petition.*

The tribunal further held that the petitioner presented nothing either in their pleadings or evidence establishing how 1st Respondent was invalidly awarded the highest number or majority of the total lawful votes cast in the election. As a result, the petition was dismissed for lacking merit and a cost of fifty thousand naira was awarded against the petitioner.

In *Action Congress of Nigeria v Alhaji Sani Haruna Babura & Ors*[117] where the petitioner challenged the election, among many grounds including corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 as amended. The tribunal held at page 43 of the judgement that a petitioner in an election who alleges in his petition a particular non-compliance must satisfy the court that the non-compliance is substantial and affects substantially the result of the election. And the petitioners have failed to prove their allegations of bribery, multiple thumb printing, over voting and non accreditation before voting beyond reasonable doubt and on a balance of probabilities[118]. Consequently, the petition failed and a cost of fifty thousand Naira was awarded in favour of each of the Respondents.

[115] Petition No: JS/EPT/SHA/9/2011
[116] (2008) 6 NWLR (PT 1082) P.90 at Paras.101-102
[117] Petition No: JS/EPT/SHA/7/2011
[118] See also the case of *Kudu v Aliyu* (1992) 2 NWLR (Pt.231) 615 at 620.

Kaduna State had a total number of sixteen petitions. Twelve were for the State House of Assembly, two for the House Representatives, one for the Senate and one gubernatorial election petition. One of the petitions was struck out at the preliminary stage while the remaining ones went on full trial. Kano State had fourteen petitions made up of two for the State House of Assembly, seven for the House of Representatives, one for the Senate and four gubernatorial petitions. Out of these petitions, one was dismissed at the pre-hearing stage whilst the others went on full trial.

Twenty-four petitions were filed in Katsina State. The petitions which were made up of four for the State House of Assembly, fifteen for House of Representatives, three for the Senate and two gubernatorial petitions. Among these petitions, one was struck out at the preliminary stage, while others went on full trial. At the conclusion of the hearing, the tribunal, led by Justice S.A. Akinteye on September 29, 2011, dismissed some petitions and affirmed the election of some respondents. They include the petitions in *Bala Almu Banye v Alhaji Hamza Dalhatu & 3 Ors*[119], *Naseer Babangida Mu'azu & Anor v Gambo Musa & 3 Ors*[120], *Tukur Ahmed Jikamshi & Anor v Senator Abu Ibrahim & 3 Ors*[121], *Bature Umar & Anor v Abdulaziz Labo & 3 Ors*[122].

However, the Tribunal had earlier on 28th day of September, 2011 nullified eleven elections and ordered for fresh elections within ninety days. The nullifications include the petitions of: *Senator Ibrahim Ida & Anor vs Ahmed Sani Stores & 3ors*[123], *Senator Mahmud Kanti Bello & Anor vs Senator Abdu Umar Yandoma & 3 Ors*[124], etc. Dissatisfied with the tribunal judgments, two senators, Sen. Ahmed Sani Stores (Katsina Central), Sen. Abdu Umar Yandoma (Katsina North) and the nine House of Representatives members proceeded to the Court of Appeal Kaduna after their elections were nullified. The Court of Appeal quashed the tribunal judgment that annulled the elections of Sen. Ahmed Sani Stores, Sen. Abdu Umar Yandoma, Hon. Muntari Dandutse, Hon. Adamu Katsayan, Hon. Tasiu Doguru, Hon. Aminu Ashiru, Hon. Umar Abdu Dankama, and Hon. Musa Salisu, thus, upholding their elections.

The gubernatorial petition of the former Speaker, House of Representatives, Aminu Bello Masari who contested under the flag of Congress for Progressive Change (CPC) against the return of Governor Ibrahim Shema of the Peoples Democratic Party (PDP)[125] in the April 26 poll, was dismissed by the tribunal. The grounds upon which the petition were brought were as follows; that the election was void by reason of non-compliance with the provision of the Electoral Act as amended; that the governor was not duly elected by majority of lawful votes and that the election was

[119] Petition No. KT/EPT/HR/9/2011.
[120] Petition No. KT/EPT/HR/8/2011.
[121] Petition No. KT/SN/6/2011
[122] Petition No. KTP/EPT/HR/3/2011.
[123] Petition No: KT/EPT/SN/7/2011
[124] Petition No. KT/EPT/SN/5/2011
[125] KT/EPT/GOV/1/2011.

invalid by reason of corrupt practices, which substantially voided the election. In delivering judgment, the tribunal, led by Justice C. I. Jombo-Ofo sitting with E. Teetito and D. Z. Senchi, J.J held that, based on the facts and circumstances of the petition and its relationship with the laws, the petition had failed and it was dismissed. The tribunal further held that it could not grant the reliefs sought by Masari because some of the allegations levelled by the CPC governorship candidate against Shema (violence, fraud, distribution of money or materials to voters to void the election), being criminal in nature, were not proved beyond reasonable doubts.

Kebbi State recorded fifteen petitions. Out of these petitions, one was struck out at the preliminary stage while fourteen went on full trial. At the end of the trial, some of the petitions were dismissed while others were upheld. The highlight was the nullification of the election of the state governor Saidu Usman Nasamu Dakingari of the Peoples Democratic Party (PDP) and the order to INEC to conduct fresh gubernatorial election in the State within 90 days. Delivering judgement, Justice Mairo Laraba Mohammed, along with the two other justices, held that illegal documents were used during the election while INEC did not provide the statutory Distribution Forms for the election.

Reacting to the judgment, the state chairman of the PDP, Alhaji Mansur Shehu, described the judgment as absurd and strange adding that the nullification of the election was wrong in law. But the CPC, while reacting through a statement signed by its National Publicity Secretary, Mr. Rotimi Fashakin, described the judgement as courageous and transparent, which is devoid of bias. He further stated that it aptly captured the paradigm of a citadel of justice where rulings are based on the facts presented and not over-reliance on excessive legalism and noxious technicalities[126].

The legislative tribunal also upheld the petition of Hon. Garba B. Abdullahi in *Garba A. Abdullahi & Anor vs Hon. Bello A. Kaoje & 4 0rs.*[127] Justice Alero Edodo-Eruaga held that the respondent did not score the majority of the valid votes cast at the election of 9th April, 2011. By virtue of S. 140 (3) of the Act, Hon. Garba A. Abdullahi scored the highest number of valid votes cast at the election and satisfied the requirement of the Constitution and the Electoral Act. However, the legislative tribunal ordered fresh election in *Muhammed Umar Jega & Anor v Umaru Halilu Aliero & 4ors*[128] in respect of Jega/Aliero/Gwandu Federal Constituency. Fresh election was also ordered in the petition of *Bashir Isa & Anor v Hon. Garba Musa Gulma & Ors*[129] in respect of Argungu/Augie Federal Constituency. The fresh election was only in respect of Auigie local government.

[126] Http://www.sharareporters.com of November 15, 2011.
[127] EPT/KB/HR/5/2011
[128] Petition No: EPT/KB/HR/2/2011.
[129] Petition No. EPT/KB/6/2011.

In Kogi State, twenty-two petitions were filed, made up of eleven petitions for the State House of Assembly, eight for House of Representatives and three for the Senate. Eleven of the petitions were dismissed at the preliminary stage while the remaining ones went on full trial. Following the recent gubernatorial election that took place in Kogi State, a petition was filed before the Governorship Election Tribunal sitting in the state. In *Prince Abubakar Audu & 2 Ors v Captain Idris Wada & 4 Ors*[130], the petitioner asked the tribunal to declare amongst others that the result of the election was obtained in vitiating circumstances of substantial non-compliance with mandatory provisions of Electoral Act, 2010; that violence and malpractices substantially affected the validity of the said election result and that none of the candidates in the said election can be validly returned as having won the election. The petitioner further alleged that the 1st Respondent was not qualified to contest the said election on the ground that he has been declared to be of unsound which he failed to disclose in Form CF001 which was filed and submitted to INEC; that the 1st Respondent registered in two different places prior to the election, such acts of double registration was in gross violation of the relevant provisions of the Electoral Act. But the tribunal rejected these arguments and dismissed the petition. The tribunal at page 126 of the judgment held as follows:

> *In the final analysis, it is now obvious that the case put up by petitioners was seriously pulled down by the petitioners themselves. The evidence of their witnesses was fundamentally contradictory, doubtful and lacking in credibility to the extent that no prima facie case was shown. Therefore, whichever way one looks at the petition, it cannot stand on its legs. The petition either by proof beyond reasonable doubt or on preponderance of evidence is not proved as required by law. It lacks merit and ought to fail. It has failed and it is hereby dismissed. We accordingly affirm the declaration and return of the 1st Respondent, Captain Idris Wada, as the duly elected Governor of Kogi State.*

Kwara State had a total number of twelve petitions although initially, it was made of fourteen petitions. But two were withdrawn leaving only twelve. The petitions were initially made up of six challenging State House of Assembly elections, four for House of Representatives and three for the Senate and one gubernatorial petition. In *Rasaq Saadu & Anor v Ramat Abdulkadir & 2 Ors*[131] challenging the return in the Ilorin West Central Constituency of the State House of Assembly, the tribunal upheld the petition and nullified the election for substantial non compliance with the Electoral Act. INEC was directed to conduct a fresh election in the said constituency within 90 days from the date of the judgment.

Kwara State was enveloped with apprehension and anxiety as the Governorship Election Tribunal in Ilorin sat to deliver judgment in the case between the candidate of the Action Congress of Nigeria (ACN), Dele Belgore against the return of

[130] Petition No.EPT/KG/GOV/1/2011:
[131] Petition No. EPT/KW/SH/13/2011.

Governor Abdulfatah Ahmed. Armoured vehicles patrolled major roads and streets to ensure security, while plain-clothes security men were drafted to provide information on security. It was reported that schools located around the venue of the tribunal sitting were directed to go on forced holiday on the day of the judgment, as part of measures to ensure adequate security. The spokesperson for the state PDP, Alhaji Masu'd Adebimpe, said the party was expecting nothing less than victory. On the other hand, the media aide to the ACN governorship candidate, Rafiu Ajakaiye, said their expectation from the tribunal was to nullify election in the five local councils and 28 wards the party was challenging.[132] However, the tribunal delivered judgment in favour of the PDP. The ACN appeal against the judgment was dismissed as the Court of Appeal sitting in Illorin also upheld the election of Governor Abdulfatah Ahmed.

In Lagos State, fifteen petitions were filed made up of three for the State House of Assembly, eight for House of Representatives and four for the Senate. At the preliminary stage, four of the petitions were struck out leaving eleven which went on full trial. At the end of the trial, all the petitions were dismissed for non compliance with provisions of the Electoral Act and that they lacked merit. Virtually, all the petitions were dismissed based on non compliance with the Electoral Act in applying for the issuance pre-hearing notices[133]. In delivering judgment in the case of *National Conscience Party & Anor v The Resident Electoral Commission & 3 Ors*[134], the tribunal chairman Hon. Justice Maurice O. Eneji while relying on the unreported Court of Appeal case in Akpanudoehe & 2 0rs v Akpabio & 3 Ors[135] held that:

> *Rules of the court are meant to be obeyed and where the law provides a mode or means of carrying out a particular duty or step, it must be done as specifically provided by the legislature no matter how harsh, painful or even absurd the law might seem or sound. Indeed if the law provides the mode for doing an act, it stands to reason to expect that the act can only be considered as having been properly done, if it is performed in the way prescribed by the law. That to my mind won't amount to asking too much, because to do otherwise will amount to lowering of set*

[132] www.thisdaylive.com posted on Friday, 11 November 2011.

[133] They are were Petitions No./LEGH/EPT/L/2011 - *Labour Party v INEC & 2 Ors*; NA/LEGH/EPT/L/2/2011 - *Mr. Segun Adewale & Anor v INEC & 2 Ors*; NA/LEGH/EPT/L/3/2011- *Hon. Dimeji Muse Awojobi & Anor v INEC & 2 Ors;* NA/LEGH/EPT/L/4/2011 - *Oluremi Babatunde Adeyelu & Anor v Ganiyu Oladunjoye Hamzat & 8 Ors*; NA/LEGH/EPT/L/5/2011 - *Hon. Moshood Adegoke Salvador v INEC & 2 Ors*; NA/LEGH/EPT/L/6/2011 - *Oladapo Durosinmi-Etti vs Mrs Oluremi Tinubu & 3 Ors*; NA/LEGH/EPT/L/7/2011 - T*olagbe Animashaun vs Mrs Oluremi Tinubu & 3 Ors;* NA/LEGH/EPT/L/8/2011 - P*rince Sunday Bamidele Aderonmu & Anor v INEC & 2 Ors;* NA/LEGH/EPT/L/9/2011 - M*r. Cosmas I. B. Okoli & Anor v Hon. Ganiyu Tunji Olukolu & 2 Ors*, NA/LEGH/EPT/L/10/2011 - H*on. Rotimi Osunsan v Mr. Babatunde Alliu Kazeem & 2 Ors;* NA/LEGH/L/11/2011 - B*arr. Olajumoke Josephine Sawyer & Anor v Adeyemi Sabitun Ikuforiji & 2 Ors;* NA/LEGH/EPT/L/12/2011 - N*ational Conscience Party & Anor v The Resident Electoral Commission & 3 Ors.*

[134] Petition NO:NA/LEGH/EPT/L/12/2011

[135] Appeal No: CA/C/NAEA/GOV/173/2011, delivered on Thursday the 15th day of September, 2011

standards and a breach of statutory provisions-substantive or procedural. I do not perceive anything which is technical or unjust in the demand for compliance with the requirements of the law. This is more so, because there should be no arbitrary shifting of goal post after the game has commenced. Indeed, certainty and predictability are essential components of the law. The law remains what it is, that is, the law. The court or tribunal for whatever reasons does not enjoy the liberal levity, license or luxury of ameliorating the harshness of the law or its outcome. Until it is amended, the law remains valid, binding and subsisting on all parties who invoke it. In the construction of statutes, the necessary intendment of the legislature must be given effect and reckoned with at all times.

From the perspective of the subsequent decisions of the Supreme Court in a long list of cases,[136] the petitioners suffered miscarriage of justice and were denied the opportunity of their case being heard on the merits. Even if they had appealed the judgement, their petitions would have been caught up by the time bar in section 285 of the Constitution in the event of an order for retrial on the merits.

Sixteen petitions were filed in Nasarawa State. Ten challenged the outcome of the State House of Assembly elections, one for the House of Representatives, four for the Senate and one gubernatorial petition. Out of these, thirteen were dismissed at the preliminary stage while three went on full trial. In the gubernatorial petition, *Aliyu Akwe Doma & Anor vs INEC & 3 Ors*[137]*,* the petitioners had sought the nullification of the return of Umaru Tanko Al-Makura as the governor of Nasarawa State. The petitioners sought the nullification of some results in some polling booths and the validation of others that were nullified by INEC before reaching the decision to return the fourth respondent as governor. There was a division among the panel members. While the chairman of the tribunal, Hon. Justice Frederick Chukwuemeka Obieze and Hon. Justice Peter Oyinkenimieme Afeen were in the majority decision that dismissed the petition, Hon. Justice Akinwale David Oladimeji was on the minority that upheld the petition. In the lead judgment, Justice Frederick Chukwuemeka Obieze held as follows:

"In the final analysis, upon resolution of all the issues as highlighted above, the inescapable conclusion to which we have come is that the petitioners failed to prove that the 4th Respondent did not score the majority of lawful votes cast at the governorship election conducted in Nasarawa State on 26/4/2011 or that he was wrongly returned as Governor of Nasarawa State in the said election. .....we hereby affirm the declaration and return of the 4th Respondent by the 1st -3rd Respondents as the duly elected Governor of Nasarawa State. The petition dated 17/5/2011 therefore fails and it will be and is hereby dismissed"[138]

[136] This was in *Ugba & Ors v PDP & Ors (supra) and Udoeghe & Ors v Akpabio & Ors (supra).*
[137] Petition No. EPT/NS/GOV/1/2011.
[138] see the judgment in the Petition No: EPT/NS/GOV/1/2011 @ pages 89-90

The tribunal in this case made a salient comment on the responsibility of the court of law. While relying on the statement of Bate J in the case of *Duriminya v COP*[139], it stated thus:

> *A trial is not an investigation, and investigation is not the function of a court. A trial is the public demonstration and testing before a court of the cases of the contending parties. The demonstration is by assertion and evidence; and the testing is by cross-examination and argument. The function of the court is to decide between the parties on the basis of what has been so demonstrated and tested….It was no part of his duty to do cloistered justice by making an inquiry into the case outside court not even by examination of documents which were in evidence, when the documents had not been examined in court... and exposed to test in court."*[140]

However, the contrary decision was reached by Hon. Justice Akinwale David Oladimeji in his minority judgment in which he nullified the result of the governorship election and declared the petitioner winner of the election.

In Niger State, seventeen petitions were filed. The breakdown shows that State House of Assembly had eight, House of Representatives five, three for the Senate and one for the gubernatorial election. Out of these petitions, five were dismissed at the preliminary stage while the remaining twelve went on a full trial.

Ogun State initially had twenty-eight petitions at the time of inauguration of the tribunals but this was later reduced to twenty petitions after some of the petitions have been struck out. The petitions were made up of thirteen for the State House of Assembly, six for the House of Representatives, and one gubernatorial petition. In *Peoples Democratic Party v INEC & 2 Ors*[141], the petitioner originally included Nasiru A. Isiaka and Peoples Party of Nigeria as the 4th and 5th Respondents respectively. However, their names were struck out by the tribunal for misjoinder. It is imperative to note that the 4th Respondent Isiaka Adeleke contested the gubernatorial election under the platform of the 5th Respondent (PPN), a party that is different from that of the 2nd Respondent being the winning party. The tribunal while striking out the 4th and 5th Respondents name held that it is only an election or return of a candidate that can be questioned by a petition in which the person elected or returned is a party.[142] The inclusion of the 4th and 5th Respondents in the petition was wrong in law. Otherwise, how can an election petition be deemed to be against each or any of the respondents who lost the election? What would the cause of action of the petition be based on if he were to file or be deemed to have filed a separate petition against a candidate who did not win an election?

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[139] (1961) NNLR 70 at 73-74.
[140] See page 86, supra
[141] Petition No: EPT/OG/GOV/01/2011.
[142] See the CTC judgment of the tribunal in unreported case in petition no EPT/OG/GOV/01/2011; Peoples Democratic Party (PDP) VS (INEC) & 4 Ors delivered on the 31st day of October,2011 at page19. See also the case of *Buhari v Yusuf* (2003) 14 NWLR (Pt.841) P.500-501 PARA A-F.

Furthermore, the petitioner in the alternative prayer had asked the tribunal amongst other reliefs; an order nullifying/invalidating as invalid, null and void the entire election to the governorship of Ogun State held on the 26th day of April, 2011; an order barring the 4th and 5th Respondents from participation or fielding candidate at the new election. The grounds upon which the reliefs were sought were that the 1st Respondent in non-compliance with the provisions of the Electoral Act 2010, allowed the participation of Isiaka Adeleke Nasiru in the election as the candidate of Peoples Party of Nigeria when the 1st Respondent, Isiaka Adejeke Nasiru and the PPN knew that the nomination of Isiaka Adeleke Nasiru as the candidate of the PPN is void, being a violation of the provisions of the Electoral Act, 2010 , in order to split the votes which would ordinarily have otherwise been cast for the petitioner's candidate and thus the election was invalid, null and void and ought to be invalidated or nullified. The petitioner contended that the participation of the 4th respondent deprived it of the votes that ordinarily would have been cast for the petitioner's candidate. It has thereby affected the outcome of the election. But the tribunal overruled this submission and dismissed the petition for lacking merit. The other allegations in the petition were also not proved either on a balance of probabilities or beyond reasonable doubt.

The tribunal in *Peoples Democratic Party & Anor v INEC & 2 Ors*[143] nullified the return of the 2nd Respondent, John Obafemi as a member of the Ogun State House of Assembly representing Remo North State Constituency for not being duly elected by the majority of the lawful votes cast at the election. It declared the 2nd Petitioner, Olusola Samuel Oshimade as the duly elected member of the House of Assembly. The tribunal based its decision of the petitioner's claim that the result of the election in Ward 8 (Orile-Oko) was manipulated. After nullifying the result and recounting it, it was shown that the petitioner scored the highest number of votes in the constituency. The tribunal's decision to recount the vote is very good. It cleared the doubt and ensured that justice is done at the end of the day.

In *Peoples Democratic Party & Anor v INEC & 2 Ors*[144] it was held that dual citizenship does not make a candidate ineligible to contest a legislative election if he is a Nigeria by birth[145]. The petitioner had argued that the 2nd Respondent was not qualified to contest the election on the ground that he is both a citizen of the United States of America and Nigeria contrary to Section 66 (1) (a) of the 1999 Constitution as he travelled to America via Visa lottery in 1999. The tribunal while dismissing the petition held that this ground of argument is misconceived. Section 66 (1) (a) of the 1999 Constitution as amended provides as follows:

(1) "No person shall be qualified for election to the Senate or the House of Representatives if-

[143] Petition No: EPT/OG/LH/01/2011.
[144] Petition No: EPTLOG/FH/07/2011.
[145] See *Ogbeide v Osula* (2004)12 NWLR 86 AT 127

(a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribe by the National Assembly, has made a declaration of allegiance to such country"

That a person travelled to another country by the means of a visa lottery or otherwise is not enough to disqualify the person from contesting an election. The tribunal was right by not allowing this type of argument to sway it in doing justice to the case.

Eight petitions were filed in Ondo State. Four were for the State House of Assembly elections, three for the House of Representatives and one for the senatorial election. Out of these petitions, four were dismissed at the preliminary stage while the remaining four went on full trial. Osun State had only one petition which challenged the result of a House of Representatives seat. In Oyo state, seventeen petitions were filed. Five were for the State House of Assembly, seven for House of Representatives, three for the Senate and two gubernatorial election petitions. Out of these petitions, six were dismissed at the preliminary stage while the remaining eleven went on full trial. Plateau State had a total of fourteen petitions. The petitions were made up of six for the State House of Assembly, four for House of Representatives, three for the Senate and one gubernatorial election petition.

In Rivers State, thirty-nine election petitions were filed before the tribunals. Twenty-one were for the State House of Assembly, nine for House of Representatives, five for the Senate and four gubernatorial election petitions. Our monitor in the State, Chuma Nwosu reported that there were two panels of the legislative tribunal which sat in the State while the Governorship Election Petition Tribunal was only one panel.

Ibrahim Adamu, CSJ tribunal monitor from Sokoto State reported that there was no election petition in the State with respect to legislative elections. According to him, the parties who intended to challenge the result of the election were advised not to do so in the interest of peace and development of the State. Consequently, candidates that had earlier filed petitions withdrew them in obedience to their leaders. However, it is important to note that gubernatorial election did not take place during the 2011 general elections in Sokoto State. The gubernatorial election later took place in 2012. Candidates' unwillingness to file and prosecute petitions may not be unconnected with the preparations for the gubernatorial election which politicians usually take more serious than the other elections.

In the Governorship Election Tribunal, sitting in Sokoto State, it was a contest between the ANPP and the PDP. ANPP challenged the re-election of Governor Aliyu Magatakarda Wamako of the PDP. The ANPP candidate who was the petitioner in *Yusha'u Muhammed Ahmed & 2 Ors v Aliyu Magatarda Wamako & 5 Ors*[146] alleged that the respondent was not qualified to contest the said election and that the

[146] Petition NO. SK/EPT/COV/1/2012.

election was invalid for substantial non compliance with the provisions of the Electoral Act and prayed the tribunal to declare him the winner. However, the tribunal in its judgment delivered on Wednesday the 2nd day of May, 2012 after hearing a preliminary objection filed by the respondent struck out the petition. It held that there were no pleaded facts upon which the petitioner's reliefs could stand. It further held that the petition is incompetent because the court lacks jurisdiction to enquire into or review the decision of Court of Appeal in CA/K/GOV/60/2007 that deals with the qualification of the 1st Respondent.

Ten petitions were filed in Taraba State, out of which four challenged elections to the State House of Assembly, two for the House of Representatives, two for the Senate and two for the gubernatorial election. Four of the petitions were dismissed at the preliminary stage while the remaining six went on full trial. The Governorship Election Tribunal in delivering judgment in the election petition between *Senator Joel Danlami Ikenya & Ors v Peoples Democratic Party & Ors*[147] stated the fact that it is not an investigation panel. At page 150 of the judgement, the tribunal stated as follows:

> *In effect, learned counsel wanted the trial judge to embark upon investigation outside the court. Perhaps, he should be told that it is not the duty of a court to embark upon cloistered justice by making inquiry into the case outside the court. Not even by examination of documents which were in evidence when same had not been examined in the open court. A judge is not an investigator. He should conduct a case based on pleadings and evidence adduced in open court. He should not speculate.*

Based on the above pronouncements, the tribunal held that the evidence of a lone witness would not prove all the allegations of non-voting, multiple thumb printing, irregularities and non-compliance. A lone witness could not possibly do so in an election petition of this magnitude. Corrupt practice alternates with non-compliance as a ground for election petition. The tribunal concluded by holding that all allegations on corrupt practices were not proved and consequent upon which the petitioners woefully failed to prove their case. As a result, their petition was dismissed by the tribunal.

Other petitions in the State were dismissed on technical grounds for not filing a proper application for issuance of pre-hearing notices vide paragraph 18 (1) of the First Schedule to the Electoral Act 2010[148]. Evidently, the petitioners in these cases suffered injustice in the light of subsequent Supreme Court decisions on the procedure for issuing pre-hearing notices.

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[147] Petition No: EPT/TR/G/01/2011.

[148] The petitions dismissed on this ground were Petition No: EPT/TR/R/01/2011: *Saidu Adama & Anor v PDP & 4 Ors*; Petition No: EPT/TR/R/02/2011- *Barrister Yusuf Akirikwen & Anor v PDP & 105 Ors;* Petition No. EPT/TR/S/03/2011: - *Arc. Aliyu P.S. Dankaro & Anor v PDP & Ors*; and Petition No: EPT/TR/S/04/2011 - *Rev. Jolly T. Nyame & Anor v PDP & 3 Ors.*

Only two petitions were filed in Yobe State made up of one challenging a House of Representatives return and another against a senatorial return. Zamfara State had a total number of thirteen petitions, made up of eleven State House of Assembly and two House of Representatives petitions. Out of these petitions, twelve were dismissed at the preliminary stage while the remaining one went for full trial. Victor Anyanwu, our tribunal monitor in the Federal Capital Territory, Abuja reported that apart from the Presidential Election Tribunal that sat in Abuja, FCT has three petitions at the National and the State Houses of Assembly Election Tribunal. The petitions were made up of one senatorial and two House of Representatives petitions. However, these petitions did not succeed at the trial as they were dismissed at the end of proceedings. In delivering judgment in the case of *Hon. Musa Tanko Abari & Anor v Hon. Philip T. Aduda & 2 Ors*[149], Justice O'Connell Ogbonna held that the petition "is moribund or dead". He further held that the "petition is frivolous, unwarranted, vexatious and unmeritorious", as no evidence was led in support of the grounds of the petition[150].

[149] Petition No: EPT/NASS/SEN/ABJ/1/2011- page 27 of the CTC of the judgement delivered on October 18 2011.

[150] See also *Buhari v INEC* (2008)19 NWLR (PT.1120) 246; *Amgbare v Sylva* (2009)1NWLR (Pt.1221) 1.

CHAPTER FIVE

Appeals

5.0 GUBERNATORIAL APPEALS

Appeals from the Governorship Election Tribunals went to the Court of Appeal with a right of a final appeal to the Supreme Court. All appeals arising from gubernatorial elections have been determined or have lapsed by the effluxion of time following the constitutional provision in section 285 (7)[151]. It will be recalled that under the previous legal regime, appeals in gubernatorial petitions terminated at the Court of Appeal. Based on the clamour for greater certainty in the law through pronouncements by the apex court and the seemingly relatively poor performance of the Court of Appeal in election dispute resolution, the National Assembly amended the Constitution allowing appeals up to the Supreme Court.

An important consideration in the powers of the Court of Appeal lay in section 285 (8) of the Constitution:

> *The Court in all final appeals from an election tribunal or court may adopt the practice of first giving its decisions and reserving the reasons therefore to a later date.*

The Supreme Court in *Ikenya & 2 Ors v PDP & 1222 Ors*[152] held that the Court of Appeal lacked the power to give judgement and reserve the reasons to a later date in matters which do not terminate at the court, being appeals from governorship tribunals. But it could do so in appeals from National and State House of Assembly Tribunals which terminate at the Court. However, the Court of Appeal can give a decision and give reasons for the decision later provided the reasons are given within the 60 days limit allowed by law for the conclusion of the appeal. Delivering a judgement and reserving the reasons informing the judgement indefinitely, renders the judgement a nullity. A judgement within the context of section 285 (7) of the Constitution includes the decision and the reasons for the decision. The reasons for the judgement provide the necessary materials from which appellants will raise the grounds of appeal if they intend to exercise their constitutional right to appeal the judgement.

On March 5 2012, the Supreme Court threw out the challenge to the election of Governor Isa Yuguda of Bauchi State. In the Yuguda case, the challenge by the candidate of the Congress for Progressive Change failed by a unanimous decision of the five man panel led by the former Chief Justice of Nigeria, Justice Dahiru

[151] Those that were caught by section 285 (7) include *Chief Dr Felix Amadi v INEC & 2* Ors (2012) 2 SC (Pt.1) 1 arising from Rivers State*; Ibanga Sunday Stephen Ibanga & Anor v INEC & Ors* (2011) 11-12 SC (Pt.1) arising from Akwa Ibom State; *Ikenya & 2 Ors v P.D.P. & 1122 & Ors* (2012) 3 S.C. (Pt.1) arising from Taraba State, etc.

[152] 2012 3 S.C. (Pt.1) - following *Abubakar & Ors v Nasamu & Ors*, supra.

Musdapher. The Supreme Court held that it lacks jurisdiction to entertain the appeal since the decision of the Court of Appeal is incompetent, invalid and a nullity. The said judgement of the Court of Appeal was delivered without adducing the reasons in support within the constitutional time frame in accordance with section 285 (7) of the Constitution. However, the Counsel to the CPC urged the Supreme Court to invoke section 22 of the Supreme Court Rules to hear the appeals on its merit. The Court overruled the submission of the CPC counsel and held that section 22 of the Supreme Court Rules cannot save a nullity and cannot give the court jurisdiction where there is none. In recognition of the hardship litigants go through pursuing their electoral petitions, the former Chief Justice of the Federation urged the National Assembly to amend the Constitution and make it less cumbersome. This same line of reasoning was also used by the Supreme Court in the Imo State gubernatorial decision on March 2, 2012 between the PDP and Chief Rochas Okorocha and 10 others. It was held in the Okorocha case that *a decision and the reason for it are one and the same; none is valid or can exist without the other*. This was also the position in the earlier decision in the Kebbi State gubernatorial appeal at the Supreme Court.

In *ACN v Lamido & 4 Ors*[153] where the Action Congress of Nigeria challenged the return of Sule Lamido as governor of Jigawa State, the Supreme Court held that the failure of the appellant who was the petitioner at the tribunal to accompany his petition with copies or lists of every document to be relied on at the hearing of the petition, which includes ballot papers in line with paragraph 4 (5) (c) and 41 (8) of the First Schedule to the Electoral Act 2012 as amended was a good ground for the trial tribunal to refuse to admit the documents in evidence and as such, no complaint of denial of fair hearing could arise therefrom. The appeal was unanimously dismissed. The appeal in the Zamfara State gubernatorial elections went up to the Supreme Court and was also lost on the merits of the case[154].

5.1 LEGISLATIVE AND PRESIDENTIAL APPEALS

Appeals from the National and State Houses of Assembly Tribunals were lodged at the Court of Appeal. Considering the time frame in section 285 (7) of the Constitution, all appeals have either been determined or have lapsed by the effluxion of time. After the 60 days timeframe, the Court of Appeal lacked the jurisdiction to continue with the proceedings in these appeals.

The Court of Appeal sitting in Enugu nullified the election of Senator Andy Uba representing Anambra South Senatorial district and ordered fresh election within 90 days. However, Andy Uba applied to the National Judicial Council to review the judgment on the ground that the Court of Appeal awarded reliefs that were not asked for by the petitioner. He contended that the petitioner Chuma Nzeribe asked for the cancellation of results in 14 wards out of 118 wards in the senatorial district, but the Court went beyond that by nullifying the entire result in the senatorial zone. But his

[153] (2012) 2 S.C. (Pt.11)
[154] *PDP v INEC & 3 Ors*, (2012) 2 S.C. (Pt.111)

appeal to the National Judicial Council failed as INEC has since conducted a fresh election as was ordered by the Court of Appeal where he was re-elected to represent his senatorial district. In Rivers State, the Court of Appeal Port Harcourt Division presided over by Justice Mohammed Dattijo (JCA) upheld the tribunals' judgment that nullified the election of the appellant, Senator George Sekibo and a rerun was ordered within 90 days. In Kaduna State, the Court of Appeal sitting in Kaduna upheld the decision of the election petitions tribunal which had earlier declared Alhaji Ahmed Makarfi, as the winner of the election for the Kaduna North senatorial zone.

But there were conflicting decisions of the Court of Appeal in election and pre-election matters. This created unnecessary challenges for lower courts and made the law uncertain. Dr Alex Iziyon (SAN) in *Conflicting Judgements of the Appellate Courts in Election Cases*[155] gave this example:

> *It seems to me that there are conflicting judgments by the appellate courts on pre-election matters. What are pre-election matters? They are matters whose cause or causes of action took place before the election. These may be nominations, primaries, qualification issues etc.* See *Adeogun v. Fashogbon* (2008) 17 NWLR (PT. 1115) 149 at 181, Paras. D - E. *Let us examine a few cases here in recent times on this. In Ahmed Sani Stores v. Senator Ibrahim Ida & Ors*. CA/K/EP/NA/24/11, *the Kaduna Division of the Court of Appeal held that the issue of sponsorship by a political party was a pre-election matter which the trial election tribunal lacks the jurisdiction to entertain and therefore set aside the decision of the election tribunal which has nullified the election of Ahmed Sani Stores as Senator of Katsina Central Senatorial District of Katsina State. Other group of cases from the Katsina axis were decided on the same line by the Court of Appeal, Kaduna Division. A cursory look at the ground of the petition by the petitioner before the tribunal was that the 1st Respondent at the time of the election was not qualified to contest the election as he was not sponsored by a political party in the election. On the other hand, the Court of Appeal Abuja Division in Hon. Atai Aidoko Ali Usman & Anor v. Ocheja Emmanuel Dangana, CA/A/582/2011 OF 13/12/11, held to the contrary. The facts as simple, Ocheja Emmanuel Dangana and Hon. Atai Aidoko Ali Usman emerged as candidates in the primaries conducted by their political parties PDP and ANPP respectively. In the 19th April, 2011 election into the Kogi East Senatorial District, Dangana was sponsored by PDP while Usman by ANPP. Danjuma of PDP won and was returned and issued a certificate. Usman of ANPP dissatisfied challenged the election and return before the National Assembly Election Tribunal sitting in Lokoja. The tribunal on 18th October, 2011 held that since the petition was predicated on Dangana not being qualified to contest the election as he was not sponsored and validly sponsored to contest the election as a candidate by a political party as required by section 65 (2)(b) of 1999 Constitution and section 138 (1)(a) of the Electoral Act, 2010 (as amended) even though the Tribunal criticized the primary in that it took place in Anyangba instead of Idah the Senatorial Constituency headquarters for Kogi East, nevertheless it went ahead to dismiss the petition as a pre-election matter. On appeal, the Court of Appeal allowed the appeal and held that the votes credited to PDP candidate Dangana were wasted votes and therefore ordered that Usman be returned as the candidate who won the election. The appeal to the Supreme Court was dismissed on the ground that appeal on National Assembly election matter terminate at the Court of Appeal by virtue of section 246 (3)*

[155] Being a paper presented at the NBA Benin Conference March 2012, which reviewed the performance of election tribunals.

of the 1999 Constitution. The Supreme Court did not consider the merit or demerit of the Appeal, therefore leaving the judgment of the Court of Appeal standing.

It is tempting from this scenario to recommend that all appeals should end at the Supreme Court so that all litigants get the same quality of justice. However, the number of appeals that may result from the implementation of this recommendation may overwhelm the Supreme Court.

In Makurdi Judicial Division of the Court of Appeal, at least 56 appeals from election petitions were recorded between 2011 and February, 2012[156]. According to J.S.

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1. CA/MK/EPT/01/2011 (EPT/NS/HA/8/2011) *Saidu Galadima & Anor v. Madaki Adah Goje & 2 Ors*

2. CA/MK/EPT/02/2011 (EPT/NS/HA/10/2011) *Danlami Idris Moh & Anor v Hon. Ibrahim Ahmed Aga & 11 Ors*
3. CA/MK/EPT/03/2011 (EPT/NS/NAS/1/2011) *Altai Tank Wambai & Anor v Suleman Asonya & 5 Ors*
4. CA/MK/EPT/04/2011 (EPT/NS/NAS/4/2011) *Usman Shanwilu & Anor v Suleiman Asonya Adokwe & 4 Ors*
5. CA/MK/EPT/05/2011 (EPT/NS/HA/6/2011) *A'aron Sallau & Anor v Hon. Peter mbucho & 18 ors*
6. CA/MK/EPT/06/2011 (EPT/NS/HA/7/2011) *Alhaji Yakubu Bala & Anor v Tahir Alayi & 5 Ors*
7. CA/MK/EPT/07/2011 (EPT/BN/02/2011) *Gabriel Torwua Suswam v Prof. Steve Torkuma Ugba & 3 Ors*
8. CA/MK/EPT/08/2011 (EPT/NS/NAS/2/2011) *Ahmed Abdullahi Aboki v Alh Abdullahi Adamu & 12 Ors*
9. CA/MK/EPT/09/2011 (EPT/NS/HA/13/2011) *Matthias Danjuma & Anor v Philip Aruna Gyunka & 2 Ors*
10. CA/MK/EPT/10/2011 (GET/BN/02/2011) *Peoples Democratic Party v Prof. Steve Torwua Ugba & 3 Ors*
11. CA/MK/EPT/2011 (EPT/NS/GOV/1/2011) *Umar Tanko Al-Makura v. Alh (Dr) Aliyu Akwe Doma & 4 Ors*
12. CA/MK/EPT/12/2011 (GET/BN/03/2011) *Sen. Daniel Saror & Anor v. Hon. Gabriel Torwua Suswam & 4 Ors*
13. CA/MK/EPT/13/2011 (EPT/NS/HA/14/2011) *Hon. Isa Badamasi Dahiru v. Hon. Othman Bala Adam & 2 Ors*
14. CA/MK/EPT/14M/2011 (GET/BN/02/2011) *Peoples Democratic Party v Gabriel Torwua Ugba & 3 Ors*
15. CA/MK/EPT/15/2011 (GET/BN/02/2011) *Prof. Steve Torkuma Ugba & Anor v Gabriel Torwua Suswam & 2 Ors*
16. CA/MK/EPT/16/2011 (NSHA/EPT/BN/HA/33/2011) *Ojoje Edache Reuben & Anor v Ogbole Joshua & 2 Ors*
17. CA/MK/EPT/14/2011 (NSHA/EPT/BN/HA/44/2011) *Hon. Ortse Kpev Terna & Anor v Ujege Theresa A. & 2 Ors*
18. CA/MK/EPT/18/2011 (NSHA/EPT/BN/HA/07/11) *Onjeh Daniel Donald & Anor v Hassan Anthony Saleh & 4 Ors*
19. CA/MK/EPT/19/2011 (NSHA/EPT/BN/HA/43/11) *Barr. Tombowua Tar & Anor v Hon. Akaan & 93 ors*
20. CA/MK/EPT/20/2011 (NSHA/EPT/BN/HA/25/11) *Tar Zoor Terhemen v Agbom A. Avine & 3 ors*
21. CA/MK/EPT/21/2011 (NSHA/EPT/BN/HA/25/2011) *Peoples Democratic Party v Agbom A. Avine & 3 Ors*
22. CA/MK/EPT/22/2011 (NSHA/EPT/BN/HA/25/2011) *INEC & 8 Ors v Agbom A. Avine & 3 ors*
23. CA/MK/EPT/23/M/2011 *Sen. Daniel I. Saror & Anor v Hon. Gabriel Torwua Suswam & 4 ors*
24. CA/MK/EPT/24/M/2011 *James Aegberga Gram & Anor v Christopher Afaor & 2 ORS*
25. CA/MK/EPT/25/2011 *Arc. Austin Asema Achado & Anor v Christiana Alaaga & 2 Ors*
26. CA/MK/EPT/26/2011 (NSHA/EPT/BN/REP/42/11) *Hon. Barr. Jacob Obande Ajene v Hon. Samson Okwu & 2 ors*

Okutepa, (SAN)[157], this definitely had an impact in the quality of time the tribunals

27. CA/MK/EPT/27/2011 (NSHA/EPT/BN/HA/36/11) *Letter Titus Terugwa & Anor v Ayua Terhile Emmanuel & 2 Ors*
28. CA/MK/EPT/28/2011 (NSHA/EPT/BN/REP/40/11) *Iho David Mzenda & Anor v Emmanuel Meng Udede & 2 Ors*
29. CA/MK/EPT/29/2011 (NSHA/EPT/BN/HA/34/11) *James Aemberga E. & Anor v Christopher Afaor & 2 Ors*
30. CA/MK/EPT/30/2011 (HSHA/EPT/BN/REP/14/11) *Martha Shakyum Tilly Gyado & Anor v Hon. Iorwase H.C. Heme & ors*
31. CA/MK/EPT/31/2011 *Major General Lawrence Onoja (Rtd) v Senator David Mark & Ors*
32. CA/MK/EPT/32/2011 (NSHA/EPT/BN/HA/32/11) *Stephen Adamgbe & Anor v Abraha Agba Akor & Ors*
33. CA/MK/EPT/33/2011 (NSHA/EPT/BN/HA/32/11) *Hon. Terseer Tsumba & Anor v Gbileve Orhena Adugu & Ors*
34. CA/MK/EPT/34/2011 (NSHA/EPT/BN/SEN/8/11) *Joseph Akaagerger & Anor v B.A.I. Gemade & ors*
35. CA/MK/EPT/35/2011 (EPT/NS/HA/15/2011) *Raymond d. Akolo & Anor v Godiya Akwashiki & 4 Ors*
36. CA/MK/EPT/36/2011 (EPT/NS/NAS/2/2011) *Ahmed Abdullahi Abokie & Anor v Alh. Abdullahi adamu & 12 ors*
37. CA/MK/EPT/37/2011 (EPT/NS/NAHR/3/2011) *Hon. Samuel Azanu Egya & Anor v INEC & 2 Ors*
38. CA/MK/EPT/38/2011 (NSHA/EPT/BN/REP/06/11) *Nelson G.O. Alapa & Anor v Hon. Ezekiel A. Adaji & 2 Ors*
39. CA/MK/EPT/39/2011 (NSHA/EPT/BN/REP/05/11) *Hon. Uhondo Nanev Clement Anor v Hon. Emmanuel Iyambee Jime & 2 Ors*
40. CA/MK /EPT/40/2011 (NSHA/EPT/BN/SEN/31/11*) Rt. Hon. Terngu Tsegba & Anor v Senator George Akume & 2 Ors*
41. CA/MK/EPT/41/2011 (NSHA/EPT/BN/HA/23/11) *Hon. Odufu Adams Clement & Anor v Hon. James Ochojila & 2 Ors*
42. CA/MK/EPT/42/2011 (EPT/NS/GOV/1/2011) *Alh.(Dr) Aliyu Akwe Doma & 4 Ors v Umar Tanko Al-Makura*
43. CA/MK/EPT/43/2011 (NSHA/EPT/BN/REP/07/11) *Hassan Anthony Saleh v Onjeh Daniel Donald & 2 Ors*
44. CA/MK/EPT/44/2011 (NSHA/EPT/BN/REP/40/11) *Emmanuel M. Udende v David Mzenda Iho & 2 Ors*
45. CA/MK/EPT/45/2011 *Christiana D. Alaaga v Peoples Democratic Party & 103 Ors*
46. CA/MK/EPT/46/2011 (NSHA/EPT/BN/REP/42/11) *Peoples Democratic Party v Arc. Autin Asema Achado & 101 Ors*
47. CA/MK/EPT/47/2011 (NSHA/EPT/BN/REP/13/11) H*on. Samson Okwu v Hon. Barr. Jacob Obadne Ajene*
48. CA/MK/EPT/48/2011 (NSHA/EPT/BN/RE/13/11) *Peoples Democratic Party v Hon. Barr. Jacob Obadnde Ajene*
49. CA/MK/EPT/01/2012 (GET/BN/02/2011) *Peoples Democratic Party v Prof. Steve Torkuma Ugba & 3 Ors*
50. CA/MK/EPT/02/12 (GET/BN/03/2011) *Hon. Gabriel Torwua Suswam v Sen. Daniel Saror & 5 Ors*
51. CA/MK/EPT/04/2012 (GET/BN/03/2011) *People Democratic Party v. Sen. Daniel Saror*
52. CA/MK/EPT/04/2012 (NSHA/EPT/BN/HA/36/11) *Ayua Terhile Emmanuel v Letter Titus Terungwa & 3 Ors*
53. CA/MK/EPT/05/2012 (NSHA/EPT/BN/HA/44/11) *Ujege Theresa A. & Anor v Hon. Ortese Kpev Terna & 2 ors*
54. CA/MK/EPT/06/2012 (GET/BN/02/2011) *Hon. Gabriel Torwua Suswam v Prof. Steve Torkum Ugba & 3 ors*
55. CA/MK/EPT/07/2012 (GET/BN/03/201) *Sen. Daniel I. Saror & Anor v Hon. Gabriel Torwua Suswam & 3 ors*
56. CA/MK/EPT/07/2012(GET/BN/02/2011) *Prof. Steve Torkuma Ugba & Anor v Gabriel Torwua Suswam & 2 ors*

[157] *The Performance of Election Petition Tribunals in the North Central Zone*, supra

and courts had to appreciate the issues arising from the petitions and to give their sound opinion within the time permitted by law. Evidently, this Division of the Court of Appeal had to contend with more appeals than it was reasonably expected to handle.

The presidential petition of the Congress for Progressive Change went up to the Supreme Court where it was dismissed and the decision of the Court of Appeal affirmed. Generally, there were a flurry of appeals and many petitioners attempted exhausting their rights of appeal. But this trend excludes most petitions from the State House of Assembly which were not appealed against. Apparently, the high cost of litigation may have been responsible for this.

CHAPTER SIX

Effectiveness and Fairness of the Tribunals - Perceptions and Reality

6.0 THE REALITY OF ELECTORAL ADJUDICATION

In the adjudication of election disputes, courts are called upon to play a fundamental role to strengthen the pillars of democracy. It is not only about justice to the litigants but justice to the whole society and the respective constituencies who voted in the election. It is justice as to whether the votes count or the votes of constituencies are replaced by usurpers who assume office against the wish of the people. The adjudication process where elections are hotly contested will contribute to the determination of the quality of governance and the government's ability to meet the basic rights and needs of the people. If those who actually won elections are returned through the courts, good governance will likely ensue while impostors who did not win the popular votes but find themselves in positions of power will likely subvert processes and create an atmosphere of impunity to cover their tracks. As a popular aphorism, it is stated that a people cannot rise above the quality of their government. Thus, justice as conceptualised here is not about technical statements of the law but whether justice has been seen to be done by those who stayed under the sun and the rain to cast their ballots. The average Nigerian has lost hope in the ability of government (executive and legislature) to protect his rights and the judiciary is glorified as the last hope of the common person. The poser is; did the judiciary through the tribunals live up to this expectation? What was the public perception on the adjudication of the cases?

A learned commentator had stated as follows[158]:

> *Once again, the increasing involvement of the judges in the resolution of electoral disputes has continued to question the legitimacy of the democratic process in Nigeria. A situation whereby candidates are not elected by the electorate but imposed by courts and tribunals on technical grounds is a judicial subversion of democracy. The dangerous trend has to stop. All stakeholders should insist on the immediate adoption of a transparent electoral system that is devoid of manipulations by compromised electoral bodies and corrupt politicians. Free and fair elections cannot take place in a country where the law is interpreted to provide immunity for election riggers.*

Thus, a case is made for sound electoral reform which should allow the electorate the final say on who represents them instead of what has been termed *democracy*

[158] *180 Days: Is the Supreme Court Wrong?* - Femi Falana in Thisday Newspaper of Tuesday, February 28 2012 at page vi.

by court order[159]. Indeed, Nigeria's Vision 20:2020 acknowledges that the country is still faced with the challenge of conducting free and fair elections[160] and one of the four dimensions of the Vision, the institutional dimension, is the vision for a stable and functional democracy where the rights of citizens to determine their leaders are guaranteed[161].

6.1 PARAMETRES TO BE USED

This report shall use the parameters of the underlying jurisprudence, timeliness, openness and transparency of the tribunals, security, performance of lawyers and judges, the challenge of technicalities, corruption, etc to analyse effectiveness and gauge the fairness of the tribunals. However, for partisan minds, the issue of fairness is not based on any objectivity, it depends on whether they are winning or losing. Indeed, the expected pecuniary benefits that will flow from assuming office will blur their objective analysis. For instance, if the judgment is in favour of the petitioner, then justice according to the petitioner has been achieved but if it is against the petitioner, he may allege bias and injustice. The reactions of petitioners and the respondents in the Kebbi State gubernatorial election petition has gone a long way in bringing out the issue of partisanship in analysing the effectiveness and fairness of the tribunals. Initially when the judgment was in favour of the Congress for Progressive Change, they accepted the judgment as truly representative of justice and fairness. But when the Appeal Court overturned the judgment against them, they rejected the judgment. The CPC chairman in the State Alhaji Suleiman Nasih in rejecting the result said that they will appeal against it at the Supreme Court whereas the PDP through its lead counsel Yakubu Makyan, SAN, accepted the verdict of the Court of Appeal. It will be recalled that the PDP had earlier rejected the judgment of the tribunal when it was against them. The Supreme Court eventually allowed the appeal and upheld the decision of the Tribunal and set aside the judgment of the Court of Appeal. A dispassionate and unbiased disposition will therefore be used to evaluate effectiveness and fairness.

In Hon *Ozo Ughamadu V Nwogbo*[162], the tribunal did all in its powers with the cooperation of counsel involved in the case, to conclude the petition within 180 days prescribed by the Constitution. The tribunal delivered its judgment on the 8th day of July 2011, but for some inexplicable reasons failed, refused and or neglected to release the judgment which was read in open court until the 8th day of August 2011, 32 clear days after it was delivered, thereby affectively circumscribing the 60 days constitutional provision within which to conclude the appeal from the date of the judgment. Of course, the unfortunate result happened as the appeal lapsed to the

[159] By Legal Defence Centre being *an analytical evaluation of the 2007 Election Petition Tribunals in Nigeria,* January 2009.
[160] Nigeria's Vision 20:2020 at page 71.
[161] Ibid at page 8.
[162] Petition No. EPT/AN/HR/7/2011

chagrin of the Appellants and jubilation of the Respondents. It was struck out by the Court of Appeal, Enugu Division who openly admitted the responsibility of the tribunal for the lapse and apologised profusely but felt bound by the Constitution to strike out the matter[163].

In the case *of Hon. (Sir) Stanley Ugochukwu Ohajuruka vs Theodore Orji & Ors*[164]*,* delays by the courts and their registries and no fault of the petitioner led to the cause of action being extinguished by the 60 days rule for appeals. A learned commentator had asked if it was wrong for the petitioner to feel cheated in such a circumstance[165]:

> *How else would you expect a Governorship candidate who had expended time and resources to feel when he had to resort to petitioning the President of the Court of Appeal in order to force the release of his judgment after 32 days of the decision to enable him effectively pursue his constitutional right of a further appeal to the Supreme Court*.

6.2 NATURE OF ELECTORAL PETITIONS - THE NEED FOR A NEW JURISPRUDENCE

The idea that electoral petitions are *sui generis*[166] and as such, every technicality should be explored to defeat the ends of justice seems to be the jurisprudence of might is right, an open invitation to anarchy since law cannot remedy injustice, violation of laws and its attendant mindset of impunity which is translated into corruption and poor governance. This was the background for military interventions in governance in Nigeria. Instead of the nature of election petitions being the reason for violation of peoples' right to choose their leadership, its nature provides every reason to scrupulously and meticulously examine whether substantive law has been complied with and to protect the right of the people to elect a government of their choice. The nature of an election petition should de-emphasise adjectival law which to all intents and purposes ambushes substantial justice.

Upon the consideration of jurisprudential schools of thought, if law is viewed from the Austinian positivist command of the sovereign backed by sanctions[167], the poser will be; what is the command of the sovereign in electoral petitions? Is it to confirm the choice of the people or to strike out cases on frivolous technicalities? The answer must be in the nature of confirming the choice of the people because the command of the sovereign which is the law is that the votes must count. Even if the hierarchical

[163] *Performance and Work of the Election Tribunals in the South East Zone* by G,C. Igbokwe Esq, supra.
[164] Petition No: EPT/AB/GOV/5/2011
[165] *Performance and Work of the Election Tribunals in the South East Zone* by G.C. Igbokwe Esq, supra.

[166] *Sirika v Bello* (2011) 2 NWLR (Pt.1232) 452 at 468-469; *Buhari v Yusuf* (2003) 14 NWLR (Pt 841) 446 at 498-499.
[167] John Austin in *The Province of Jurisprudence Determined*, (Ed Hart), 1954.

structure of Hans Kelsen's positivism[168] is used to assess technical interpretations of electoral laws against interpretations weighing in favour of substantive justice, it is evident that what fits into the constitutional hierarchy of laws in the grundnorm is an interpretation that makes every vote count.

If electoral jurisprudence is informed by the utilitarianism of its impact on society through the measurement of happiness by the proverbial *felicific calculus*, which quantifies the pain or pleasure that will result from choosing alternative causes of action in our conduct, then the happiness of the majority is not improved through using technicalities to defeat the ends of justice. By the historical school of jurisprudence which sees law as the spirit of the nation and in a constant state of evolution; law grows with the growth and strengthens with the strength of the people and finally dies away as the nation loses its nationality[169]. Nigeria which claims to be one nation founded on one destiny should be growing and as such, reinforcing the fundamental tenets of democracy and good governance and these tenets are antithetical to using technicalities to enthrone impostors into elected positions. Finally, the way to satisfy the claims and demands of society, with the least sacrifice is by enthroning substantive justice over technicalities in electoral cases[170].

There is a level of impunity in holding that mere court rules and procedures should trump substantive justice based on the constitution which is the grundnorm. Court rules and technical provisions are forms and procedures, a means to the end, a guide. When you put them on the scale with the ends of justice and you weigh the form to be greater than the substance, then, that is a substantial fallacy of reasoning and a miscarriage of justice. Indeed, it seems some judges of electoral tribunals look for every conceivable reason and opportunity to short circuit justice by striking out cases and concluding their jobs in record time. This is not the spirit of justice[171].

The fact that section 137 of the Electoral Act limits the category of persons who may file petitions to candidates and political parties makes the voter to be of no consequence and a mere spectator even if the votes did not count. There is the need for a new concept which grants locus standi to all taxpaying citizens who are registered voters to sue to challenge the outcome of the election. If the object of election petitions is to ensure that the votes count in the decision of who takes an elective seat, why should the voter not have locus to sue? If sovereignty belongs to the people of Nigeria from whom government through the constitution derives all its

[168] Geoffrey Sawyer: Law in Society (O.U.P) Pl: Kelsen H. *Society and Nature: a Sociological Inquiry*, London, Routledege and Kegan Paul, 1946: *Pure Theory of Law* 50 LQR, 51 (1953).
[169] Von Savigny on *the Vocation of our Age for Legislation and Jurisprudence* (1831) (Haywood Transl) at page 27.
[170] Dean Roscoe Pound, *Philosophy of Law* (1954) page 47.
[171] See the overruled reasoning of the Court of Appeal in the unreported case of *Akpanudoehe & 2 0rs v Akpabio & 3 Ors*, supra.

powers and authority[172], why should the sovereigns not be in a position to challenge poll returns which they deem not reflective of their votes?

6.3 OPENNESS OF TRIBUNALS

The Electoral Act provides that election petitions shall be heard and determined in an open tribunal. Paragraph 19 of the First Schedule to the Act provides as follows that "e*very election petition shall be heard and determined in an open tribunal or court*." This provision on openness is in tandem with the demands of section 36 of the Constitution on the right to fair hearing. Thus, all the tribunals sat in places where the public could have access to them. An open trial allows access to dispassionate observers and the media so as to form an opinion whether justice had been done in the trial. However, there were some reported challenges to the tribunals sitting in public. The Tribunal venue in Nasarawa was reported to be too small for its purposes. The venue can comfortably take twenty litigants and ten lawyers. The venue cannot therefore accommodate the number of lawyers appearing in the cases and court attendees who want to witness the trials. There were not enough seats for lawyers and some lawyers were compelled to wait outside the court until those inside finish their case. Also, the case of the Borno State tribunals that were relocated to Abuja due to security threats raises the issue of which publics the proceedings were open to. Normally, those interested in the proceedings are persons who voted and have a direct interest in the outcome of the proceedings but the security situation denied many of them the opportunity to follow proceedings on a day to day basis.

6.4 THE TIME FOR FILING AND DETERMINING PETITIONS

One issue that came up several times in the course of the adjudication of election cases related to the time allowed for filling, hearing and determination of the petitions. By the virtue of Section 285 (5) of the Constitution,[173] election petitions shall be filed within 21 days after the date of the declaration of the result of the elections. It was consequent upon this provision that many petitions were dismissed. For instance, the petition in *Ekereobong Udo Afia & Anor v Godwin Oton Charlie & Ors*[174] was dismissed because it was filed after 21 days stipulated in the Constitution. The election in this case was conducted on the 26th of April, 2011 and the result was declared on the same day. The petitioner filed the petition on the 18th of May, 2011 which is 23 days from the date of declaration. The petitioner had argued that though the result was declared on the 26th of April, 2011 but that the result was *"announced"* on the 28th of April 2011 thereby making its filing to fall within 21 days. The tribunal held that there is distinction between the date of declaration of result and the date of announcement. Whereas the date of declaration is the date

[172] Section 14 (2) (a) of the Constitution.
[173] 1999 Constitution as Amended
[174] EPT/AKS/HA/29/2011.

contained in the Form EC 8 E (i), the other date is unknown to law and as it cannot be authenticated, hence the petition was dismissed because it was incompetent.[175]

Many other petitions were struck out based on the foregoing ground. They include *Akwaowo Isidore Akpan & Anor v Hon. (Dr.) Ekaette Ebong Okon & 3 Ors*[176], *Pastor Etop Robson Imah & Anor v Eyakeno Okon Etukudo & 3 Ors*[177]*.* To the petitioners, they did not get justice in the decision of election tribunals on the 21 days for filing of petitions. There is no gainsaying that all the parties cannot be satisfied once a judgment or ruling of court is delivered. There must be a winner and a loser. The essence of limiting the time of filling election petitions is to avoid delay in the dispensation of justice.

Section 285 (6) provides that an election tribunal shall deliver its judgment in writing within 180 days from the date of filling of the petition while section 285 (7) provides that an appeal shall be heard and disposed off within 60 days from the date of the delivery of judgement of the tribunal or Court of Appeal. The purport of this is to prevent the practice of endless litigation but it has also worked undue hardship on petitioners. The idea of including Saturdays, Sundays, Public holidays and court vacation periods in the computation of the 180 and 60 days as held by the Supreme Court can only promote injustice and it is antithetical to common sense and reason. Would an ordinary and reasonable person come to the conclusion that justice has been done when the Supreme Court proceeded on vacation and could not sit to entertain an appeal and came back to declare an appeal dead for effluxion of time? In good conscience, the answer to the above is a resounding no. Also, computing the 60 days time frame for disposal of an appeal, when the records of appeal are still being compiled, works hardship against the appellant. Cases remitted by higher courts for retrial based on miscarriage of justice by lower courts have been caught up by the time frame and have also lapsed due to effluxion of time. This does not look or sound like real justice.

Should a litigant who has complied with all the requirements of the law be punished for the inability of the judiciary to hear and determine his or her appeal within 60 days as provided by the law? The position of the Court of Appeal, when it refused to punish the litigants for the inadvertence of the Secretary of the tribunal in the case of *Uduaghan v Ogboru*[178] is recommended. Agbo JCA observed that:

> "*It is our view that it does not require any hard thinking to understand that the duty or responsibility of compiling and serving the records of appeal by virtue of paragraph 9 of the Practice Direction 2011, fall squarely on the Secretary of the lower tribunal and*

[175] See page 6 of the C.T.C of the unreported ruling in petition no: EPT/AKS/HA/29/2011: *Ekereobong Udo Afia & Anor v Godwin Oton Charlie & Ors* delivered on Tuesday the 16th day of August, 2011.
[176] Petition No: EPT/AKS/HA/28/2011.
[177] Petition No. EPT/AKS/HR/25/2011.
[178] (2012) 1 NWLR (pt 1282) 521 at 537 paras E-G.

certainly not the appellant … the sin of the Secretary to the lower tribunal are his and the appellant cannot be punished for it. For it would be unfair and unconscionable to do so"

A learned commentator described what happened before some tribunals in obedience to the timeframes in the following words[179]:

This has given rise to the delivery of justice with pragmatic speed. In fact, at times the witnesses are merely called upon to adopt their statements on oath and are immediately cross examined within regulated minutes as if in a quiz competition, and so on and so forth. And because of the speed of the hearing and fast procedure adopted by the tribunals, some of the judgments delivered by them with due respect were riddled with a comedy of both typographical and legal errors. There is an instance where the judgment delivered at about 7pm to catch up with time frame, was devoid of legal certainty as to who won and this prompted both counsel acting for petitioner and respondent to contemporaneously ask for costs as nobody knew who won! At times, documents are admitted by the tribunal suo moto on grounds of catching up with time already lost. Counsel were ordered to file written addresses within 48 hours or less in some cases and judgment followed in the following 48 hours!

There are also other arguments against the strict and unbending enforcement of section 285 (6) and (7) of the Constitution. Chika Madumere and Kemdi Opara who were candidates and litigants before various tribunals that handled disputes arising from the 2011 elections[180], had through their counsel, Chief Mike Ahamba, SAN approached a Federal High Court in Abuja, asking it to declare section 285 subsections (6) and (7) of the Constitution, null and void. They argued that section 285 subsections (6) and (7) runs counter to the right to fair hearing guaranteed under section 36 (1) of the Constitution, adding that section 36 (1) is fundamental and inalienable to any adjudicatory process including election petitions. They maintained that the procedure for alteration of the Constitution under section 9 (2) of the Constitution is different from the procedure under section 9 (3) for the alteration of any provision under Chapter IV thereof. Under section 9 (2) of the Constitution which was employed by the National Assembly, they needed only two thirds majority of all the members and approval by a resolution of the Houses of Assembly of not less than two thirds of all the States. However, section 9 (3) of the Constitution requires four fifth majority of all the members of the National Assembly before seeking the approval of State Houses of Assembly. Accordingly, section 36 (1) of the Constitution could not have been altered, and was not altered by the First, Second and Third Alterations of the Constitution so far made. Subsections (6) and (7) of section 285 of the constitution have created a confusion as to the right to fair hearing of a party in an election petition. Therefore, they insisted that section 285 (6) and (7)

[179] *Public Perception of the Work and Performance of Election Petition Tribunals*, Mudiagha Odje, supra.
[180] Petition Nos. EPT/IM/SHA/27/2011 and , EPT/IM/NASS/HR/11/2011

cannot validly co-exist with section 36 (1) in the Constitution, and in event of conflict, section 36 (1) shall prevail.

6.5 THE ASCENDANCY OF TECHNICALITIES

A plethora of petitions were struck out on the ground that the petitioners did not apply for the issuance of the pre-hearing notice after 7 days of service or receipt of the respondents reply[181]. The essence of this provision is to make the petitioners more serious with their cases. Some of these petitions were dismissed on the ground that the proper procedures were not followed in applying for the issuance of the notices. This dismissal of petitions on this ground occasioned injustice because it is a dismissal that was based on technicality, not on the merits of the case.

The form for the issuance of pre-hearing notices was an issue before tribunals and the Court of Appeal before the Supreme Court held that the application for the issuance of pre-hearing notice could be made by letter, on notice, ex-parte or orally[182]. Virtually all the petitions in Lagos State were dismissed based on non compliance with the Electoral Act in applying for the issuance of pre-hearing notices[183]. The tribunals insisted that rules of court were meant to be obeyed at the pain of punishment which involved the dismissal of cases. Instead of facing the substance of the petitions, the tribunals resorted to technicalities which worked hardship on the petitioners and society. Some divisions of the Court of Appeal also followed this strict interpretation of the law. The petitioners thereby suffered injustice due to a wrong interpretation of the law by the tribunals and the Court of Appeal. By indulging in the practice of dismissing petitions based on frivolous technicalities, justice was thrown overboard. However, some divisions of the Court of Appeal were more liberal and their decisions were in tandem with the later Supreme Court decision on the subject matter. For example, the Court of Appeal decision in *Isa v. Tahir*[184] stated that:

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[181] Tribunals in Anambra, Benue, Akwa Ibom and Lagos States, etc, were notorious for this.

[182] *Ugba & Ors v PDP & Ors*[182] *and Udoeghe & Ors v Akpabio & Ors.*

[183] They are were Petitions No./LEGH/EPT/L/2011- *Labour Party v INEC & 2 Ors*; NA/LEGH/EPT/L/2/2011- *Mr. Segun Adewale & Anor v INEC & 2 Ors*; NA/LEGH/EPT/L/3/2011- *Hon. Dimeji Muse Awojobi & Anor vs INEC & 2 Ors;* NA/LEGH/EPT/L/4/2011- *Oluremi Babatunde Adeyelu & Anor v Ganiyu Oladunjoye Hamzat & 8 Ors*; NA/LEGH/EPT/L/5/2011- *Hon. Moshood Adegoke Salvador v INEC & 2 Oors*; NA/LEGH/EPT/L/6/2011- *Oladapo Durosinmi-Etti vs Mrs Oluremi Tinubu & 3 Ors*; NA/LEGH/EPT/L/7/2011- T*olagbe Animashaun vs Mrs Oluremi Tinubu & 3 Ors;* NA/LEGH/EPT/L/8/2011- P*rince Sunday Bamidele Aderonmu & Anor v INEC & 2 Ors;* NA/LEGH/EPT/L/9/2011- M*r. Cosmas I. B. Okoli & Anor v Hon. Ganiyu Tunji Olukolu & 2 Ors*, NA/LEGH/EPT/L/10/2011- H*on. Rotimi Osunsan v Mr. Babatunde Alliu Kazeem & 2 Ors;* NA/LEGH/L/11/2011- B*arr. Olajumoke Josephine Sawyer & Anor v Adeyemi Sabitun Ikuforiji & 2 Ors;* NA/LEGH/EPT/L/12/2011- N*ational Conscience Party & Anor v The Resident Electoral Commission & 3 Ors.*

[184] CA/YL/EPT/ADS/HA/2/2011

….to hold that to apply for the issuance of Pre-Hearing Notice under Paragraph 18(1) of the of Schedule is restricted to filing a Motion on Notice or ex-parte to activate the issuance of Form TF007 and, therefore, reject the process filed by Petitioner, is to be hypocritical, and turn the Court to an agent or instrument of oppression and injustice, to celebrate procedural technicalities at the expense of justice on the merit.

In Anambra State, less than 13% of the petitions were heard on the merit; in Ebonyi, about 63% of the petitions were heard on the merit; in Enugu State, 66.6% of the petitions were heard on the merit; in Imo State, trial on merit took place in only four petitions which represents about 8.9% of the total petitions filed. It is imperative to recall the words of a learned commentator on technicalities[185]:

Persistent inability by aggrieved parties to prove obvious electoral malpractices is a sure source of heat to the polity. It is not right for impunity to be encouraged so that each candidate will try to win by all means since the victory can never be over turned - no thanks to technicalities.

In Kebbi State, the Court of Appeal sitting in Sokoto set aside the judgment of the Election Petition Tribunal sitting in Kebbi that nullified the election of the Governor Sa'idu Dakingari of the Peoples Democratic Party and ruled in his favour. While delivering the judgment, Justice Aminu Sanusi (JCA) stated that:

.. the election was free and fair. The Tribunal had no right to cancel the election, because the judges themselves admitted that there were no malpractices during the election.

However, the Congress for Progressive Change (CPC) appealed to the Supreme Court which on the 24th February, 2012 set aside the judgment of the Court of Appeal and affirmed the decision of the Tribunal nullifying the election of Governor Dakingari and ordered a fresh election. But the Supreme Court based its decision on the fact that the Court of Appeal gave its judgement within 60 days allowed by the Constitution but failed to give the reason for the judgement until 71 days which was outside the timeframe allowed by the Constitution. As such, it held that the judgement of the Court of Appeal was null and void. The Court held that when section 285 (7) of the Constitution provides for the decision of a Court, it means the decision and the reasons for the decision. As such, a decision without the reasons for the same in law is no decision at all. But a Court can give a decision and give reasons for the decision later, provided the reasons are given within the time limit allowed by law for the conclusion of the case. Thus, the Court did not look into the merits of the decision by the Court of Appeal but used technicalities to order for fresh election. The Supreme Court essentially punished a litigant for the sins of the Court of Appeal and technicalities triumphed over a finding that there were no malpractices during the election.

[185] *The Performance of the Election Petition Tribunals in the South East Zone* at page 37 being a paper presented by Donald Chika Denwigwe, SAN at the NBA Conference on the Election Petition Tribunals on 15th – 16th March, 2012 at Benin City, Edo State.

6.6 THE BURDEN AND STANDARD OF PROOF

The issue as to who bears the burden of proof in electoral petitions and the nature of that burden of proof is fundamental in the determination of whether justice has been done to the litigating parties and the society at large. The general legal principle is that he who alleges must prove which makes eminent sense in normal judicial proceedings. Once crime is alleged in election petition, the standard of proof is elevated to proof beyond reasonable doubt used in criminal trials[186]. Requesting a petitioner to prove allegations beyond reasonable doubt, when the evidence he may need is likely in the hands of agencies that perpetuated the crime, and who normally will be unwilling to facilitate proof of their crime, will continue to fuel impunity for violation of electoral laws.

When the election management body deliberately flouts the procedure and rules meant to ensure free and fair elections such as serialisation and numbering of ballot papers[187] and a petitioner seeks to annul elections based on this failure, does it make sense to ask the petitioner to show how this failure affected the outcome of the election? The legislature had a reason for making this provision - to check fraud and to keep a trail of the ballot papers. It accords more with reason to request the election management body to show cause informing its decision to flout the law and that despite this violation of the law, the outcome of the election was substantially based on the votes of the people.

The recommendation of the Uwais Electoral Reform Committee to shift the burden of proof from the petitioners to INEC to show, on the balance of probabilities that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate can help to ameliorate the injustice in the system. Requesting a petitioner to prove that non compliance took place and that the non-compliance substantially affected the result of the election is such a high hurdle that cannot be scaled, especially at presidential election level. Apparently, this may have been the reason why no presidential election has been annulled by the courts in Nigeria's electoral history. Even if we do not accept the whole Uwais Committee recommendation to entirely shift the burden of proof; at least, where a petitioner is able to show instances of non compliance with the Act, the burden of proving that the non compliance did not substantially affect the outcome of the election should be placed on the election management body.

6.7 PERFORMANCE AND CONDUCT OF LAWYERS AND JUDGES

Legal practitioners generally have a right of audience to represent parties in courts in Nigeria. This right was not abridged by the tribunals. Petitions were presented and argued by lawyers. Majority of the lawyers comported themselves credibly well.

[186] *Nwobodo v Onoh* (1984) 1 S.C.N.L.R 1.
[187] Section 44 (2) of the Electoral Act.

However, there were a few who departed from the norm. According to one of the Judges who sat in one of the panels:

> *The performance of Counsel was shocking and indeed abysmally poor, particularly of local Counsel as those from outside the jurisdiction performed creditably well. The case being put forward by Counsel in one of the matters was totally outside the facts in the pleadings that attempts by the Tribunal to prod counsel went unheeded with tactlessness and hostility. Some of the Counsel also failed to display adequate knowledge of the provisions of the Evidence Act as well as the provisions of the Electoral Act relating to the procedure applicable at the Tribunal. It was strange to find a Counsel of considerable years at the Bar objecting to the filing of a Further Affidavit and Reply on Points of Law pursuant to the provisions of Paragraph 47(5) of the 1st Schedule to the Electoral Act. Stranger still was his insistence on filing a process after these processes that he called a Rejoinder which is unknown to the 1st Schedule of the Act. More galling perhaps is the arrogance and self confidence that was employed in displaying such ignorance of the applicable procedural Rules. The Tribunal discovered that it was not only this Counsel that employed the use of the word Rejoinder, that the Tribunal had to ask whether it was provided for in the Civil Procedure Rules of the State, and rather surprisingly it was not as the Rules are similar to the Civil Procedure Rules initiated by Lagos State in 2004. This clearly shows that Counsel were unfamiliar with the Applicable procedural Rules. The Tribunal was also confronted with the increasingly bad and insidious acts of Counsel that is slowly creeping into our corpus juris by writing petitions, and courting extra judicial solutions to matters purely judicial, instead of filing appeals as provided by Law, against decisions they are aggrieved with. In a particular instance where allegations of bias were raised, they were not based on any recognized principles of law but solely on facts that the tribunal did not adjourn the matter and granted costs in the absence of Counsel as well as that (appealable) decisions of the Court were granted against them, the irony in this matter was that one such decision of the Tribunal appealed against was upheld by the Court of Appeal. The Tribunal also found that the atmosphere and the environment, where these petitions were for determination, were riddled with suspicion and a general distrust by Counsel of other Counsel and the Tribunal.*
>
> *The conduct of Counsel was also shocking and most reprehensible, no etiquette and no decorum, hardly ever any respect for the Tribunal and none for other Counsel, no grace and of course no gratitude for those little courtesies that those steeped in the greatest traditions of the Bar and Bench have taken for granted. The Counsel were also generally tacky, lazy, tardy and generally unwilling to go on with their cases and were wont to think that adjournments were to be granted to them just for their asking and at their whims and caprices. It must be clearly emphasized that this was the general attitude of most Counsel who appeared before the Tribunal and practises in that jurisdiction. However a few of the Counsel who were also from the jurisdiction and Counsel who came from outside the locale did not exhibit such indecorous behaviour.*
>
> *It is my opinion that the NBA should in its continuing legal education programme for members of the Bar continue to address this issue of decorum and etiquette at the*

Bar and in the Courtroom specifically, if we must continue to justify "Gentlemen of the noble Profession" tag to wipe out such indecorous behavior I had talked about."[188]

This was also corroborated from the North Central zone where it was reported that some senior members of the Bar who should lead by example held the tribunals in contempt and exhibited unpardonable professional conduct towards the bench. They addressed tribunals with their hands in their pocket and when corrected by the tribunal judges, they openly insulted them[189]. Some lawyers became emotionally attached to the case of their clients and thereby became their mouthpiece. On flimsy excuses, petitions were sent to the President of the Court of Appeal requesting tribunal members to disqualify themselves from further participation in the proceedings. Some lawyers even had cause *to argue from both sides of the mouth* in different petitions[190]. This is a departure from the stipulation of professional ethics which stipulates that a lawyer owes allegiance to a higher cause, being the cause of truth and justice, and as a minister in the temple of justice, must disregard the most specific instructions of his client if it conflicts with his duty to the court[191].

The fact that interpretation of some key provisions in the Electoral Act was unsettled also affected the performance of the tribunals. Divisions of the Court of Appeal took different positions on the issue of the procedure for issuing pre-hearing notice with some insisting that it must be very formally commenced whilst others were more liberal. The tribunals being bound by the doctrine of *stare decisis* to follow the judgements of superior courts had to pick and choose the judgements to follow[192]. At the end of the day, two litigants whose counsel had followed the same procedure got different interpretations of the law and indeed different outcomes for their petition. By the time the Supreme Court finally laid the matter to rest, many petitioners had lost their cases on what later came out to be a wrong interpretation of the law.

It was also reported that some lawyers undertook much more petitions than they could diligently prosecute and this resulted in non-diligent prosecution or defence of

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[188] Hon. Justice O. Ogunfowora of Sagamu High Court stated this in Benin on the 16th of March, 2012 while delivering a paper titled: *Performance and Conduct Of Lawyers at the Election Petition Tribunals.*

[189] *The Performance of Election Petition Tribunals in the North Central Zone* by J.S Okutepa, SAN, supra

[190] Ibid

[191] See Lord Denning in the *locus classicus* of *Rondel v Worsely* (1967) 1 Q.B. 443, 502

[192] See the decisions in Appeal No. CA/J/EP/HR/127/2011: *Aliyu Ibrahim Gebi vs. Alhaj1 Garuba Dahiru* delivered on 23/8/2011 by a full Court of five Justices of the Court of Appeal: Appeal No. CA/YL/EPT/ADS/HA/2/2011: *Mr. Simon Isa & Anor v. Alhaj1 Sa'ad Tahir & Anor* delivered on 06/9/2011; Appeal No. CA/YL/EPT/TR/SE/5/2011: ARC. *Aliyij Dainkaro & Anor v. PDP & Ors* delivered on 06/9/2011; Appeal No. *CA/YL/EP T/TR/6/2011: Rev. Jolly T. Nyame & Anor vs. Peoples Democratic Party & Ors* delivered on 06/9/2011, and Appeal No. CA/E/EPT/06/2011: *Lawrence C. Ezeudu v. Olibie John & Ors* delivered on 05/9/2011.

the petitions. In some cases, they failed to meet up with the demands of the assignment. Cases of non-diligence on the part of lawyers manifested in the areas of non or late filing of Application for Issuance of Pre-hearing Information Sheet as in Form TF 007 and incessant applications for adjournment contrary to paragraph 25 (1) of the First Schedule to Electoral Act[193].

6.8 SECURITY AT THE TRIBUNAL VENUES

The provision of security is fundamental to every human endeavour. Judges, lawyers, litigants and the public at large need a sense of security, freedom from attacks and reprisals to be able to attend tribunal sittings, perform their duties and eventually facilitate justice. Since the conclusion of the 2011 elections, Nigeria has witnessed unprecedented security challenges. Crime and terrorism had been on the increase, ranging from bombing and shooting in the north while kidnapping for ransom and armed robbery became prevalent in the south. In the north, the group Boko Haram appears to have elevated its crimes to sheer terror and had made unreasonable demands on the state. It regularly bombs government institutions, churches and public places to drive home its reign of terror. Thousands of lives and property worth billions of naira had been lost in the process

Based on the above scenario, security was beefed up around tribunals especially in the northern states. Boko Haram issued threats to bomb and kill tribunal members if the tribunals did not nullify the results of certain candidates and declare others as winners in Borno State. The tribunals sat under very tight security and most times in camera. Sometimes, few members of the press were granted access to the venue. The Borno tribunals were later relocated to Abuja from where they carried out their hearings. At tribunals in Kaduna, members of the public were frisked with metal detectors before being allowed into the premises. The Oyo State Tribunal recorded the presence of armed uniformed and plain cloth security men and bomb detectors. Tribunal attendees were screened before being allowed into the court.

On the 6th of June 2011, at the Nasarawa Governorship Tribunal, a group of youths of the Congress for Progressive Change forced their way into the tribunal hall and challenged members of the tribunal. The tribunal members ran away. The tribunal was forced to adjourn to June 27 2011 to enable the police authorities provide security in the tribunal premises and their residence in the hotel.

The Governorship Tribunal in Benue State also faced security challenges and had to suspend sitting for some days pending consultations with the President of the Court of Appeal. The chairperson of the tribunal, Justice Daisy Okocha resigned over

[193] Performance and Work of the Election Petition Tribunals in the South-East Zone at page 7 *(delivered by Barrister Emeka Etiaba at the N.B.A Conference on Review of the Performance of Election Petition Tribunals in Nigeria , 15th – 16th March, 2012 in Benin, Edo State)*

allegations of insecurity after some unknown persons deflated the tyre of her car while the tribunal was in session. Her replacement, Justice Munir Ladan also quit citing threats to his life and family. This was barely a month after Justice Daisy Okocha who was assigned the case resigned. Sources close to the Judge indicated that Justice Ladan had received threat calls and messages; and his house in Kaduna was broken into by unknown gun men while valuable materials were carted away[194]. The tribunals in Plateau State were forced to abandon sitting for some days due to the general unrest in Jos, the Plateau State capital. We could not confirm if these security problems in anyway influenced the judgments delivered by the tribunals.

6.9 CORRUPTION

Corruption has permeated every aspect of Nigerian life. There were allegations of corrupt practices against tribunal members and the non judicial staff in some states during the hearing of petitions. In Nasarawa State, the secretary of the National and State Houses of Assembly Election Tribunal, Mrs. Chinyere Dike was withdrawn following a confirmation that she collected money from Senator Sulaiman Adokwe for the tribunal to dismiss the petition against him. She was sent back to her primary duty post in Ibadan pending further disciplinary action.

The Anambra State National and State House of Assembly Tribunal (Panel 1) was dissolved by the President of the Court of Appeal on persistent allegations of corruption and partisanship. It was alleged by the ruling party in the State, the All Progressive Grand Alliance (APGA) that Panel 1 was compromised with the sum of N90 million by the PDP. In Panel 2, led by Justice Y.A. Adesanya, there was an allegation that the assistant secretary to the tribunal smuggled in some documents into the record of the court. In Kebbi State, the PDP through its chairman sent a petition against the members of the legislative tribunal. The petition was sent to the President of the Court of Appeal and the Chief Justice of Nigeria alleging bias and corruption by the tribunal in favour of the Congress for Progressive Change.

In Akwa Ibom State, there were unsubstantiated allegations against the Gubernatorial Election Petition Tribunal. It was alleged that the judges actually gave the incumbent governor, Godswill Akpabio, a copy of the judgment in advance of its delivery. It was further alleged that Mr. Akpabio and his associates staged a major celebration at Government House in Uyo as well as a series of celebrations at other locations in anticipation of formal announcement of a judgement the governor had secured by corrupt means. It was revealed that Mr. Akpabio lodged panel members in Davok Hotel located in the expensive Ewet Housing Estate. The hotel reportedly belongs to Mr. Akpabio's wife and that one of the tribunal members, recently received a car gift from Akpabio [195].

[194] See pointblanknews.com published on July 25, 2011.
[195] See Sahara Reporters on Judicial *Scam As Akwa Ibom Tribunal Dismisses Election Petition Against Akpabio* Posted, July 18, 2011.

In Imo state, there were allegations that the chair of the Court of Appeal panel that was billed to hear the appeal of the Peoples Democratic Party, Justice O. Uwa was out to compromise the panel's decision. The allegation was contained in a petition written by the All Progressive Grand Alliance which was sent to the Acting President of the Court of Appeal. They alleged that the chairman of the panel once practised law in the law firm of the current State Chief Judge who was appointed by the former governor whose appeal is before the panel and there is a tendency that their closeness will influence their decisions.

In the Presidential Election Petition Tribunal, it was alleged that Salami's suspension had given credibility to speculations that President Jonathan would interfere with the decision of the Presidential Election Petition Tribunal. It was alleged that Salami was suspended to pave the way for manipulation at the tribunal. Accordingly, the National Chairman of the Conference of Nigeria Political Parties, Alhaji Balarabe Musa, described Salami's suspension as an attempt by Jonathan to defeat justice in the Presidential Election Petition Tribunal. Balarabe stated that "what has happened has further given credibility to our speculations; the judiciary is once more being used as tool by the executive arm of government,"[196].

However, the low level of corrupt practices recorded in the work of election petition tribunals was attributed to the fact that panel members were made to serve in states other than their own. Also, it was the view of several lawyers that the judicial officers who served on these panels had drawn the right lessons from the fate of those officers earlier found to have been corrupt. Despite the fact that there were no proven cases of corruption, public perception of corruption in the tribunals subsisted and the President of the Nigeria Bar Association was cited with approval by a learned commentator as follows[197]:

> *The President of the Nigeria Bar Association (NBA), Mr. Joseph Daudu (SAN), last week stirred the hornet's nest when he identified senior lawyers and retired judicial officers of being responsible for the corruption in the judiciary. Daudu who spoke at the valedictory session held in honour of the late Supreme Court Justice, Anthony Aniagolu, did not mention any name nevertheless, he stated emphatically that senior lawyers and retired judicial officers serve as bribe couriers between politicians and election petition tribunals…..Sadly, it is no longer a moot point that the corruption that encompassed the larger society has infiltrated the justice sector, I make no distinction here between the Bar and the Bench. Corruption is now a live issue that is threatening to tear apart the foundation and fabric of the society. We are no doubt aware that some of our colleagues including very senior counsel and at times eminent retired judicial officers go about offering their services as consultants*

[196] http://www.thisdaylive.com/articles/salamis-successor-reshuffles-presidential-election-tribunal/97752/ of September 4, 2011.
[197] See This Day Newspapers of 24/2/2012 at page 16 and Dr Akpo Mudiagha Odje, supra

particularly in election cases for incredible sums of money so as to act as conduit between their client and the election court. Speaking further, the NBA boss said: "The end result is to facilitate ready-made justice for persons they are acting for. We must strongly deprecate this practice.

Beyond the judicial officers, the conduct of support staff such as secretaries and their assistants and bailiffs also impact on perceptions of corruption. In tribunals that operated in Abia, Anambra, Ebonyi, Enugu and Imo States, it was reported that the average cost of compiling records of appeal were N300,000, N350,000, N100,000, N200,000 and N200,000 respectively[198]. In the *Stanley Ohajuruka* case, the tribunal secretary demanded and received N1,200,000 to compile the records of appeal while his Court of Appeal counterpart demanded and received N800,000 for the same task and from the same appellant. As long as this category of judicial workers continues to perceive the tribunal as a major source of income, the public will continue to believe that the tribunals are corrupt. The judiciary must look for ways of regulating the charges for service of the processes of tribunals by providing a guide and template of charges[199]. And where there is evidence of a breach of the template, such a judicial staff should be severely punished. The tribunal registrars, bailiffs and other para-legals need to be strongly regulated and/or sanctioned for their exorbitant charges for either serving processes or processing same for filing[200].

[198] Paper by Barrister Emeka Etiaba, Ibid.

[199] *Public Perception of the Work and Performance of Election Petition Tribunals* being a lecture delivered by Dr Akpo Mudiaga Odje, the Nigerian Bar Association Conference held in Benin City, Edo State, from 15th – 16th March 2012

[200] Ibid

CHAPTER SEVEN

Conclusions and Recommendations

7.0 CONCLUSIONS

The legislature in amending the Constitution and enacting a new Electoral Act was responding to the mischief in the existing law. The new provisions were designed to improve the quality of electoral adjudication and the management of elections. For instance, the new timeframes for filing and disposal of petitions and the ensuing appeals were enacted in response to the endless litigation syndrome. The new powers of the National Assembly with respect to political parties were meant to strengthen internal democracy, ensure fairness in the conduct of party primaries and to give party members a voice in the affairs of the party. The constitutional amendment for gubernatorial appeals to end in the Supreme Court was in response to the uncertainty introduced by conflicting judgements of the Court of Appeal. The funding of INEC which is now a first line charge is to strengthen its independence and autonomy and thereby ensure that incumbents do not have undue influence over the affairs of the Commission.

However, in implementing the new provisions, a number of challenges have arisen particularly as it relates to the timeframes provided in the Constitution for the filing and disposal of petitions. Many petitions were lost due to the effluxion of time since the courts and tribunals lost their jurisdiction to entertain petitions after the expiry of the new timeframe. It appeared that the tribunals and litigants are yet to come to terms with the new time frames considering the number of cases that were lost on that premise. But the strict and unbending interpretation given to the timeframes by the Supreme Court introduces the need for further amendments to the Constitution. But these amendments are avoidable if and only if, the Supreme Court adopts a more liberal attitude to the interpretation of the timeframe sections.

Technicalities still reared its head as a major clog in the wheel of justice. The form in which a pre-hearing notice is to be presented attracted conflicting decisions until the Supreme Court gave a decision on it. Tribunals were therefore free to pick and choose the conflicting decisions of the Court of Appeal to follow under the doctrine of *stare decisis* until the Supreme Court stepped in. The burden of proof on petitioners was also a major issue. It was a challenge particularly where petitioner alleges substantial non compliance. The petitioner was required, not just to prove irregularities and non compliance but that the non compliance affected the outcome of the polls. This was virtually impossible in many instances and situations. Also, the challenge of proving criminal allegations beyond reasonable doubt became a hurdle for petitioners.

In some jurisdictions, Court of Appeal Judges were apparently overwhelmed by the sheer number of appeals they had to entertain, coupled with the fact that the appeals were to be determined within a short timeframe. Apparently, there were few reported

and proven cases of judicial corruption. The security challenges facing the nation affected the work of tribunals in some parts of the country and tribunals in Borno State had to relocate to Abuja, the federal capital. But some of the security challenges were situations where judges were threatened by parties interested in the outcome of the proceedings.

The number of pre-election cases, especially suits to determine the authentic candidate of a political party shows that issues of internal democracy are yet to be resolved in the political parties. It appeared the support staff of the tribunals were not regulated or under any serious code of conduct. Arbitrary fees were charged for compilation of records of appeal and service of processes. Evidently, there were no rules or guidance on the level of fees chargeable for these transactions. Alternatively, if there were rules, they were flagrantly disobeyed. In some tribunals, the secretaries appeared not to have been properly trained. Sitting venues of the tribunals were generally good except in few instances where the court rooms were too small or did not have cooling facilities. There is room for improvement in future election tribunals.

Lawyers and judges generally comported themselves with the requisite decorum although there were few instances of unprofessional conduct by members of the Bar. In a few instances, INEC officials became stumbling blocks to the administration of justice by using subterfuge to disobey court orders, particularly on access to materials used in the election. However, their behaviour was better than that of the staff of the Maurice Iwu led INEC that conducted the 2007 elections.

From the sheer number of petitions filed, it is apparent that the electoral process still needs reform. Ideally, the decision on who represents a constituency should be made by the people through their votes and not by courts. The intervention of the tribunals and courts unduly exposes the judiciary to a terrain that it should normally have been excused from.

7.2 RECOMMENDATIONS

(A) Time Frames

The timeframe in section 285 (5) – (7) of the Constitution for filing and determining petitions and appeals should be amended:

- To exclude weekends, public holidays, court vacations and strikes.
- The time frame for appeal should only start running after the compilation and transmission of the records of appeal.
- For cases remitted for re-trial to the tribunal or Court of Appeal, the time for determination of such a petition should run de-novo from the commencement of the new trial.

It stands to reason that the petitioner has no control over weekends, public holidays, strikes and court vacations and a petition should not lapse merely because these days were included in the calculation of time. In making this recommendation, we are not unmindful of paragraph 26 (2) of the First Schedule to the Electoral Act which states that the hearing of an election petition may continue on a Saturday or Public holiday if the circumstances dictate. It is also imperative to acknowledge the decision by Onu JSC *in Anie V Uzorka,* that[201]:

> *"Any Judge has the Jurisdiction … to sit on Saturday or even Sunday provided he did not compel the litigants who are members of the public and their counsel to attend…"*

The Supreme Court should also take an early opportunity to reconcile section 285 (5) - (7) of the Constitution with the fundamental right to fair hearing considering that the process adopted by the National Assembly in enacting section 285 (5) - (7) could not have amended the right to fair hearing or any provision of the fundamental rights chapter of the Constitution. While two thirds majority of each chamber of the National Assembly is required to kick-start the amendment of other sections of the Constitution, the fundamental rights chapter demands four-fifths majority of each chamber of the National Assembly for its amendment.

(B) Burden of Proof

In reviewing the Electoral Act 2010, it is imperative to consider the recommendation of the Electoral Reform Committee to shift the burden of proof from the petitioner to INEC to show, on the balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. If this recommendation is difficult to accept, it is recommended that in deciding matters brought under section 139 (1) of the Electoral Act for non compliance, once the petitioner proves non compliance, the burden of proof should be shifted to INEC to show that the non compliance did not substantially affect the result of the election. This would involve a presumption that once non compliance is proved, a rebuttable presumption that the results were affected by non compliance arises. It is only through evidence that INEC can now rebut this presumption and discharge the burden of proof on a balance of probabilities to the effect that notwithstanding the non compliance, the result declared reflected the wishes of voters.

The proposed amendment is in tandem with section 36 (5) of the Constitution which after stating the presumption of innocence in criminal trials indicated in a proviso that nothing in the section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts. The fact about how the elections were organised and the inherent challenges are facts peculiarly within the knowledge of the election management body and not the petitioner. Thus, if the

[201] Per Onu JSC; (1993) 8 NWLR (Pt. 309) 1 at page 20 paras F-G:

burden of proof could be shifted in specific circumstances in criminal trials, then election petitions which are purportedly *sui generis* can afford such a shift after certain conditions are met. This will also involve the amendment of the relevant sections 131 (1) and 132 of the Evidence Act on burden of proof. Section 168 (1) of the Evidence Act on presumptions of regularity should also be amended because once non compliance is proved, the act complained of cannot in good faith be said to have been done in a manner substantially regular so as to presume its validity.

(C) Standard of Proof

Considering the decision of the courts that election petitions are *sui generis;* insisting on the principle that where allegations of crime are made in an election petition, that the proof must be beyond reasonable doubt is to place an onerous burden on the petitioner. The standard should be on a balance of probabilities considering that no penal sanctions will be meted to the respondent(s) on the basis of the petitioner proving his case. The amendment of section 135 of the Evidence Act will be imperative.

(D) Expanding the Category of Persons who Can File Election Petitions

It is imperative to expand the category of persons who can file election petitions to include all registered voters. This will involve an amendment of section 137 (1) of the Electoral Act which states as follows:

> *An election petition may be presented by one or more of the following persons*
>
> *(a) a candidate in an election*
> *(b) a political party which participated in the election*

The implication is that voters cannot sue to protect their votes. They are left at the mercy of the political parties and candidates, both of whom may decide not to file any petition at all. We can borrow from section 64 of the Ghanain Constitution of 1992 which allows citizens of Ghana to present petitions to a court. We however recommend including the qualification that such a person must be a registered voter who has paid his taxes as and when due.

(E) De-emphaising Technicalities

Practice Directions and Rules of Procedure for Election Petitions should de-emphasise technicalities and move lawyers and judges towards the substantial justice of making the votes count. Non compliance with mere technical rules should not defeat a petition but the tribunal should allow the petitioner the opportunity to correct or remedy the defect in procedure.

(F) Training for Judicial Personnel

With the changes made in constitutional provisions related to electoral adjudication and the culture of a new Electoral Act for every new election, judicial officers

involved in election petitions need to be properly trained before their deployment. Although, training had been organised for them in the past, enhanced training is recommended before their deployment in future.

(G) Provision of Judicial Assistants

Judicial assistants to support the research work of judges should be provided so as to facilitate the work of the tribunals and make maximum use of the time frame constitutionally allotted for the disposal of petitions.

(H) Training and Ethics for Support Staff

The tribunal secretaries, bailiffs and other support staff should be trained before their deployment. It is also imperative that ethical issues be addressed in their training. The appropriate authorities should also take expeditious action to discipline erring support staff. Further, bailiffs who know the terrain and the environment should be used by the tribunals instead of bringing in bailiffs from outside the jurisdiction of the locale of the tribunal.

(I) Fees for Tribunal Services

Beyond filling fees and security for costs, the First Schedule and the Rules should make provisions for fees chargeable for compilation and transmission of records, service of processes, etc. This should be standardised so as to avoid the reported extortion of litigants by non judicial personnel of the tribunals.

(J) Automating the Tribunal and Courts

The tribunals and courts handling election petitions should be provided with electronic registry that will allow for the filing of petitions and other processes electronically. There should be electronic recording devices for the tribunals' use with well trained operators and transcribers.

(K) Sitting Venues

Sitting venues should be improved and they should be spacious enough to accommodate litigants, counsel and a reasonable number of members of the public who want to witness the trials. Venues should have public power supply, stand-by power generating sets, air-conditioning, convenience facilities, etc.

(L) Security

The security around judicial personnel adjudicating electoral disputes should be improved.

APPENDIX ONE

FIRST SCHEDULE: Section 140 (4) and 145 (1) of the Electoral Act 2010 as amended

RULES OF PROCEDURE FOR ELECTION PETITIONS

1. In this Schedule-

Interpretation

"Attorney –General" means the Attorney-General of the Federation and includes the Attorney-General of a State where the context admits;

"Civil Procedure Rules" means the Civil Procedure Rules of the Federal High Court for the time being in force;

"Election" means any election under this Act to which an election petition relates;

"Registry" means a Registry set up for an Election Tribunal established by the Constitution or this Act or the Registry of the Court of Appeal;

"Secretary" means the Secretary of an election Tribunal established by the Constitution or this Act and shall include the Registrar of the Court of Appeal or any officer or Clerk acting for him;

"Tribunal" means an election Tribunal established under this Act or the Court of Appeal;

"Tribunal Notice Board" means a notice board at the Registry or a notice board at the place of hearing where notice of presentation of election petition or notice of hearing an election petition or any other notice may be given or posted.

Security for Costs

2.-(1) At the time of presenting an election petition, the petitioner shall give security for all costs which may become payable by him to a witness summoned on his behalf or to a respondent.

(2) The security shall be of such amount not less than N5,000,00 as the Tribunal or Court may order and shall be given by depositing the amount with the Tribunal or Court.

(3) Where two or three persons join in an election petition, a deposit as may be ordered under subparagraph ((2) of this paragraph of this Schedule shall be sufficient.

(4) If no security is given as required by this paragraph, there shall be no further proceedings on the election petition.

Presentation of Election Petition

3.-(1) The presentation of an election petition under this Act shall be made by the petitioner (or petitioners if more than one) in person, or by his Solicitor, if any, named at the foot of the election petition to the Secretary, and the Secretary shall give a receipt.

(2) The Petitioner shall, at the time of presenting the election petition, deliver to the Secretary a copy of the election petition for each respondent and ten other copies to be preserved by the Secretary.

(3) The Secretary shall compare the copies of the election petition received in accordance with subparagraph (2) of this paragraph with the original petition and shall certify them as true copies of the election petition on being satisfied by the comparison that they are true copies of the election petition.

(4) The petitioner or his Solicitor, as the case may be, shall, at the time of presenting the election petition, pay the fees for the service and the publication of the petition, and for certifying the copies and, in default of the payment, the election petition shall be deemed not to have been received; unless the Tribunal or Court otherwise orders.

Contents of Election Petition

4.-(1) An election petition under this Act shall-

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.

(2) The election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively.

(3) The election petition shall further –

(a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified, as the case may be; and

(b) be signed by the petitioner or all petitioners or by the Solicitor, if any, named at the foot of the election petition.

(4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

(5) The election petition shall be accompanied by-
(a) a list of the witnesses that the petitioner intends to call in proof of the petition;
(b) written statements on oath of the witnesses; and
(c) copies or list of every document to be relied on at the hearing of the petition

(6) A petition which fails to comply with sub-paragraph (5) of this paragraph shall not be accepted for filling by the secretary.

(7) The election petition shall be accompanied by-
(a) a list of the witnesses that the petitioner intends to call in proof of the petition;
(b) written statements on oath of the witnesses; and
(c) copies or list of every document to be relied on at the hearing of the petition

(8) A petition which fails to comply with, subparagraph (7) of this paragraph shall not be accepted for filing by the Secretary.

(9) An election petition, which does not comply with, subparagraph (1) of this paragraph or any provision of that subparagraph is defective and may be struck out by the Tribunal or Court.

Further Particulars

5. Evidence need not be stated in the election petition, but the Tribunal or Court may order such further particulars as may be necessary-

(a) to prevent surprise and unnecessary expense;

(b) to ensure fair and proper hearing in the same way as in a civil action in the Federal High Court; and

(c) on such terms as to costs or otherwise as may be ordered by the Tribunal or Court.

Address of Service

6. For the purpose of service of an election petition on the respondents, the petitioner shall furnish the secretary with the address of the respondents abode or the addresses of places where personal service can be affected on the respondents

Action by Secretary

7.-(1) On the presentation of an election petition and payment of the requisite fees, the Secretary shall forthwith-

(a) cause notice of the presentation of the election petition, to be served on each of the respondents;

(b) post on the tribunal notice board a certified copy of the election petition; and

(c) set aside a certified copy for onward transmission to the person or persons required by law to adjudicate and determine the election petition.

(2) In the notice of presentation of the election petition, the Secretary shall state a time, not being less than five days but not more than seven days after the date of service of the notice, within which each of the respondents shall enter an appearance in respect of the election petition.

(3) In fixing the time within which the respondents are to enter appearance, the Secretary shall have regard to-

(a) the necessity for securing a speedy hearing of the election petition; and

(b) the distance from the Registry or the place of hearing to the address furnished under paragraph 4(4) of this Schedule.

Personal Service on Respondent

8.-(1) Subject to subparagraph (2) and (3) of this paragraph, service on the respondents-

(a) of the documents mentioned in subparagraph (1)(a) of paragraph 7 of this Schedule; and

(b) of any other documents required to be served on them before entering appearance, shall be personal.

(2) Where the petitioner has furnished, under paragraph 6 of this Schedule, the addresses of the places where personal service can be effected on the respondents and the respondents or any of them cannot be found at the place or places, the tribunal or court on being satisfied, on an application supported by an affidavit showing that all reasonable efforts have been made to effect personal service, may order that service of any document mentioned in subparagraph (1) of this paragraph be affected in any ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in civil cases and that service shall be deemed to be equivalent to personal service

(3) The proceedings under the election petition shall not be vitiated notwithstanding the fact that-

(a) the respondents or any of them may not have been served personally; or

(b) a document of which substituted service has been effected pursuant to an order made under subparagraph (2) of this paragraph did not reach the respondent, and in either case, the proceedings may be heard and continued or determined as if the respondents or any of them had been served personally with the document and shall be valid and effective for all purposes.

Entry of Appearance

9.-(1) Where the respondent intends to oppose the election petition, he shall-

(a) within such time after being served or deemed to have been served with the election petition; or

(b) where the Secretary has stated a time under paragraph 7(2) of this Schedule, within such time as is stated by the Secretary, enter an appearance by filling in the registry a memorandum of appearance stating that he intends to oppose the election petition and giving the name and address of the solicitor, if any, representing him or stating that he acts for himself, as the case may be, and, in either case, giving an address for service at which documents intended for him may be left or reserved.

(2) If an address for service and its occupiers are not stated, the memorandum of appearance shall be deemed not to have been filed, unless the tribunal or court otherwise orders.

(3) The memorandum of appearance shall be signed by the respondent or his solicitor, if any.

(4) At the time of filling the memorandum of appearance, the respondent or his solicitor, as the case may be, shall-

(a) leave a copy of the memorandum of appearance for each of the other parties to the election petition and three other copies of the memorandum to be preserved by the Secretary; and

(b) pay the fees for service as may be prescribed or directed by the Secretary and in default of the copies being left and the fees being paid at the time of filing the memorandum of appearance, the memorandum of appearance shall be deemed not to have been filed, unless the tribunal or court otherwise orders.

(5) A respondent who has a preliminary objection against the hearing of the election petition on grounds of law may file a conditional memorandum of appearance.

Non-Filing of Memorandum of Appearance

10. (1) If the respondent does not file a memorandum of appearance as required under paragraph 9 of this Schedule, a document intended for service on him may be posted on the Tribunal notice board and that shall be sufficient notice of service of the document on the respondent.

(2)The non-filing of a memorandum of appearance shall, not bar the respondent from defending the election petition if the respondent files his reply to the election petition in the Registry within a reasonable time, but, in any case, not later than twenty-one (21) days from the receipt of the election petition.

Notice of Appearance

11**.** The Secretary shall cause copies of the memorandum of appearance to be served on, or its notice to be given to the other parties to the election petition.

Filing of Reply

12.- (1) The respondent shall, within 14 days of service of the petition on him file in the Registry his reply, specifying in it which of the facts alleged in the election petition he admits and which he denies, and setting out the facts on which he relies in opposition to the election petition.

(2) Where the respondent in an election petition, complaining of an undue return and claiming the seat or office for a petitioner intends to prove that the claim is incorrect or false, the respondent in his reply shall set out the facts and figures clearly and distinctly disproving the claim of the petitioner.

(3) The reply may be signed by the respondent or the solicitor representing him, if any and shall state the name and address of the solicitor at which subsequent processes shall be served; and shall be accompanied by copies of documentary evidence, list of witnesses and the written statements on oath.

(4) At the time of filling the reply, the respondent or his Solicitor, if any, shall leave with the Secretary copies of the reply for services on the other parties to the election petition with ten (10) extra copies of the reply to be preserved by the Secretary, and pay the fees for services as may be prescribed or directed by the Secretary, and in default of leaving the required copies of the reply or paying the fees for service, the reply shall be deemed not have been filed unless the tribunal or court otherwise orders.

Service of Reply

13. The Secretary shall cause a copy of the reply to be served on each of the other parties to the election.

Amendment of Election Petition and Reply

14.-(1) Subject to subparagraph (2) of this paragraph, the provisions of Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "*any proceedings*" in those provisions there were substituted the words "*the election petition or reply*"

(2) After the expiration of the time limited by-

(a) Section 134 (1) of this Act for presenting the election petition, no amendment shall be made:

(i) introducing any of the requirements of subparagraph (1) of paragraph 4 of this Schedule not contained in the original Election petition filed, or

(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or

(iii) except anything which may be done under the provisions of subparagraph (2) (a)(ii) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for or sustain the prayer in the election petition; and

(b)Paragraph 12 of the Schedule for filling the reply , no amendment shall be made:

(i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or

(ii) except anything which may be done under the provisions of subparagraph (2)(a) (ii) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply

Particulars of Votes Rejected

15. When a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed.

Petitioner's Reply

16.-(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within five (5) days from the receipt of the Respondent's reply, a petitioner's reply in answer to the new issues of fact, so however that-

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and

(b) the petitioner's reply does not run counter to the provisions of subparagraph (1) of paragraph 14 of this schedule.

(2) The time limited by subparagraph (1) of this paragraph shall not be extended

(3) The petitioner in proving his case shall have 14 days to do so and the respondent shall have 14 days to reply.

Further Particulars or Directives

17.-(1) If a party in an election petition wishes to have further particulars or other directions of the Tribunal or Court, he may, at any time after entry of appearance, but not later than ten days after the filling of the reply, apply to the Tribunal or Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Tribunal or Court otherwise orders, be set down for hearing on the first available day.

(2) If a party does not apply as provided in subparagraph (1) of this paragraph , he shall be taken to require no further particulars or other directions and the party shall be barred

from so applying after the period laid down in subparagraph (1) of this paragraph has lapsed.

(3) Supply of further particulars under this paragraph shall not entitle the party to go beyond the ambit of supplying such further particulars as have been demanded by the other party, and embark on undue amendment of, or additions to his petition or reply, contrary to paragraph 14 of this Schedule.

Pre-hearing Session and Scheduling

18.-(1) Within 7 days after the filing and service of the petitioner's reply on the respondent or 7 days after the filling and service of the respondent's reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF 007

(2) Upon application by a petition under sub-paragraph (1) of this paragraph, the Tribunal or Court shall issue to the parties or their Legal Practitioners (if any) a pre-hearing conference notice as in Form TF 007 accompanied by a pre-hearing information sheet as in Form TF 008 for-

(a) the disposal of all matters which can be dealt with on interlocutory application;

(b) giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of election petitions:

(c) giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view the need for the expeditious disposal of the petition; and

(d) fixing clear dates for hearing of the petition

(3) The respondent may bring the application in accordance with subparagraph (1) where the petitioner fails to do so, or by motion which shall be served on the petitioner and returnable in 3 clear days, apply for an order to dismiss the petition.

(4) Where the petitioner and the respondent fail to bring an application under this paragraph, the Tribunal or Court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.

(5) Dismissal of a petition pursuant to subparagraphs (3) and (4) of this paragraph is final, and the tribunal or court shall be *functus officio.*

(6) At the pre-hearing session, the tribunal or court shall enter a scheduling order for-

(a) joining other parties to the petition;

(b) amending petition or reply or any other processes;

(c) filing and adoption of writing addresses on all interlocutory applications;

(d) additional pre-hearing session;

(e) order of witnesses and tendering of documents that will be necessary for the expeditious disposal of the petition; and

(f) any other matters that will promote the quick disposal of the petition in the circumstances.

(7) At the pre-hearing session, the Tribunal or Court shall consider and take appropriate action in respect of the following as may be necessary or desirable-

(a) amendments and further and better particulars;

(b) the admissions of facts, documents and other evidence by consent of the parties;

(c) formulation and settlement of issues for trial;

(d) hearing and determination of objections on points of law;

(e) control and scheduling of discovery; inspection and production of documents;

(f) narrowing the field of dispute between certain types of witnesses especially the Commission's staff and witnesses that officiated at the election, by their participation at pre-hearing session or in any other manner;

(g) giving orders or directions for hearing of cross-petitions or any particular issue in the petition or for consolidation with other petitions;

(h) determining the form and substance of the pre-hearing order; and

(i) such other matters as may facilitate the just and speedy disposal of the petition bearing in mind the urgency of election petitions.

(8) At the pre-hearing session, the tribunal or court shall ensure that hearing is not delayed by the number of witnesses and objections to documents to be tendered and shall pursuant to paragraph (b), (e), (b) and (e) of this paragraph-

(a) allow parties to admit or exclude documents by consent;

(b) direct parties to streamline the number of witnesses to those whose testimonies are relevant and indispensable.

(9) The pre-hearing session or series of the pre-hearing sessions with respect to any petition shall be completed within 14 days of its commencement, and the parties and their legal practitioners shall co-operate with the Tribunal or Court in working within this time table. As far as practicable, pre-hearing sessions shall be held from day to day or adjourned only for purposes of compliance with pre-hearing sessions, unless extended by the Chairman or the Presiding Justice.

(10) After a pre-hearing session or series of pre-hearing sessions, the Tribunal or Court shall issue a report and this report shall guide the subsequent course of the proceedings, unless modified by the Tribunal or Court.

(11) If a party or his Legal Practitioner fails to attend the pre-hearing sessions or obey a scheduling or pre-hearing order or is substantially unprepared to participate in the session or fails to participate in good faith, the Tribunal or Court shall in the case of-

(a) the petitioner, dismiss the petition; and

(b) a respondent enter judgment against him

(12) Any judgment given under subparagraph (11) of this paragraph, may be set aside upon an application made within 7 days of the judgment (which shall not be extended) with an order as to cost of a sum not less than N20,000.00

(13) The application shall be accompanied by an undertaking to participate effectively in the pre-hearing session jointly signed by the applicant and the Legal Practitioner representing him.

Hearing of Petition to be in Open Tribunal or Court

19. Every election petition shall be heard and determined in an open Tribunal or Court

Time and Place of Hearing Petition

20-(1) Subject to the provisions of subparagraph (2) of this paragraph, the time and place of the hearing of an election petition shall be fixed by the Tribunal or Court and notice of the time and place of the hearing, which may be in form TF.005 set out in Second Schedule to this Act, shall be given by the Secretary at least five days before the day fixed for the hearing by-

(a) posting the notice on the tribunal notice board; and
(b) sending a copy of the notice by registered post or through a messenger to the-
    (i) petitioner's address for service;

    (ii) respondent's address for service, if any; or

    (iii) Resident Electoral Commissioner or the Commission as the case may be.

(2) In fixing the place of hearing, the Tribunal or Court shall have due regard to the proximity to and accessibility from the place where the election was held.

Notice of Hearing

(21) A Tribunal or Court, as the case may be, shall publish the notice of hearing by causing a copy of the notice to be displayed in the place which was appointed for the delivery of nomination papers prior to the election or in some conspicuous place or places within the constituency, but failure to do so or any miscarriage of the copy of

notice of hearing shall not affect the proceedings if it does not occasion injustice against any of the parties to the election petition.

Posting of Notice on Tribunal Notice Board deemed to be Good Notice

22. The posting of the notice of hearing on the Tribunal notice board shall be deemed and taken to be good notice, and the notice shall not be vitiated by any miscarriage of the copy or copies of the notice sent pursuant to paragraph 16 of this Schedule.

Postponement of Hearing

23.-(1) The Tribunal or Court may, from time to time, by order made on the application of a party to the election petition or at the instance of the Tribunal or Court, postpone the beginning of the hearing to such day as the Tribunal or Court may consider appropriate having regard at all times to the need for speedy conclusion of the hearing of the petition.

(2) A copy of the order shall be sent by the Secretary by registered post or messenger to the Electoral Officer or the Resident Electoral Commissioner or the Commission who shall publish the order in the manner provided in paragraph 20 of this Schedule for publishing the notice of hearing, but failure on the part of the Electoral Officer or Resident Electoral Commission or the Commission to publish the copy of the order of postponement shall not affect the proceedings in any manner whatsoever.

(3) The Secretary shall post or cause to be posted on the tribunal notice board a copy of the order.

(4) Where the Tribunal or Court gives an order of postponement at its own instance , a copy of the order shall be sent by the Secretary by registered post or messenger to the address for service given by the petitioner and to the address for service, if any, given by the respondents or any of them

(5) The provisions of paragraph 21 of this Schedule shall apply to an order or a notice of postponement as they do to the notice of hearing.

Non –Arrival of Chairman of Tribunal or Presiding Justice of the Court;

24. If the Chairman of the Tribunal or Presiding Justice of the Court has not arrived at the appointed time for the hearing or at the time to which the hearing has been postponed, the hearing shall, by reason of that fact, stand adjourned to the following day and so from day to day.

Hearing Continues from Day to Day

25.-(1) No formal adjournment of the Tribunal or Court for the hearing of an election petition shall be necessary, but the hearing shall be deemed adjourned and may be continued from day to day until the hearing is concluded, unless the Tribunal or Court otherwise directs as the circumstance may dictate.

(2) If the Chairman of the Tribunal or the Presiding Justice of the Court who begins the hearing of an election petition is disabled by illness or otherwise, the hearing may be recommenced and concluded by another Chairman of the Tribunal or Presiding Justice of the Court appointed by the appropriate authority.

Adjournment of Hearing

26.-(1) After the hearing of an election petition has begun, if the inquiry cannot be continued on the ensuing day or, if that day is a Sunday or a Public Holiday, on the next day, the hearing shall not be adjourned *sine die* but to a definite day to be announced before the rising of the Tribunal or Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the notice board.

(2) The hearing may be continued on a Saturday or on a Public Holiday if circumstances dictate.

Power of Chairman of the Tribunal or the Presiding Justice of the Court to Dispose on Interlocutory Matters

27.-(1) All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the Court who shall have control over the proceedings as a Judge in the Federal High Court.

(2) After the hearing of the election petition is concluded, if the Tribunal or Court before which it was heard has prepared its judgment but the Chairman or the Presiding Justice is unable to deliver it due to illness or any other cause, the Judgment may be delivered by one of the members, and the judgment as delivered shall be the judgment of the Tribunal or Court and the member shall certify the decision of the Tribunal or Court to the Resident Electoral Commissioner, or to the Commission.

Effect of Determination of Election Petition

28.--- (1) At the conclusion of the hearing, the Tribunal shall determine whether a person whose election or return is complained of or any other person, and what person, was validly returned or elected, or whether the election was void, and shall certify the determination to the Resident Electoral Commissioner or the Commission.

(2) If the Tribunal or Court has determined that the election is invalid, then, subject to section 138 of this Act, where there is an appeal and the appeal fails, a new election shall be held by the Commission.

(3) Where a new election is to be held under the provision of this paragraph, the Commission shall appoint a date for the election which shall not be later than 3 months from the date of the determination.

Withdrawal or Abatement of Petition

29.—(1) An election petition shall not be withdrawn without leave of the Tribunal or Court.

(2) Where the petitioners are more than the one, no application for leave to withdraw the election petition shall be made except with the consent of all the petitioners.

(3) The application for leave to withdraw an election petition shall be made by motion after notice of the application has been given to the respondents.

(4) The notice of motion shall state the grounds on which the motion to withdraw is based, supported with affidavit verifying the facts and reasons for withdrawal, signed by the petitioner or the petitioners in the presence of the Secretary.

(5) At the time of filling the notice of motion, the petitioner or petitioners shall leave copies for service on the respondent.

(6) The petitioner or petitioners shall also file the affidavits required under subparagraph (4) of this paragraph together with copies for each respondent and pay the fees prescribed or directed by the Secretary for services.

Affidavits against Illegal Term of Withdrawal

30.---- (1) Before the leave for withdrawal of an election petition is granted, each of the parties to the petition shall produce an affidavit, stating that ----

(a) to the best of the deponent's knowledge and belief, no agreement or term of any kind whatsoever has been made; and

(b) no undertaking has been entered into; in relation to the withdrawal of the petition, but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement and shall make the foregoing statement subject to what appears from the affidavit.

Time for Hearing Motion for Leave to Withdraw Petition

31. --- (1) The time for hearing the motion for leave to withdraw the election petition shall be fixed by the Tribunal or Court.

(2) The Secretary may give notice of the day fixed for the hearing of the motion to the respondents and post or cause to be posted on the tribunal notice board a copy of the notice.

Payment of Cost to Respondents

32. If the election petition is withdrawn, the petitioner shall be liable to pay appropriate cost to the respondents or any of them unless the Tribunal or Court otherwise orders.

Abatement of Proceedings in Election Petition

33.----(1) If a sole petitioner or the survivor of several petitioners dies, then subject to subparagraphs (2) and (3) of this paragraph, there shall be no further proceedings on the election petition and the Tribunal or Court may strike it out of its cause list.

(2) The death of a petitioner shall not affect his liability for the payment of cost previously incurred in the course of proceedings in respect of the election petition prior to its abatement.

(3) Where notice, with copies for each party to the election petition supported by the affidavit of two witnesses testifying to the death of a sole petitioner or of the survivor of several petitioners, is given to the Secretary, he shall submit the notice to the Tribunal or Court and if the Tribunal or Court so directs, the Secretary shall---

(a) serve notice thereof on the other parties to the petition;

(b) post or cause to be posted a notice thereof on the Tribunal notice board; and

(c) cause notice thereof to be published in conspicuous places in the constituency, in such form as the Tribunal or Court may direct.

Notice of no Opposition to Petition

34.--- (1) If before the hearing of an election petition, a respondent, other than the Electoral Officer, the Returning Officer or Presiding Officer, gives to the Tribunal or Court notice in writing signed by him or his Solicitor before the Secretary that he does not intend to oppose the election petition, the Secretary shall-----

(a) serve notice thereof on the other parties to the election petition; and

(b) post or cause to be posted a notice thereof on the Tribunal notice board.

(2) The respondent shall file the notice with a copy for each other party to the election petition not less than six days before the day appointed for hearing of the election petition.

(3) A respondent who has given notice of his intention not to oppose the election petition shall not appear or act as a party against the election petition in any proceeding on it; but the giving of the notice shall not of itself cause him to cease to be a respondent.

Countermand of Notice of Hearing

35.--- (1) Where a notice of the----

(a) petitioner's intention to apply for leave to withdraw an election petition;

(b) death of the sole petitioner or the survivor of several petitioners; or

(c) respondent's intention not to oppose an election petition, is received after notice of hearing of the election petition has been given, and before the hearing has begun, the Secretary shall forthwith countermand the notice of hearing.

(2) The countermand shall be given in the same manner, and as near as may be, as the notice of hearing.

Discretion of Tribunal or Court if no Reply

36. Where the respondent has not entered an appearance, or has not filed his reply within the prescribed time or within such time as the Tribunal or Court may have allowed, or has given notice that he does not intend to oppose the petition, then if---

(a) there remains no more than one other candidate in the election who was not returned;

(b) the election petition contains no prayer for a determination that the election was void;

(c) there are no facts or grounds stated in the election petition or in the reply, if any, or stated in any further particulars filed in the proceedings or otherwise appearing on proof of which it ought to be determined that election was void; or

(d) the election petition is one complaining of undue return and claiming the seat or office for the candidate who was not returned and the respondent has not raised any formal or written objections to any of the votes relied on by the petitioner, the Tribunal or Court may, if it deems fit, determine the proceedings on the election petition without hearing evidence or further evidence, and in any case, the proceedings shall be continued and determined on such evidence or otherwise as the Tribunal or Court may deem necessary for the full and proper determination of the election petition.

Fees

37. ---- (1) The fee payable on the presentation of an election petition shall not be less than N1, 000.00.

(2) A hearing fee shall be payable for the hearing at the rate of N40.00 per day of the hearing but not exceeding N2,000 in all, but the Tribunal or Court may direct a different fee to be charged for any day of the hearing.

(3) For the purpose of subparagraph (2) of this paragraph, the petitioner shall make a deposit of not less than N2,000 at the time of presenting his petition.

(4) Subject to the provisions of this paragraph, the fees payable in connection with an election petition shall be at the rate prescribed for civil proceedings in the Federal High Court.

(5) No fees shall be payable by the Attorney-General of the Federation (acting in person or through any other legal officer) or by a respondent who was the Commission or any of its officers appointed pursuant to the provisions of this Act.

(6) No fees shall be payable for the summoning of witnesses by the Tribunal or Court at its own instance.

Allocation of Costs

38. (1) All costs, charges and expenses of and incidental to the presentation of an election petition and to the proceedings consequent thereon, with the exception of such as are otherwise provided for, shall be defrayed by the parties to the election petition in such manner and in such proportions as the Tribunal or Court may determine, regard being had to the---

(a) disallowance of any costs, charges or expenses, which may in the opinion of the Tribunal or Court have been caused by vexations conduct, unfounded allegation or unfounded objection on the party of the petitioner or of the respondent, as the case maybe; and

(b) discouragement of any needless expresses by throwing the burden of defraying the expenses on the party by whom it has been caused; whether that party is or is not on the whole successful.

(2) Where the Tribunal or Court declares an election to be void, it may, if satisfied that the validity was due either wholly or in part to the culpable default of an officer responsible for the conduct of the election in the performance of his duties, order that the whole or part of the cost awarded to the successful petitioner be paid by that officer.

Return of Security

39. Money deposited as security shall, when no longer needed as security for costs, charges or expenses, be returned to the person in whose name it was deposited or the person entitled to receive it by order of the Tribunal or Court which may be made on motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Tribunal or Court may require**.**

Payment of Costs out of Security

40-. (1) The Tribunal or Court may, on application made by a person to whom costs, charges or expenses is payable, order it to be paid out of a deposit made to secure it, after notice to the party by or on whose behalf the deposit was made, requiring him to file a statement within a specified time whether he opposes the application and the ground of his opposition.

(2) Where a dispute arises on an application under subparagraph (1) of this paragraph, the Tribunal or Court shall afford every person affected by the dispute an opportunity of being heard and shall make such order thereon as it may deem fit.

(3) A person shall be deemed to have been afforded the opportunity of being heard if notice of the appointed time for the inquiry into the dispute was given to him, though the person may not have been present at the making of the inquiry.

(4) A notice to be giving to a person under this paragraph may be given by the Secretary handing him the notice or sending it to him by registered letter in the case of-----

(a) a party, at the address for service;

(b) an application for payment, at the address given in his application, so however, that the provisions of this subparagraph shall not preclude the giving of notice in any other manner in which notice may be given or which may be authorized by the Tribunal or Court.

(5) Execution may be levied under an order for payment made by the Tribunal or Court under this paragraph in the same manner and to the same extent as execution may be levied under judgment for the payment of money.

Evidence of Hearing

41. (1) Subject to any statutory provision or any provision of these paragraphs relating to evidence, any fact required to be proved at the hearing of a petition shall be proved by written deposition and oral examination of witnesses in open court.

(2) Documents which parties consented to at the pre-hearing session or other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.

(3) There shall be no oral examination of a witness during his evidence-in- chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in deposition.

(4) Real evidence shall be tendered at the hearing.

(5) The Tribunal or Court may, at or before the hearing of a petition order or direct that evidence of any particular fact be given at the hearing in such manner as may be specified by the order or direction.

(6) The power conferred by subparagraph (5) of this paragraph extends in particular to ordering or directing that evidence of any particular fact be given at the trial---

(a) by statement on oath of information or belief;

(b) by the production of documents or entries in books; or

(c) in the case of a fact which is of common knowledge either generally or in a particular district by the production of a specified newspaper which contains a statement of that fact.

(7) The Tribunal or Court may, at or before the hearing of a petition order or direct that the number of witnesses who may be called at the hearing be limited as specified by the order or direction.

(8) Save with leave of the Tribunal or Court, after an applicant has shown exceptional circumstances, no document, plan, photograph or model shall be received in evidence at

the hearing of a petition unless it has been listed or filed along with the petition in the case of the petitioner or filed along with the reply in the case of the respondent.

(9) Such leave may be granted with costs save where in the circumstance the Tribunal or Court considers otherwise.

Calling of Witnesses

42—(1) On the hearing of an election petition, the Tribunal or Court may summon a person as a witness who appears to the Tribunal or Court to have been concerned in the election.

(2) The Tribunal or Court may examine a witness so summoned or any other person in the Tribunal or Court although the witness or person is not called and examined by a party to the election petition, and thereafter he may be cross examined by or on behalf of the petitioner and the respondent.

(3) The expenses of a witness called by the Tribunal or Court at its own instance shall, unless the Tribunal or Court otherwise orders, be deemed to be costs of the election petition and may, if the Tribunal or Court so directs, be paid in the first instance by the Secretary in the same way as State witness' expenses and recovered in such manner as the Tribunal or Court may direct.

(4) Where the Tribunal or Court summons a person as a witness under this paragraph, the provisions of the Civil Procedure Rules relating to the expenses of persons ordered to attend a hearing shall apply as if they were part of this paragraph.

(5) The Tribunal or Court shall—

(a) in making and carrying into effect an order for the production and inspection of documents used in the election; and

(b) in the examination of any witness who produces or will produce a document, ensure that the way in which the vote of a particular person has been given shall not be disclosed.

Privileges of a Witness

43.—(1) A person called as a witness in a proceeding in the Tribunal or Court shall not be excused from answering a question relating to an offence or connected with an election on the grounds that the answer thereto may incriminate or tend to incriminate him, or on the ground of privilege.

(2) A witness who answers truly all questions which he is required by the Tribunal or Court to answer shall be entitled to receive a certificate of indemnity under the hand of the Chairman or the Tribunal or Presiding Justice of the court stating that the witness has so answered

(3) An answer by a person to a question before the Tribunal or Court shall not, except in the case of a criminal proceeding for perjury in respect of the answer be admissible in any proceeding, civil or criminal, in evidence against him.

(4) When a person has received a certificate of indemnity in relation to an election and legal proceedings are at any time brought against him for an offence against the provisions of this Act, committed by him prior to the date of the certificate at or in relation to that election, the Tribunal or Court having cognizance of the case shall, on proof of the certificate, stay the proceeding, and may, at its discretion award to that person such cost as he may have been put to in the proceeding.

Evidence of Respondent

44. At the hearing of an election petition complaining of an undue return and claiming the seat or office for a petitioner, the respondent may, subject to the provisions of subparagraph (2) of paragraph 12 of this Schedule, give evidence to prove that the election of the petitioner was undue in the same manner as if he were the person presenting the election petition complaining of the election.

Enlargement and Abridgement of Time

45.—(1) The Tribunal or Court shall have power, subject to the provisions of section 134 of this Act and paragraph 11 of this Schedule, to enlarge time for doing any act or taking any proceedings on such terms (if any) as the justice of the case may require except otherwise provided by any other provision of this Schedule.

(2) An enlargement of time may be ordered although the application for the enlargement is not made until after the expiration of the time appointed or allowed.

(3) When the time for delivering a pleading or document or filing any affidavit, answer or document, or doing anything or act is or has been fixed or limited by any of the sections, paragraphs or rules under or in pursuance of this Act or by a direction or an order of the Tribunal or Court, the costs of an application to extend the time, where allowed or of an order made thereon shall be borne by the party making the application unless the Tribunal or Court otherwise orders.

(4) Every application for enlargement or abridgement of time shall be supported by affidavit.

(5) An application for abridgement of time may be ex parte, but the Tribunal or Court may require notice of the application to be given to the other parties to the election petition.

(6) An application for enlargement of time shall be made by motion after notice to the other party to the election petition but the Tribunal or Court may, for good cause shown by affidavit or otherwise, dispense with the notice.

(7) A copy of an order made for enlargement or abridgement of time shall be filed or delivered together with any document filed or delivered by virtue of the order.

Hearing in a Petition

46.—(1) When a petition comes up for hearing and neither party appears, the Tribunal or Court shall, unless there are good reasons to the contrary, strike out the petition and no application shall be brought or entertained to re-list it.

(2) When a petition comes for hearing, if the petitioner appears and the respondent does not appear, the petitioner may prove his petition so far as the burden of proof lies upon him and the Tribunal or Court shall enter a final judgment in the petition.

(3) When a petition comes up for hearing, if the respondent appears and the petitioner does not appear, the respondent shall be entitled to final judgment dismissing the petition.

(4) Documentary evidence shall be put in and may be read or taken as read by consent.

(5) A party shall close his case when he has concluded his evidence and either the petitioner or respondent may make oral application to have the case closed.

(6) Notwithstanding subparagraph (5) of this paragraph, the Tribunal or Court may suo-motu where it considers the either party fails to conclude its case within a reasonable time, close that party's case.

(7) The Secretary shall take charge of every document or object put in as exhibit during the hearing of a petition and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibits is proved) and with a number so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

(8) The Secretary shall cause a list of all exhibits in the petition to be made which when completed shall form part of the record of the proceedings.

(9) For the purpose of subparagraph (8) of this paragraph, a bundle of documents may be treated and counted as one exhibit.

(10) When the party beginning has concluded his evidence, if the other party does not intend to call evidence, the party beginning shall within 10 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 7 days file his own written address.

(11) Where the other party calls evidence, he shall within 10 days after the close of its evidence file a written address.

(12) Upon being served with other party's written address, the party beginning shall within 7 days file his written address.

(13) The party who files the first address shall have a right of reply on points of law only and the reply shall be filed within 5 days after service of other party's address.

(14) Where the other party calls evidence, he shall within 10 days after the close of its evidence file a written address.

(15) Upon being served with the other party's written address, the party beginning shall within 7 days file his written address.

(16) The party who files the first address shall have a right of reply on points of law only and the reply shall be filed within 5 days after service of the other party's address.

Motions and Applications

47.—(1) No motion shall be moved and all motions shall come up at the pre-hearing session except in extreme circumstances with the leave of Tribunal or Court.

(2) Where by these Rules, any application is authorized to be made to the Tribunal or Court, such application shall be made by motion which may be supported by affidavit and shall state under what rule or law the application is brought and shall be served on the respondent.

(3) Every such application shall be accompanied by a written address in support of the reliefs sought.

(4) Where the respondent to the motion intends to oppose the application, he shall within 7 days of the service on him of such application file his written address and may accompany it with a counter affidavit.

(5) The applicant may, on being served with the written address of the respondent file and serve an address in reply on points of law within 3 days of being served and where a counter-affidavit is served on the applicant he may file further affidavit with his reply.

Service of Notice

48— (1) Where a summons, notice or document, other than a notice or document mentioned in subparagraph (1) of paragraph 7 of this Schedule, is required to be served on a person for a purpose connected with an election petition, it may be served by delivering it to the person or by leaving it at his last known place of abode in the constituency with any person there found who is a resident of the abode and appears to be 18 years of age or more.

(2) After a party has given an address for service it shall be sufficient if, in lieu of serving him personally with a document intended for him, the document is served on the person—

(a) appearing on the paper last filed on his behalf as his Solicitor wherever the person may be found or, if the person is not found at his office, on the clerk there apparently in charge; or

(b) named as occupier in his address for service wherever the person may be found or, if the person is not found at the address, on---

(i) the person there found apparently in charge, if such address is a place or business, or

(ii) a person, other than a domestic servant, there found who is a resident of the address appears to be 18 years of age or more.

(3) A party may change his address for service by giving notice of his new address for service and its occupier to the Secretary and to each party to the election petition, but, until a notice, is received by the Secretary; his old address for service shall continue to be his address for service.

(4) Where service by one of the modes specified in this paragraph has proved impracticable, the Tribunal or Court may, on being satisfied, on an application supported by an affidavit showing what has been done, that all reasonable efforts have been made to effect service---

(a) order that service be effected in any of the ways mentioned in the provisions of Civil Procedure Rules relating to substituted service which service shall be sufficient; or

(b) dispense with service or notice as the tribunal or court deems fit.

Two of more Candidates as Respondents

49. Two or more candidates may be made respondents to the same petition and their case may, for the sake of convenience be heard at the same time but for all purposes (including the taking of security) the election petition shall be deemed to be separate petition against each of the respondents.

Consolidated Petitions

50. Where two or more petitions are presented in relation to the same election or return, all the petitions shall be consolidated, considered and be dealt with as one petition unless the Tribunal or Court shall otherwise direct in order to do justice or an objection against one or more of the petitions has been upheld by the Tribunal or Court.

Electoral Officer, etc. as Respondents

51.---(1) Where an election petition complains of the conduct of an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the Commission, he shall for all purposes be deemed to be a respondent and joined in the election petition as a necessary party, but an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the commission shall not be at liberty to decline from opposing the petition except with the written consent of the Attorney-General of the Federation.

(2) If Consent is withheld by the Attorney-General under subparagraph (1) of this paragraph, the Government of the Federation shall indemnify the Electoral Officer, Presiding Officer, Returning Officer or such other official of the Commission against any costs which may be awarded by the Tribunal or Court in respect of the election petition.

(3) Where the Commission, an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the Commission has been joined as a respondent in an election

petition, a Legal Officer of the Commission or a Legal Practitioner engaged by the Commission or the Attorney-General of the State concerned (acting in person or through any of his Legal Officers) , or the Attorney-General of the Federation (acting in person or through any of his Legal Officers) shall represent the Commission, Electoral Officer, Presiding Officer, Returning Officer or other official of the Commission at the Tribunal or Court.

(4) A private Legal Practitioner engaged by the Commission under subparagraph (3) of this paragraph shall be entitled to be paid his professional fees and a Legal Officer so engaged shall be paid such honorarium as may be approved by the Commission.

Duplicate of Document

52 In the absence of express provision in this Schedule, a party filing any document or process paper in connection with any step being taken in the proceedings of an election petition shall, unless the Secretary otherwise directs, leave with Secretary copies of the document or process paper for service on each of the parties to the election petition in addition to three copies which the Secretary may preserve.

Non-Compliance with Rules, etc.

53. --- (1) Non-Compliance with any of the provisions of this Schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the Tribunal or Court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Tribunal or Court may deem fit and just.

(2) An application to set aside an election petition or a proceeding resulting therefrom for irregularity or for being a nullity, shall not be allowed unless made within a reasonable time and when the party making the application has not taken any fresh step in the proceedings after knowledge of the defect.

(3) An application to set aside an election petition or a proceeding pertaining thereto shall show clearly the legal grounds on which the application is based.

(4) An election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the defect either by way of amendment or as may be directed by the Tribunal or Court.

(5) An objection challenging the regularity or competence of an election petition shall be heard and determined after the close of pleadings.

Application of Rules of Court

54. Subject to the express provisions of this Act, the practice and procedure of the Tribunal or the Court in relation to an election petition shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the exercise of its civil jurisdiction, and the Civil Procedure Rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act, as if the

petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action.

Practice and Procedure of Court of Appeal and Supreme Court

55. Subject to the provisions of this Act, an appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with the practice and procedure relating to civil appeals in the Court of Appeal or of the Supreme Court, as the case may be, regard being had to the need for urgency on electoral matters.