

The Nigerian Supreme Court On Electoral Matters And The Dynamic Nature Of Law.

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ABSTRACT

In logic, there are four concepts of argument: first, the law of non-contradiction, second, the law of excluded middle, third, the law of identity, and fourth, De Morgan's laws. However, for convenience's sake, we shall limit ourselves to the first two of the four concepts of arguments.. The law of non-contradiction states that: if something is true, then the opposite of it is false. For example, suppose it is true that in genuine democracies, the majority must rule. In that case, the opposite of it is false to state that, in genuine democracies, the minority must rule. A statement must not offend the law of identity. For example, a minority rule over a majority is not dangerous, unlike setting a venomous snake on the loose. A person not scared by minority rule over the majority is irrational. The law of identity states that each thing is identical with itself. Against these backgrounds, we will critically appraise some of the Supreme Court of Nigeria's decisions in electoral matters. This paper examines whether the Supreme Court's decision on some disputes on electoral matters is premised on valid logic based on a wide range of acceptable political nuances. The objective of this paper are: to embark on the voyage of distilling the views of authors to study the trends of knowledge in review of literature, to engage in critical appraisal of some decisions of the Supreme Court on electoral matters, to distill reasons why some of the decisions of Courts are not in tandem with the basic rules that guides any political establishment, and to suggest solutions for future consideration by the Courts.

KEYWORDS: Nigeria, Supreme, Court, Electoral, Matters, Dynamic, Nature, Law.

1.0 A Brief History of Elections in Nigeria

The election history in Nigeria started with the Sir Hugh Clifford Constitution of 1922. The elective principle introduced by this Constitution was limited to Lagos and Calabar. Till 1946, virtually all of the official members of the Legislative Council were hand-picked white officials representing the colonial government. Also, the majority of the unofficial members of the legislative council were traditional leaders picked by the Colonial Masters. This arrangement was opposed in 1946 by the nationalist leaders, among many other criticisms levied against the Sir Author Richard Constitution of 1946. There was a tremendous improvement in 1951 under the Sir John Macpherson Constitution. This Constitution provided for unofficially elected parliamentarians at the Centre, though the white officials still retained their seats in the council. In 1954, with the creation of the

Regional Government and the British Parliamentary System of Government, indirect elections took place in Nigeria's three regions: Western, Northern, and Eastern. With this election, Sir Ahmadu Bello, the Sardauna of Sokoto, became the Premier of Northern Region, Chief Obafemi Awolowo became the Premier of Western Region, and Dr. Nnamdi Azikwe was elected the Premier of Eastern Region. This was the position until the 1957/58 Constitutional Conferences, when Nigerian leaders demanded Universal Adult Suffrage from their Colonial Masters¹.

The election that took place in 1959 was said to be massively rigged with the support of the Balewa-led Federal Government. This was when the personality clash between Chief Obafemi Awolowo and Chief S.L. Akintola was ongoing. This resulted in the popular 'wet e', which means 'spray them with petrol and set them ablaze. At this time, many people who were alleged to be involved in the election rigging that took place in the Western Region, including some electoral officers, were set ablaze. This crisis and some other factors led to the overthrow of the Nigerian First Republic Civilian Government in a coup led by Major Kaduna Uzegwu, which resulted in the killings of some of the cream of Nigerian leaders, including Prime Minister Abubakar Tafawa Balewa, Chief S.L. Akintola, Sir Ahmadu Bello, the Sardauna of Sokoto, and Chief Samuel Okotiebor. This led to the inauguration of the first Military Government led by General Agunyi Ironsi.²

After about thirteen years of Military Rule, General Obasanjo, who led the Military Government, decided to hand over power to Civilians. The process commenced with the inauguration of a Fifty Wise Men Constituent Assembly, chaired by

¹ O. Durotolu, (1994), *A Blueprint for Nigeria Economic Survival And Some Essays on Commercial Law*, Osogbo, Nigeria, Jehoval Loveslink And Press Limited.

² *Ibid*.

Chief Rotimi Williams, who was charged with the assignment of consultation with all Nigerians to give the Nation a Constitution. The outcome was the 1979 Constitution of the Federal Republic of Nigeria. This Constitution brought the American Executive Presidential Model, a bicameral legislature, Universal Adult Suffrage, the States' Executive Governors, and state House of Assemblies³.

The military lifted the ban on Politics, and political activities commenced with the registration of five political parties, namely: the National Party of Nigeria, led by Alhaji Shehu Shagari, the Unity Party of Nigeria led by Chief Obafemi Awolowo, the Nigeria People's Party led by Dr. Nnamdi Azikwe, the Great Nigeria People's Party led by Alhaji Ibrahim Waziri, and the People's Redemption Party led by Mallam Aminu Kano. Chief Michael Ani headed the Federal Electoral Commission. Elections were conducted for the various political offices. But the Presidential election was controversial. Under the 1979 Constitution, a winning Presidential Candidate must score at least 25 per cent of the electoral votes in at least 2/3rd of the Nineteen States. In a case that ensued between *Chief Obafemi Awolowo v. Alhaji Shehu Shagari, and Fedeco*⁴, the Supreme Court, in declaring Alhaji Shehu Shagari as the winner, agreed with the position that two-thirds of nineteen states is 12 2/3rd.

The 1983 General Election conducted by the civilian government of NPN led by the Federal Government under the watch of Justice Ovie Whisky was massively rigged in what Nigerians called daylight robbery. Many Governors were rigged out of office with another round of 'wet e' in Western Nigeria. There was massive resentment, especially in Ondo State, where an alleged winner was chased out of the state. Three months after the government was installed, the military took over power again, leading to the Buhari/Idiagbon government⁵.

Meanwhile, a few years after General Babangida took over power, he commenced a transition programme by establishing only two government-sponsored political parties. For the first time, this arrangement prevents Nigerians from joining political parties based on ethnic differences. The electoral commission chairman introduced the option A4 formula, whereby any candidates contesting the election must commence the contest from their constituency. Professor Nwosu introduced the open secret voting system, which did away with the ballot system and other expensive materials that cost billions of naira. The system, which permits accreditation, disregards voting by ballot and requires all voters to queue behind the picture of their party's candidatures at the same time throughout Nigeria. Voters in the queue were counted, and everyone knew the results immediately, as they were recorded in the appropriate form. The election was annulled by the military aided by one Abinbola Davies who brought a motion to stop the election before Justice Bassey Ikpeeme's Court, which granted an order stopping the election. Nevertheless, the election was adjudged the best in Nigeria's history. Today, the electoral system adopted by the Nigerian government is a secret ballot system with the use of Bimodal voters Accreditation System(BVAS), a portable electronic voting authentication device configured to read into perfect memory only the permanent voters' card that prevents double accreditation and multiple voting⁶.

2.0 Review of Literature

Encyclopedia Britannica's authors emphasised that elections make a fundamental contribution to democratic governance⁷. A democratic governance can only be established when the electoral process produces a majority government. There are many principles and features considered common to the electoral system. It is only when these principles and characteristics are present that the electoral process could be said to be unmanipulated. The author of the Ontario Citizen Assembly on Electoral Reform⁸ elicits some of these principles and characteristics as: legitimacy, fairness of representation, stable and effective government, effective parliament, stronger voters' participation, accountability, simplicity and practicability. To be precise, legitimacy is achievable when the leadership produced by the electoral process enjoys the mandate and acceptability of the majority of voters. Anything short of acceptance of the set of leadership produced by the electoral process is illegitimate and anti-democratic. In essence, the electoral process should invoke the voters' confidence and reflect their values. It is always easy to accept the results of the election of the rulers insofar as the election is fair. Legitimacy rides on a sound electoral system. For the representation to be fair, it must reflect the voters' desire. In this situation, the election results that produce the people's representatives must reflect the population and numerical strength of the voters. The majority must have the most significant number and not otherwise. Put differently, the representation must be a true reflection of the voters' choice. Around the rights of the citizens to choose their representatives and leaders. Another feature of a credible electoral process is the existence of effective political parties.

³ *Ibid.*

⁴ *Awolowo v. Shagari*, (1979) CLR 9(a) (SC) ; VRU 14 (1981), S. 387-399.

⁵ O, Durotolu, *Op.cit.*

⁶ *Ibid.*

⁷ Retrieved from www.britannica.com on the 3rd day of November, 2022.

⁸ The Citizen Assembly on Electoral Reform was a creation of regulation under an Ontario's Electoral Act. The regulation directs the Assembly to consider eight principles and characteristics to assess inter alia the Ontario Electoral System and to consider any other principles it believes are essentials to democratic governance, which are simplicity and practicability. Retrieved on the 3rd day of September, 2022 from www.citizenassembly.gov.on.ca

Political parties are effective when they have well-defined philosophies, political and economic blueprints, and social programmes of action plans from which voters can express their choice in voting for a political party in line with their respective choice programmes. In essence, political parties must be able to structure public debate⁹ by educating the electorate on their respective philosophies and programmes, mobilising and engaging the electorate on alternative development programmes¹⁰.

Democracy is well-rooted in a stable and effective government. There can only be a stable and effective government where the electoral process produces a party that enjoys the majority's support and also has majority representation. Anything short of majority rule is an invitation to anarchy. An effective government depends on effective leadership, the ability to take action quickly to deal with emergencies based on early warning and early response mechanisms, and the ability to achieve peaceful coexistence through the success of negotiation and compromise. The roles of an effective parliament and stronger voter participation¹¹ could only be performed and made effective where those elected are the genuine voters' representatives. Then, there can be cooperative governance based on establishing a working relationship.

The Citizens Assembly of Ontario, Canada, also considered the principle of accountability¹², but only in the sense of viewing political parties as instrumentalities for the enforcement of responsibilities, wherein voters viewing political parties as responsible for good or bad policies by which they use, to measure whether the performance of a political party justifies its acceptance or rejection in future elections. The paper finally considered the simplicity and practicality of the electoral process.

Also, the author of the ACE project concentrates their efforts in the areas of Electoral systems, their context, which includes the importance of Electoral systems, party systems, electoral systems and conflict management, psychological and mechanical effects, the importance of contest and the broader democratic framework, as the indices that characterise the effective electoral process. Though the above discussions are crucial when considering the factors that could make or mar the electoral process, the above authors did not discuss the courts' vital role in determining the winner of an election in real contest situations. This paper filled this hiatus.

3.0. Appraising Some Decisions of the Supreme Court of Nigeria.

This paper examined some controversial decisions of the courts in Nigeria on electoral matters. In reaching their conclusions, the courts have been careful not to dabble into politics by being impartial and fair and observing equity in determining cases before them. Whichever we observed it, one could not disregard the consideration of some relevant political concepts to properly appraise the Court's decisions in the determination of cases before it. Undoubtedly, a solid connection or inter-relationship exists between political concepts and electoral matters. This paper pinpointed that such political concepts, inseparable from politics, are not taken care of by the courts in determining electoral cases.

The ingenuity of the courts creates the rules known to us today, especially in civil cases. These rules are brought up by considering many social factors within our political milieu. It is never an aberration for the courts to create a concrete solution via these rules distilled by judges' ingenuity. In the light of the above, it is, therefore, reasonable that any decision by the courts on electoral matters, apart from the need for complying with the Constitution and not derogatory from the rules of practice of the Electoral commission and other rules, should pass two tests; first, that such decision must be politically valid, and second, it must conform with the rules of logic. This is in line with the maxims that *attinentia decisiones, quae logica, politica valida, non sunt constituta*, and *attinens decisions not determinatas in logico valida*. Therefore, against the above backgrounds, decisions contrary to some basic political understanding are appraised due to the controversies that climaxed those decisions.

3.1. Effect of Inconclusive Election and the Death of the Gubernatorial Candidate.

In the case of the Kogi State of Nigeria Gubernatorial election, the Courts were faced with the vexing question of, on the death of the Gubernatorial candidate, when he was still leading the votes, with some units yet to be decided, what was the fate of his deputy to succeed the deceased candidate? Second, in cases where the gubernatorial election is inconclusive and the gubernatorial aspirant is deceased, could the Deputy Governorship aspirant step into the shoes of the deceased gubernatorial aspirant to complete the election? Then, what qualifies the deputy aspirants to succeed the deceased? And whether the votes for the deceased are to be considered votes for the parties on the joint tickets of the deceased aspirants and the deputy gubernatorial aspirant. The lesson of the unfortunate incident of the Kogi State election brought in its wake the following constitutional requirements:

- i. The deputy must participate in all the election preliminaries, obtain a nomination form, and participate in the candidate screening and primary elections.
- ii. The deputy must come second in the party's primary election.

⁹ *Ibid*, p.7.

¹⁰ *Ibid*, Pp -89.

¹¹ *Ibid*, p 9

¹² "The Electoral knowledge Network", retrieved from <https://aceproject.org> on the 3rd day of September, 2022.

- iii. The deputy must not have defective credentials that might give the impression of a virulent fraudster or put his real personality in question.

The above are some of the prominent factors taken into consideration by the Courts in the determination of the case of *Hon. Abiodun Faleke v. Independent National Electoral Commission (INEC) and Anor*¹³. In this case, in preparation for the Kogi State of Nigeria Governorship election, in November 2015, the All Progressive Congress (APC) party held its primary elections in August of the same year to choose its flag bearer. Several party members, including the Late Prince Audu, the second Respondent, contested the primary. In the primary, the Late Prince Audu Abubakar emerged the winner, whilst the second Respondent, Yahaya Bello, came second. The Appellant, Abiodun Faleke, did not contest the primary. Meanwhile, the Late Prince Audu Abubakar picked Hon. Abiodun Faleke as his running mate, and both names were submitted to the Independent National Electoral Commission for contesting the Gubernatorial Election, representing the APC party. The election was contested on the 21st day of November, 2015, and the results released by INEC showed that the Late Prince Audu Abubakar and Abiodun Faleke's ticket was leading with 24,867 votes, whilst the People's Democratic Party was placed second with 199,248 votes. Meanwhile, electoral malpractices were discovered in 91 polling units, and the registered votes in these 91 polling units exceeded the margin of winning votes between the APC and PDP. This is what the INEC felt could affect the outcome of the election. Consequently, INEC, relying on its Manual for Election of Public Officials, declared the results of the election inconclusive.

Consequently, upon these happenings, the Independent National Electoral Commission wrote to the APC to present another gubernatorial aspirant to conclude the election. The APC settled for Yahaya Bello and presented him to INEC. On this basis, two cases emerged at the prompting of the applicant, the vice gubernatorial candidate under the Late Audu Abubakar in the person of Abiodun Faleke, first, the Appellant instituted an action before the Federal High Court, seeking the interpretation of S. I. (2), 179(2) (a) (b), and S.181 of the 1999 constitution (as amended). He also sought the setting aside of the declaration of the 2nd Respondent, Yahaya Bello as the Governorship candidate and prays the Court to overturn the 1st respondents declaration that the election was inconclusive, whilst he prayed the Court to declare that the Gubernatorial election of Nov, 2015 was conclusive and that he was entitled to step into the shoes of Audu Abubakar as the Governor elect. However, this suit was struck out on the ground that only an Election Petition Tribunal had the jurisdiction to look into the matter. The election into the remaining 91 units was eventually conducted on the 5th day of December, 2015, with Yahaya Bello as the APC's flag bearer substitute. The APC and Yahaya Bello won the election and were eventually issued a certificate of return¹⁴.

Dissatisfied with the return of Yahaya Bello as the governor-elect, the Appellant filed a petition before the Kogi State Governorship and State House of Assembly Election Petition Tribunal. At the close of the trial, the Tribunal entered judgment for the 1st and 2nd Respondents. After the Appellant's Appeal failed before the Court of Appeal, the Appellant finally appealed to the Supreme Court¹⁵.

At the Supreme Court, Justice Kudirat Kekere Ekun itemised the crux of the Appeal in the question below¹⁶:

- i. Whether the Late Prince Abubakar Audu and the Appellant, Hon. Abiodun Faleke, met the requirements of S.179(2) (a) and (b) of the 1999 Constitution (as amended) and are entitled to be deemed elected as Governor and Deputy Governor of Kogi State based on the election results?
- ii. Did INEC rightly declare the election inconclusive?
- iii. Was the Appellant, Hon. Abiodun Faleke, under S.181 (i) of the 1999 Constitution, entitled to step in as the Governorship candidate and as the Governor elect of Kogi State?
- iv. Whether the 2nd Respondent, Yahaya Bello, was entitled to substitute Late Prince Abubakar Audu as the Governor elect of Kogi State under S.33 of the Electoral Act, and
- v. Was the 2nd Respondent, Yahaya Bello, entitled to appropriate the votes the Audu/Faleke ticket garnered?

Based on the above, the Court forms the opinion that the issue to be resolved bothered on; the status of the November, 2015 election, whether the 1st Respondent, INEC, ought to apply its Manual for Election of Officials to circumvent the provisions of S.179 (2) of the Constitution and thus declared the election as inconclusive. In resolving the riddle brought forth by this case, we shall rely on the lead judgment of Kudirat Kekere Ekun, JSC. According to the eminent Justice of the Supreme Court, she elicits the route to do substantial justice in this case as follows¹⁷:

- I. To reproduce some of the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria applicable to this case.
- ii. To analyse the controlling word "duly elected" and settle for a canon of expression for its true purport.

¹³ (SC. 648/2016; (2016) NGSC 84, 30TH day of September, 2016.

¹⁴ *Supra*.

¹⁵ *Supra*.

¹⁶ *Supra*.

¹⁷ *Supra*.

- iii. To analyse the meaning of the controlling words.
- iv. To determine whether the INEC's Manual for Election of Officials was employed by INEC to amend or augment the provisions of the Constitution, against the background of the principle of Supremacy of the Constitution argument.
- v. To determine whether a political party can substitute its candidate.
- vi. Whether the party had taken the proper legal course in substituting its candidate.

At this stage, the Supreme Court engaged in a thorough analysis of the Constitution, and we shall elicit the wisdom of the Court on the following points:

3.2. The Relevant Constitutional Provisions

The first Constitutional provision considered in this case is S.179(2) of the 1999 Constitution of the Federal Republic of Nigeria, which states thus:

A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected, where there are two or more candidates.

(a) He has the highest number of votes cast in the election, and

(b) He has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the state.

Also, section 181(1) of the 1999 Constitution of the Federal Republic of Nigeria states that:

Suppose the person duly elected as Governor dies before taking and subscribing the oath of Allegiance and Oath of Office, or is unable for any reason whatsoever to be sworn in. In that case, the person elected with him as Deputy Governor shall be sworn in as Governor. He shall nominate a new Deputy Governor who shall be appointed by the Governor with the approval of a simple majority of the House of Assembly of the State.

While analysing the above Constitutional provisions, the Supreme Court, per Kekere Ekun JSC, felt that the controlling words are 'duly elected' and borrowing from Black's Law Dictionary¹⁸, the word 'duly', according to the Court, is defined as following legal requirements, and puts, following the requirement of law. According to the Court, the next question arises: how could it be determined that the legal requirements have been met? To determine the legal requirement, the Supreme Court applied the provisions of S.156 of the Electoral Act, 2015 and S.69 of the Constitution of the Federal Republic of Nigeria, 1999. Section 156 of the Electoral Act states that: *Return is the declaration by a returning officer of a candidate in an election under this Act, as the winner of that election.* Also, S. 69 of the 1999 Constitution of the Federal Republic of Nigeria, provides that:

"In an election to the office of the President or Governor, whether or not contested, and in any contested election to any other elective officer the result shall be ascertained by connecting the voters' cast for each candidate, and subject to the provisions of section 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer.

In effect, according to the Court, a person is duly elected as Governor or President when:

- i. The result has been ascertained by counting the votes cast for each contestant.
- ii. A candidate has received the highest number of votes, and
- iii. A candidate with the highest number of votes has been declared the winner by the returning officer in charge of the election. According to Kekere Ekun, JSC.

Sections 179(2) and 181(1) of the Constitution are not self-executing. A candidate must be declared or returned as the winner of an election before the sections become applicable. To hold otherwise would lead to a situation where anyone could declare themselves the deemed winner of an election, which would undoubtedly lead to anarchy. The electorate is also entitled to have the election results formally declared by an unbiased umpire¹⁹.

Distilling from the wisdom of the Court, until the declaration of results by the Returning Officer, a winner has not yet emerged.

¹⁸ Black's Law Dictionary, 8th edition, p.540.

¹⁹ *Supra*.

3.2.1. Whether the INEC's Manual Could be Used to Amend the Constitution

This question was prompted by the Appellant's counsel's argument that the provisions of INEC's Manual could not be employed to amend or augment the provisions of the Constitution of the Federal Republic of Nigeria, 1999. The Supreme Court, in contradiction of the above argument, found Constitutional backing for INEC's usage of the Manual. According to the Court, S.73 empowers the Commission to publish in the Gazette, guidelines for election which shall make provisions for the step by step recording of the votes casted in the appropriate electoral forms, whilst S.153 empowers INEC to issue regulations, guidelines or manuals to give effect to the provision of the Electoral Act for proper administration of its affairs. The Supreme Court decides that "the INEC's Manual for Electoral Officers is relevant for the appropriate conduct of the election; and that its provisions of the Manual has statutory backing and it is therefore, a subsidiary legislation; since the Manual embodies the steps to be complied with in the conduct of free and fair elections; and hence, in deciding, that the election was inconclusive when 91 units results were outstanding, the provisions of the Manual becomes relevant to determine the next course of action by INEC. In essence, the Court, per Kekere Ekun JSC, held that the resort to the provisions of the Manual did not show a flagrant disregard for the principle of Supremacy of the Constitution. The Apex Court decides that the relevant section of the provision of the Manual is unambiguous and does not need or require a foray for its provision to be applied.

3.2.2. Whether the APC as a Party took a Normal Course.

In this case, the Appellant contended that the APC as a party was not entitled to substitute its deceased Governorship candidate as the election was already conclusive and at an end, and the 2nd Respondent could not appropriate the votes cast for Audu/Faleke's ticket. In deciding on this argument, the Supreme Court quoted the dictum of Oguntade JSC with approval while interpreting S. 221 of the 1999 Constitution of the Federal Republic of Nigeria; thus²⁰:
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"The above provision effectually removes the possibility of independent candidacy in our elections and places emphasis and responsibility in elections on political parties. Without a political party, a candidate cannot contest. Therefore, the primary method of contest for elective offices is between the parties. If, as provided in S.221 above, it is only a party that canvasses for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning, but in the end, for the day, the party wins or loses an election.

The Supreme Court, based on the above, held that since the votes garnered by Prince Audu/Hon. Faleke tickets were votes cast for the political party; logically, the issue of transfer of votes could not arise. To buttress the fact that the APC as a party was proper in its choice of candidate after INEC had declared the election inconclusive, the Supreme Court invoked section 177(c) of the 1999 Constitution, which combined with judicial authority to decide that²¹:

First, a person seeking to contest an election into the office of Governor of a State must be a member of a political party. Second, such a person must be sponsored by that party. Third, he must have participated in the primary election conducted by the party, in this case, the APC. Fourth, he must come second behind²² the deceased Gubernatorial candidate. Meanwhile, according to the Supreme Court, the conduct of the said primary is not in dispute. It is also not in dispute that the Appellant (i.e. Hon. Abiodun Faleke) did not participate in his party's primary. From this, the Appeal by Hon. Abiodun Faleke failed, and the Court upheld the decision by the APC as a political party to be in line with the Constitutional provisions on the choice of the candidate to represent the party to conclude the inconclusive election.

A gubernatorial candidate should consider the tenors of Faleke's case when choosing a deputy governor to forestall unforeseen exigencies.

- i. The deputy governor must partake in all the preliminaries to the election, from the collection of nomination forms to the screening of candidates to primaries.
- ii. The deputy must come second.
- iii. That since Faleke cannot fulfil these conditions precedent to his qualification for replacement, while Yahaya Bello satisfied these conditions, the Party APC was proper in the choice of Yahaya Bello, who was subsequently elected as the Governor of Kogi State on the platform of APC.

²⁰ relevant provision as contained in the manual states that: where the margin of win excess of the total number of registered votes of the polling unit(s) where elections were cancelled or not held, the returning officer shall decline to make a return until another poll has taken place in the affected polling units and the results incorporated into a new form ECSD for a declaration and returns.

²¹ *Supra*.

²² See S. 87 of the *Electoral Act*, 2010: See also *Onubugadu v. C. P. C. (2012) 1pplr, 8606 (CA)*.

3.2.3. Parties are Strictly Bound by their Constitution.

The rule that parties are strictly bound by their Constitution was established in the Zamfara State's case of *Samusi Liman Dan Alhaji and 37 Others v. APC and 143 Others*²³, where the Plaintiffs asked the Courts inter alia to compel APC to accept the parties' primaries. In this election, Idris Shehu of the APC polled 67.51% of % majority votes, thereby defeating PDP's candidate, Bello Matawale, who got 23.89% of the total votes and trailed behind by a majority margin of 345,089 votes. The APC also led in the 14 Local Government Areas of Zamfara State. Meanwhile, due to the internal wrangling within APC, the party took itself to Court because the party, APC, failed to conduct primaries to choose all its flag bearers in the election conducted on the 7th day of October, 2018. The Federal High Court per Ojukwu J held that it was not the fault of the INEC that the APC failed to conduct a valid primary within the stipulated period by the electoral body. Further, INEC was poised to curb impurity among political parties and politicians and ensure that the rule of law is followed by insisting on the conduct of parties' primaries. The Court ruled that the APC-led failed to conduct valid party primaries within the period permitted by the electoral body²⁴.

Meanwhile, the Zamfara State High Court, sitting in Gusau, decided contrary to Justice Mohammed Shinkaki that the Governing APC actually conducted that party's primaries and should be allowed to present its candidate to contest the election. The Court further barred the National Secretariat of the APC from replacing the names of those who won the party's primaries. On Appeal, the Appellant contended that the Respondent had no *locus standi* to institute the action at the Court of first instance and, on issue two, that the High Court of Zamfara State lacked the jurisdiction to entertain the matter by arguing that only the Federal High Court has the exclusive jurisdiction to entertain this matter²⁵.

Firstly, on this stand, the Court of Appeal conceded that the Defendant, now Appellant, had filed a preliminary objection at the High Court that the 1st – 38th Defendant had no *locus standi* for instituting their action. The Court of Appeal also conceded that the Court, in deciding on the question of *locus standi*, only has to look at the amended statement of claim. The Court of Appeal stated that after perusing the Respondent's amended statement of claim and counter affidavit, it concluded that the 1st to 38th Respondents had the requisite legal capacity to institute the action as aspirants for the Zamfara State Gubernatorial, National and State House of Assembly Elections. According to the Court²⁶:

Their grouse was that having participated in the primary elections, the 39th Respondent had the plan to reverse the results from the aforesaid primary election and shortchange them, hence, they had to approach the Court below to protect their rights and interests.

The second issue thrashed by the Court of Appeal was that appellant contention that under S.251 (i) (v) of the 1999 Constitution of the Federal Republic of Nigeria as amended, the High Court had no jurisdiction to have entertained and determined the action brought by the 1st to 38th plaintiff/respondent, the Constitution having vested the exclusive jurisdiction on such matter to the Federal High Court. To appreciate the importance and the dynamics of this argument, the Court of Appeal considered the combined effect of S.251(i)(v) of the 1999 Constitution of the Federal Republic of Nigeria as amended, and section 87(9) of the Electoral Act, 2010, as amended.

S.251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise exclusive jurisdiction to the exclusion of any other court in civil causes and matters.

v. Any action or procedure for a declaration of injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies is within the exclusive jurisdiction of the High Court.

Meanwhile, S.87 (a) of the Electoral Act, 2010, as amended, states that;

Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, or the Federal Capital Territory, for redress.

Based on the combined effect of the above provisions, the Court of Appeal decided that on matters bordering on grievances by aspirants who participated in political party primaries, indisputably, the law is no longer recondite but well settled that

²³ ZMS/GS/52/2018.

²⁴ *Supra*.

²⁵ *Supra*.

²⁶ *Supra*.

the Federal High Courts, the State High Courts and the High Court of the Federal Capital Territory, have concurrent jurisdiction to hear and determine complaints brought by aspirants who had participated in political party primaries.

Thirdly, the Appeal was further determined on the issue whether the Zamfara State High Court did discharge the duty incumbent on it to evaluate and ascribe weight to the evidence led by the parties before concluding that the 1st – 38th Respondents have proved their claims, upon which the relief sought by them was granted. Learned counsel had submitted that the Lower Court had failed to evaluate the evidence, and the failure had occasioned a miscarriage of justice²⁷.

In evaluating the evidence, the Court of Appeal found out that Alhaji Lawal M. Liman, the Chairman of APC in Zamfara State who was not a member of the National Working Committee of the APC was the one that sent a letter containing the list of candidates for the Governorship candidate, the senatorial candidates, the House of Representative candidates and the twenty four members states House of Assembly candidates to INEC. With this development, the Court discovered that the State Executive of the Party led by Lawan Liman had conducted the Primary Election in Zamfara State for the APC contrary to the All Progressives Congress guidelines for the nomination of candidates for the 2019 General Elections, which saddled the National Working Committee of the party solely for that assignment. The Court in addendum discovered from the provisions of paragraphs 14 and 20 of the guidelines that the guidelines emphasised recruiting persons from outside the area where elections were to be conducted and vested the power to appoint the seven-man committee who are to conduct the election on the National Working Committee of the party. The Court of Appeal discovered that the party's National Working Committee did not appoint Lawal M. Liman to conduct the Primary Election. The Court of Appeal, per Tom Shaibu Yakubu, JCA, reasoned that²⁸.

I must say it loudly and clearly, Lawal. M. Liman, the Chairman of the APC Zamfara State, had no power to conduct primaries and forward a list of successful candidates to INEC. He acted illegally against his party's Constitution and guidelines concerning the conduct of primaries; he had no authority or slightest business conducting primary elections and forwarding a list of allegedly successful candidates, including his name, to INEC. His action is incongruous, patently bizarre and detrimental to healthy political competition.

The Court of Appeal conceded that sequel to a letter written by INEC to the APC notifying the party on its failure to conduct the party primaries in Zamfara State within the stipulate timeframe of the 18th day of August to the 7th day of October, 2018, the National Working Committee attempted to conduct the primaries twice, first through a committee led by Engineer Abubakar Fari and second, through another committee headed by Major General Abubakar Mustapha, but both attempt failed due to protest, escalation of violence, absence of voters register, inadequate ballot papers etc. Based on these failed attempts and to beat the deadline, the Court discovered that the Zamfara State Government directed the State Executives to conduct the primaries at all levels before midnight of the 7th day of October 2018. Meanwhile, the Court reasoned that the attempt contravened the APC guidelines for the conduct of primaries. While allowing the Appeal, the Court of Appeal held that the High Court failed to properly evaluate the evidence before it and come to a decision that was perverse in the following words²⁹:

It is apparent from the decision of the lower Court that attention was not accorded to the materials before it. The lower Court failed to properly evaluate the evidence and come to a conclusion, which is undoubtedly a case of the lower Court shutting its eyes to the obvious, and remanded persistently on the path of error, thereby giving a perverse decision. This decision differs from what is reasonable or required, a decision against the weight of evidence. The law is settled that where the trial Court fails to evaluate the evidence placed before it correctly, the Appellate Court is in a good position, as the trial court, to reevaluate the evidence placed before it, to ensure that justice is done between the parties. The Court of Appeal further held that³⁰:

- I. Whenever there is a specific provision regulating the procedure for doing a particular act, that procedure must be followed
- ii. It is also trite that when a statute dictates a certain mode of doing something, then that method must be employed in the performance of the Act.

The Appellant finally appealed to the Supreme Court. The Appeal Court, out of many issues canvassed in the Appeal, decided that the only surviving issue for determination relates to whether, considering the evidence before the trial court, the lower Court was right when it held that the Appellant did not conduct primaries from which candidates emerged for the 2019 General Election. On this issue, Counsel for the Appellant had submitted that 'the lower Court acted in error in reevaluating the evidence before the trial court.

²⁷ *Supra*.

²⁸ *Supra*.

²⁹ *Supra*.

³⁰ *Supra*.

On this, the Supreme Court, per Paul Adamu Galumje, JSC, decided that the Court entirely agreed with the lower Court that the trial court had failed to evaluate the evidence properly before it and had remained persistent on the path of error, thereby arriving at a perverse decision. The Supreme Court further decided that the rule that an appellate court has no jurisdiction to interfere with the assessment and evaluation of evidence of a trial court is not absolute. The Court held that such a rule can only remain absolute in the absence of exceptional circumstances warranting such interference, and where special circumstances abound, the rule must give way³¹.

The Supreme Court, therefore, made certain clarifications on the rule; first, that the principle of non-interference with the assessment of evidence and ascription of probative value to the evidence of the trial court generally concerns oral evidence by witnesses whose demeanour the trial court is required to observe and draw conclusions. Second, the rule does not apply to documentary evidence, as the appellate Court can look at the document and comment freely on it. Third, even where the trial court improperly evaluates oral evidence before it arrives at a perverse decision, an appellate Court has absolute jurisdiction to interfere and make corrections³².

In this case, the Supreme Court arrived at the above premises and held that³³;

- i. Section 87 of the Electoral Act 2010 provides how a candidate emerges for an electoral contest, stating that ‘A Political Party seeking to nominate a candidate for elections under this Act shall hold primaries for aspirants to all elective positions.
- ii. Where a political party fails to conduct primaries, it is apparent that such a party cannot participate in the general elections.
- iii. For the above reasons, all the political parties have promulgated their constitutions and guidelines, eliciting the process and procedures for the selection of candidates for general elections
- iv. Political parties are therefore bound by their own Constitution and guidelines for the emergence of their candidates in the primary elections;
- v. In line with APC’s guidelines, two committee were constituted by the National Working Committee of the party to conduct the party primaries, one under the leadership of Engineer Abubakar Fari and the second, under the headship of Major General Abubakar Mustapha Gana (rtd), but both committees achieved no success, ostensibly due to lack of sufficient materials and general insecurity

That based on the fact that INEC had written a letter to APC in time, telling the party of the likelihood that the party might not have their candidates contesting the elections, and considering the deadline for the primaries issued by INEC, the state Government in contravention of its party guidelines for the conduct of primaries directed the state primaries at all levels before 12: 00 midnights of the 7th day of October 2018.

Relying on Rhodes Vivour JSC in the case of *Emenike v. PDP and Ors*, the Supreme Court decided that the Appellant, through its State Executive Committee, conducted illegal primaries, and this is tantamount to saying that the APC did not conduct primary elections in Zamfara state, and therefore has no candidates for the polls. The Apex Court stated emphatically that a party with no candidates in an election cannot be declared the winner. Based on the above, the Supreme Court made the following consequence orders³⁴:

- i. The votes credited to the APC’s candidates in the 2019 general elections were to be considered wasted by the APC’s unconstitutional outfit that conducted the election.
- ii. Those candidates of parties other than the APC, with the highest votes and the required spread, are elected into the various offices contested in Zamfara State in the 2019 general elections.

Meanwhile, it should be noted concerning Zamfara state Gubernatorial elections, that Mukhtar Shehu Idris of the APC polled 67.41 % of the popular votes, while defeated Bello Matawalle of the PDP, got 23.89% of the total votes and trailed behind by a wide Margin of 345,089 votes. The effect of this judgment is to foist minority rule on Zamfara state with the imminent likelihood of violent reaction. The violent was so virulent that Bello Matawalle had to decamp with membership of the State Houses of Assembly into the ruling APC to assuage the violent which assumed unassuming dimension in Zamfara state, so much that at a stage, the Governor decided to resign and abdicate the seat of power, if that would put an end to the violence in Zamfara State. Many stakeholders in the Nigerian political process have demanded Governor Matawalle’s resignation over the Killings and kidnappings in the state³⁵.

Concertise the danger looming in Nigeria, his Lordship concluded his judgment with the following caveat.

³¹ *Supra*.

³² *Supra*.

³³ *Supra*.

³⁴ *Supra*.

³⁵ Daily Post of 3rd day of May, 2021, “Zamfara Governor Offers to Resign Over Rising Insecurity”, retrieved from <https://dailytrust.com>

The democratic system this country has adopted was borrowed from the United States of America and other democratic nations of Europe. Those from whom we borrowed this system are steadily forging ahead in all areas of endeavour to create stress-free and economically viable nations. For this great country, some politicians either are ignorant of what party politics is or have continuously dragged this nation backwards out of mischief. If care is not taken, this class of politicians will drag this nation to the Stone Age, where all of us will be consumed. I urge this class of politicians to play the game according to the laws and guidelines that they have enacted. It is only when this is done that sanity will take centre stage in this great nation's domestic and international affairs.

3.3. Unlawful Exclusion and Discrepancy in Names of Deputy Governor

The case of *INEC v. ANDP & Ors*³⁶ raised the issue of whether there can be unlawful exclusion in the absence of a valid Nomination. In the case, the Advanced Nigeria Democratic Party, as the petitioner, challenged the election conducted by INEC for the office of the Governor of Bayelsa State. The election was conducted on the 16th day of November, 2019. Before the election, the INEC issued regulations and guidelines. The third Respondent, Duoye Diri, was the flagbearer of the People's Democratic Party as the 2nd Respondent³⁷.

In the petition, the ANDP alleged that INEC unlawfully excluded it and its candidate from participating in the election. After the election, INEC declared and returned Leon David Pereuorimini of the All Progress Congress as the winner on the 17th day of November, 2019. On the 6th day of December, 2019, ANDP and its candidate filed a petition against the election. The grounds of the petition were that they were unlawfully excluded from its conduct. The Tribunal dismissed the petition on the 21st day of January, 2020. The petition moved from the Court of Appeal to the Supreme Court.

On the 13th day of February 2020, the Supreme Court disqualified the APC candidate and nullified the 17th day of November 2019 declaration that proclaimed the APC's candidate as winners. The Apex Court also ordered INEC to declare the PDP candidate, Duoye Diri, as the winner on the 14th day of February 2020. Sequel to this, the ANDP again approached the Tribunal with its three candidates who were not allowed by INEC to participate in the election to expunge the result. At the end of the trial, the Tribunal granted the petition. Aggrieved by the decision of the Tribunal, the Appellant challenged the same at the Court of Appeal and raised three issues for determination³⁸:

- i. Whether the nomination of a candidate of the ANDP for the gubernatorial election in Bayelsa State was not a pre-election matter as defined by the 1999 Constitution of the Federal Republic of Nigeria.
- ii. Whether concerning the provision of sections 177 and 187 of the Constitution of the Federal Republic of Nigeria, whether the Tribunal was right when it held that the first Respondent proved its candidates were validly nominated but unlawfully excluded from the Bayelsa State Governorship Election held on the 16th day of November 2019.
- iii. Whether the Tribunal was right when it granted reliefs that inure in favour of a person who voluntarily withdrew from the petition.

On the whole, the Appeal was allowed and the Court of Appeal held that³⁹:

- i. The Tribunal cannot constitute an appellate court over a matter once it has decided. According to the Court, the Tribunal, having struck out the 1st Respondent and its candidate from the earlier petition, ceased to be a pending claim. In a fresh election, the grant of the relief ordering the INEC to include the name and Logo of the 1st Respondent, together with the names of its candidate, was a gratuitous award. Also, by granting the relief it had earlier struck out, the Tribunal constituted itself into an Appellate Court, which is offensive to law⁴⁰.
- ii. The majority judgment of the Bayelsa State Governorship Election Tribunal delivered on the 17th day of August 2020 was set aside.
- iii. The declaration of the third Respondent, Duoye Diri, as the Governor of Bayelsa State made by the Independent National Electoral Commission on the 14th day of February, 2020, was affirmed.
- iv. That is what the ANDP brought to the Court: a pre-election matter brought out of time.
- v. The Court held that disqualifying a candidate based on underage is a pre-election matter under section 285(14)(c) of the 1999 Constitution as amended.
- vi. The Court of Appeal reviewed the petition by examining whether the suit was statute-barred. It held that the cause of action accrued on the 27th day of September, 2019, whilst the petition was filed on the 26th day of February, 2020 outside the mandatory period of 14 days which was outside the accrual day of within which the cause of action was stipulated to be filed under S. 285 of the 1999 Constitution as amended. The Court held that the petition was therefore statute-barred.

³⁶ (2020) LPELR-50950 (CA); Suit No, CA/ABJ/EPT/GOV/704/2020, Judgment of 2nd October, 2020.

³⁷ *Supra*.

³⁸ *Supra*.

³⁹ *Supra*.

⁴⁰ *Famu v. Kassim* (2013) 7 NWLR (Pt 1352) p. 124 ; *Cole v. Jibunor* (2016) 4 NWLR (Pt 1503) p. 499.

- vii. The Court of Appeal further held that since the case dealt with a pre-election dispute, the Tribunal lacked jurisdiction to entertain the matter and constitute an incompetent forum for its determination since via S. 31(5) of the Electoral Act, only the Federal High Court, the High Court of a State or Federal Capital Territory are the Court vested with jurisdiction in such matter⁴¹.
- viii. Since the Tribunal lacked jurisdiction, its judgment is null and void.
- ix. The Court of Appeal further held that to prove unlawful exclusion after a valid Nomination, petitions must show the following;
 - (i) That his political party validly nominated him.
 - (ii) That the election was conducted.
 - (iii) That a winner was declared; and
 - (iv) That his name was excluded from the list of contestants⁴².

The Court of Appeal, taking its position in S. 31(2) of the Electoral Act, stated thus:

Though nomination and qualification are mutually exclusive and not conterminous, section 31(2) of the Electoral Act States that "the list on information submitted by each candidate shall be accompanied by an Affidavit sworn to by the candidate at the Federal High Court", High Court of a State or the Federal Capital Territory, indicating that he has fulfilled all the constitutional requirements for election into that office. Thus, for nomination to be valid, the candidate must show that he is qualified to be nominated. A candidate disrobed of the necessary qualification cannot claim to be validly nominated to contest an elective office.

The decision of the Court of Appeal was premised on the fact that the records from documentary and oral evidence revealed that: (a) the first Deputy to Governorship candidate nominated by the party, Mr. David Peter Esinkuma was below the required age of 35 as stipulated under S. 177(b) of the Constitution of the Federal Republic of Nigeria 1999. The Court also faulted his subsequent substitution with Miss Inowei Janet, as the Court felt it was ineffectual in law since only a valid Nomination can attract substitution. Therefore, the Court of Appeal concluded that the 1st Respondent's claim of unlawful exclusion could not stand as there was no proof of a valid Nomination⁴³.

3.4. Discrepancies in the Name of Deputy Governor.

Another litigation was brought by the People's Democratic Party and its gubernatorial candidate, Duoye Diri, against the All Progressive Congress. The gubernatorial candidates, the case which led to the political eclipse of APC in Bayelsa state, was brought against the alleged falsification of certificates by the Deputy Governorship candidate of the APC, Biobarakuma Degi Evemienyo, who was alleged to have presented irreconcilable certificates that bore different names to INEC.

Sequel to the above, Justice Inyang Ekwo of the Abuja Division of the Federal High Court disqualified the Bayelsa State deputy Governorship candidate. The Federal High Court per Ekwo held that⁴⁴ all the documents containing the deputy governorship candidates' educational qualifications bore different names without a credible explanation regarding the multiplicity of the names on the papers he attached to form CFOO1.

The Court further held that 'there was no reasonable explanation as to how the deputy governorship candidates of the APC should present the names of their identification and certificates in five different names without sufficient lawful documents to reconcile those names. The Federal High Court per Ekwo J made the position of law on how to correct discrepancies in names, thus⁴⁵:

The Notary public before whom he made the deposition ought to know that he did not issue the certificates and was only helping to do that, which is wrong in law. The said affidavit of correction and confirmation of name does not conform to the proper manner of changing or correcting a name. Affidavit of regularisation of names was deposed to on the 18th day of September 2018 by another Notary Public who is faceless. Assuming that it was made correctly, the deposition is another attempt to correct the names on the first school leaving certificate issued in 1976 and the WAEC/GCE certificate issued in 1984. How many depositions are required to change the names on the FSLC, the names on the school leaving certificate purportedly issued in 1976, and the WAEC West African Examination Council Certificate purportedly issued in 1984? Only the issuing authority of those documents has

⁴¹ *PDP V. INEC (2014) 17 NWLR (Pt 1437) P. 525; Ekagbara v. Ikpeazu (2016) 4NWLR (Pt1503) P. 411.*

⁴² *Supra. See also Abubakar Atiku v. Yar' Adua, Sc. 72/2008.*

⁴³ *See Lau v. PDP (2018) 4 NWLR (Pt 1608) P. 660.*

⁴⁴ *FHC/CS/1101/2019.*

⁴⁵ *Supra.*

the power to correct anything thereon. He cannot claim to be the person referred to therein without such evidence of correction. To round up the futility, the Notary public before whom he made the deposition did not even state his name, thereby invalidating the affidavit.

From the above analysis, to succeed before the Court in reconciling disparities in a contestant's name on his documents, the following must be proved⁴⁶:

- i. There must be proven irreconcilable disparities in the contestant names.
- ii. The names on each document must be confirmed by a letter or document from the issuing authority that the names refer to the contestant and no other person.
- iii. If it were a certificate, the content of the reconciling document must confirm the contestant's study duration.
- iv. An affidavit to establish that the contestant bears different names must have copies of documents from the issuing authorities annexed to it as exhibits.
- v. The person before whom the affidavit was sworn or deposed must be identifiable by name and office address.
- vi. The deposition in the affidavit must be sworn under oath to be the truth.
- vii. If possible, evidence of publication of the change of name in the newspaper must be made available.

Consequently, His Lordship, Ekwo J, in his judgment, held further that⁴⁷:

- i. There was no evidence to prove that the documents with the different names belonged to the APC's deputy Governorship candidate.
- ii. The information presented to INEC by the deputy Governorship candidates was false and without any nexus with their name, – Evemienyo on form CF0001.
- iii. That under the mandatory Constitutional and Statutory provisions of section 6(6), 186 and 187(1) and (2) of the 1999 Constitution, the 3rd Defendant, i.e. the deputy governorship candidate, stands disqualified from contesting and standing as a deputy governorship candidate in the gubernatorial elections scheduled for the 16th day of November 2019.

Dissatisfied with the trial court's verdict, Degi Evemienyo appealed to the Abuja Division of the Court of Appeal. Allowing the Appeal, the three-person panel of the appellate Court, chaired by Adah J.C.A., held that⁴⁸:

- i. The Federal High Court erred in law and breached the appellants' right to a fair hearing.
- ii. The Court further maintained that the case was brought under section 3b of the Electoral Act and is criminal. The Respondent in the case ought to prove beyond a reasonable doubt that Senator Degi Evemienyo gave false information to INEC in support of his nomination, contrary to section 31(5) and (6) of the 2010 Electoral Act, as amended. The Court made the following pronouncements in their unanimous judgment, Per Adah J.C.A. that;

I agree with the Appellant that the ownership of the school leaving certificate and the GCE certificate is the same. I therefore state that Evemienyo submitted an affidavit to prove that the names on his school leaving certificate are the same as those on his GCE certificate and newspaper cuttings announcing a name change.

Not satisfied, the DDP and its gubernatorial candidate appealed to the Supreme Court. The Supreme Court nullified the APC's victory, restored and affirmed Justice Ekwo of the Federal High Court, Abuja's earlier judgment that disqualified the APC's Deputy Governorship candidate elect. The Supreme Court, Per Eko Jsc, held that regularising the names he filed was not enough. On the legal procedure to follow for such correction and regularisation, the Supreme Court States that: First, having not approached the authorities which issued the certificates of academic qualifications in 1976 (the first school learning certificate) and 1984 (The West African School Certificate GCE), the first Respondent brandishing of certificates using affidavit to assets the ownership of the certificates was erroneous.

Based on the above, the Supreme Court proclaimed the Governors and the Deputy Governorship candidates as having a joint ticket⁴⁹ and consequently nullified the election of both. Reversing the Court of Appeal decision, the Apex Court held that⁵⁰:

- i. The votes credited to APC's candidates were wasted, and INEC was therefore ordered by the Court to withdraw the certificates of return issued to David Lyon and Degi-Evemienyo, who were the poll winners.
- ii. The Court ordered INEC to issue fresh certificates of returns to the Governorship candidates and the Deputy Governorship Candidates of the party with the highest votes, and that met the constitutional spread of votes in the election
- iii. The Court also held that the newly declared winners of the elections are to be sworn in at the appropriate time.

⁴⁶ *Supra*.

⁴⁷ *Supra*.

⁴⁸ Judgment of the Court of Appeal, Abuja, delivered on the 23rd day of December, 2019; (2020) LPELR- 50950, CA.

⁴⁹ Judgment of the Supreme Court of Nigeria, delivered on the 13th day of February, 2020.

⁵⁰ *Supra*.

According to Eko, JSC, in total, the joint ticket of the 1st and 2nd Respondents (Iyon and Degi Evemienyo) sponsored by the 3rd Respondent, APC, was vitiated by the disqualification of the first Respondent, Degi Evemienyo. Both disqualified candidates are deemed not to be candidates in the governorship election.

4.0. Some Unsatisfactory Aspects of the Court's Decision

There are many unsatisfactory aspects of the pronouncement of the Court; first, the election of the Governor, who was not at fault, was annulled. Second, the cancellation of APC's votes was a wasted vote, and third, the election of the PDP's candidate, who won minority votes in two out of the eight local governments of Bayelsa State of Nigeria, how an earth can one democratically justify the cancellation of majority votes of 355,552 majority votes and the pronouncement as winner a candidate with the minority votes of 143,172 votes. APC had most of the votes in six out of the eight local governments in Bayelsa State.

These are two views on the Court's pronouncement that the INEC should declare as winners the party that won the highest votes with the appropriate constitutional spread. The first view is that the candidates that won 25 per cent of the total lawful ballots in at least two-thirds of the Local Governments must have 25% of the total votes, APC's votes inclusive. The second view is that the APC's votes should be countenanced or struck out as unlawful. If INEC adopts the first view, Duoye Diri will not meet the requirement; conversely, if INEC adopts the second view, Duoye Diri will be declared the winner.

The constitutional implication of adopting the first view is that a fresh election would occur in Bayelsa State, but without the APC's participation as a party, having declared its candidate disqualified. What would have possibly followed was political intrigues in Bayelsa State that could see the amalgamation of opposition parties against Duoye Diri in negotiations on who takes what. However, INEC opted for the second option and declared Duoye Diri of the People's Democratic Party the winner of the Bayelsa State Gubernatorial election. The Deputy Governorship candidate of the APC, Biobarakuma Diri, Evemienyo, had brought misfortune to the party, as a result of the incongruity in his nomenclature, having failed, according to the pronouncement of the Court, to satisfy the requirement of the extant law substantially.

4.1. Grounds by Statute

To analyse properly the judgment of the Supreme Court in the case, it is necessary to go into the nitty-gritty of the provisions of S.187(1) (2) of the Constitution of the Federal Republic of Nigeria, 1999, and Section 182 (1a-J) in terms of their combined effects. S.187(1) states that:

- (i) In any election to which the forgoing provisions of this chapter relate, a candidate for the office of Governor of a State shall not be deemed to have been validly nominated for such office, unless he nominates another candidate as his associate for his running for the office of Governor, who is to occupy the office of the Deputy Governor. That candidate shall be deemed duly elected to his office of the Deputy Governor if the candidate who nominated him is duly elected as Governor following the said provisions.*
- (2) The provisions of this part of this chapter relating to qualification for election, tenure of office, disqualifications, declaration of assets, liabilities, and Oath of Governor shall apply concerning the office of Deputy Governor as if references to Governor were references to Deputy Governor.*

4.1.1. S. 182(1) No person shall be qualified for election to the office of Governor of a state if.

- a. Subject to the provisions of Section 28 of this Constitution⁵¹, he has voluntarily acquired the citizenship of a country other than Nigeria, except in such cases as may be prescribed by the National Assembly, and he has made a declaration of allegiance to such other country as
- b. He has been elected to such office in any two previous elections or
- c. Under the law in any part of Nigeria, he is adjudged a lunatic or otherwise declared to be of unsound mind; or
- d. He is under a sentence of death imposed by any competent court of law or Tribunal in Nigeria or a sentence of imprisonment for any offence involving dishonesty or fraud (by whatever name called) or any other offence imposed on him by any court on Tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or Tribunal or
- e. Within less than 10 years before the date of election to the office of the Governor of a state, he has been convicted and sentenced for an offence involving dishonesty, as he has been found guilty of the contravention of the code of conduct, or

⁵¹ *The Constitution of the Federal Republic of Nigeria, 1999.*

- f. He is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria; or
- g. Being a person employed in the public service of the federation or of any state, he has not resigned, withdrawn or retired from the employment at least thirty days before the date for the election; or
- h. He is a member of a secret society; or
- i. He has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry, an Administrative Panel or Inquiry, or a Tribunal set up under the Tribunals of Inquiry Act or Tribunal of Inquiry Law or any other law by the Federal or State Government, whose indictment has been accepted by the Federal or State Government.
- j. He has presented a forged certificate to the Independent National Electoral Commission.
- k. Where in respect of any person who has been:-
 - a. Adjudged to be a lunatic
 - b. Declared to be of unsound mind;
 - c. Sentenced to death or imprisonment; or
 - d. Adjudge or declared bankrupt, an appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (i) of this section shall not apply during a period beginning from the date when such Appeal is lodged and ending on the date when the Appeal is finally determined, or as the case may be, the appeal lapses or is abandoned, whichever is earlier.

4.1.2. S.184. The National Assembly shall make provisions in respect of

- a. Persons who may apply to an Election Tribunal for the determination of any question as to whether
 - i. Any person has been validly elected to the office of Governor or Deputy Governor.
 - ii. The term of office of a Governor or Deputy Governor has ceased, or
 - iii. The office of Governor or Deputy Governor has become vacant.
- b. Circumstances and manners in which, and the conditions upon which such application might be made, and
- c. Powers, practice, and procedure for the election tribunal in relation to any such application.

Thus, it is apparent from section 182 subsections A-J, which spelt out the conditions for disqualification of a Governorship candidate, that the section did not state that a Governorship candidate could be disqualified based on an unproven fundamental discrepancy in the certificate of a deputy Governor. The canon of expression '*expressio unio est, exclusio alterius*', meaning the express mention of one thing implies the exclusion of other things not mentioned, strictly applies. Second, it is clear from the provisions of our statute laws, both from the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act, that there was no provision stating that a disqualification of the Deputy Governor designate could lead to or must lead to the disqualification of the Governorship elect or Governorship candidate. The pronouncement of the Court in this regard is an act of judicial law-making, reminiscent of an act of judicial encroachment of the legislative domain or an invasion of the legislature's functions.

4.2. The principle is that a Man cannot be Responsible for the Act Committed by Another Man.

Third, in this case, the pronouncement of the Court in the Bayelsa Gubernatorial Election is contrary to the principle that you are not to hold a man responsible for the Act committed by another man. This is expressed in the *Latin* maxim '*Non Hominem actorem, iniuria ab alio commissum*'. Moreso, there is no presumption that an act committed by another man could be imputed to another until that other discharges the onus that he was not implicated when the Act concerned was that of the one at fault. If the Governorship candidate committed a post-election fraud, will we invoke the Act of the Governor on the deputy? Surely not. The Governor stands impeached, whilst the deputy takes over.

5.0. Conclusion:

The Argument that Judgement on Political Issues must be in Accord with the Fundamental Principles of Politics

5.1. Judgement Needs to be in Tandem with the Principle of Politics.

Meanwhile, the concern in this paper is to illuminate our minds on the need for judgment to be in tandem with the demands and fundamental principles of politics. Judgment should therefore not be contrary to all fundamental principles of politics and should be geared towards promoting legitimacy. Hobbes's *Leviathan*⁵² emerged with concerns for the structure of society and legitimate government, against the backdrop of the English Civil War.

Hobbes settled for a Social Contract Theory to avoid the brute situation of a state of nature. The war of all against all could only be avoided by a strong individual government, demonstrably the power of the commonwealth, and the only way to maintain people in a commonwealth is the institution of an impartial and absolute sovereign. Some unique features of Hobbes's *Leviathan* are as follows: first, the prior existence of a state of nature. Second, Hobbes described a state of nature

⁵² *Leviathan: or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil*. Hobbes, T (2008), *Leviathan*, edited by J,C,A, Gaskin, London, Oxford University Press.

as a horrible one where brute force was the order. Third, it is a state where lives are nasty, brutish, and short. Demonstrably, violence and death characterised the state of nature; for Hobbes, a perfect government exists to promote peace and prevent the breakdown of law and order. Thus, insurrection must be an aberration in the Leviathan.

Inherent in Hobbesian philosophical methodology is the modelling of Leviathan after geometrical proof, having fallen under Galileo's spell in the 1630s. This is founded upon the principle that each step of argument makes conclusions based upon the previous step, observing that conclusions derivable from geometry are indisputable because the constituent steps are indisputable in themselves. Thus, it must be irrefutable that there is zero tolerance for contradiction and insurrection in the Leviathan. The existence of zero insurrection requires higher-order thinking. Hence, Hobbes conceived the social contract theory as relinquishing the power to rule to a sovereign. However, under modern democracy, a single sovereign of the Hobbesian and Austinian models is no longer conceivable. The modern Sovereign is inherent in three powers: the executive power exercisable by the executives, the legislative power, and the judicial power wielded by the judiciary.

The third essential of Hobbes's writing is that society must be structured to allow legitimate government rule. Those chosen by the citizens via a social contract must be allowed to rule and nothing more. The implication is that it would be inimical to allow anyone short of those desired by the citizens to rule. This is where the principle of representative democracy comes in. It should be the rule that those elected by the majority should be allowed to govern. A rule established by expressing minority interest could result in the anarchy orchestrated by the disgruntled majority. This is in contradiction to the Hobbesian envisaged Leviathan. It is, therefore, against this background that the decision handed down by the Supreme Court in the Bayelsa State Gubernatorial election contradicts the basic foundational principle of justice and as the judgment reinforces the rule of the minority over the majority when the judiciary itself is an essential stakeholder in the country's fledgling democracy.

5.2. Judgement should not entrench the Rule of Minority over Majority

There is no modern democracy that entrenches the rule of a minority over the majority. At the foundation of justice is the maxim, *ubi jus, ibi remedium*. This is to say that there must be a remedy when there is a right. What makes law interesting is its dynamic nature. Law must at all times reflect the changing nature of society. It takes the ingenuity of Lord Denning to engender the principle of promissory estoppel, the doctrine of new model constructive trusts, etc. Today, the Mareva and Anton Peller injunction is in the injunctive order list, which keeps ringing within us. What makes law an interesting subject area is its changing nature. It cannot be a celebration for the legal profession for law to remain static. Had our courts gone activist, they would not have allowed the politicians to lead us to the path of error; the situations in both the Zamfara and Bayelsa states could have been saved with the judicial formulation of the principle of Hobbesian-Legal interpretation of law. It would have been a celebration in our institutions of higher learning, a joy to the legal world.

5.3. A "Psycho-Physiotherapeutic Legal Approach"

The present world is evolving towards an interdisciplinary approach. The benefits of this drive towards a broad mental magnitude approach are to improve positively on human existence in terms of the acquisition of new knowledge, promotion of peace, enhancement in the health delivery system, broadening our sense of justice, preventing diseases and war, etc. A Psycho-physiotherapeutic legal approach is first, to promote the well-being of the citizens' state of mind (psycopolity), second, to prevent the political terrain from wobbling and thubling, ensuring that the skeletal system of the national politics does not collapse like the pack of cards, (physiotherapeutic), third, the legal is for guaranteeing the symbiotic relationship between the 'psyche' of the people, and the physiotherapeutic skeletal stabilising force for the body politics as the sole institution wielding the stick for rule maintenance.

The psycho-physiotherapeutic legal approach reinforces the likely intersection of psychological, physical, and legal considerations, particularly within healthcare and legal proceedings in society. This approach recognises the interconnectedness of mental and physical well-being and their potential impact on legal matters, such as personal injury claims, disability assessments, or competency evaluations.

5.4. key aspects of a Psycho-Physiotherapeutic Legal Approach

5.4.1. Interdisciplinary Collaboration

Some key aspects of a Psycho-Physiotherapeutic Legal Approach are: first, interdisciplinary collaboration, which necessitates the collaboration between psychologists, physical therapists, and legal professionals to provide a holistic assessment and treatment plan. I am developing the thesis that a judge presiding over a matter that could affect a whole society must contemplate those people, aside from the immediate parties before the Court, whose Lordship's pronouncement would affect. What could be the likely effects of his Lordship's decisions on the body politic? The impact of the Court's decision on the body politic must be to reinforce, strengthen, and uphold it rather than to cause delapidation and disintegration of it.

5.4.2. Understanding the Whole Milieu.

The second is understanding the whole milieu. A judge superintending a case must acknowledge that a pronouncement might have a rippling effect, such as physical injuries and illnesses, and even a total breakdown of law and order, as it was

in Zamfara state, Nigeria, with the consequential psychological consequences for the peace-loving populace. Therefore, a comprehensive evaluation considers the people's physical and mental health in the political environment. The third relates to the Legal Relevance of this concept. The first point is that a legal mind is a multidisciplinary figure. A jurist is a learned friend since he takes knowledge from every disciplinary area while adjudicating. A judge must be able to sense the volatility around his jurisdiction, make psycho-physiotherapeutic assessments and determine which way to approach an intricate legal issue on which he presides.

5.4.3. Ethical Considerations, Disability Determination, Competence Evaluation

Fourth, ethical considerations, disability determination, competence evaluation, and factors for criminal behaviour. All professionals involved in various community services, including judges, must adhere to ethical guidelines and maintain people's confidentiality. A judge must be a disability determinant by foreseeing the real ability for positive or negative thinking that determines how the masses might respond and react to judgment. Being able to decide on the positive or negative attitude of the people makes the judge an effective competence evaluator. This quality would guide the judge in understanding those psychological and physical factors that may contribute to criminal behaviour or affect an individual's ability to withstand a judgment's effects.

A psycho-physiotherapeutic legal approach seeks to bridge the gap between psychological and physical well-being and the legal system, ensuring that individuals receive comprehensive assessments and appropriate support based on their unique circumstances. A clue to unassuming jubilation for the legal world. In conclusion, the Court does not need to join the political class in entrenching abnormalities into politics. It is unnecessary to follow the track of arbitrariness of the Political Class. Instead, the judiciary should make a significant "u-turn" by strictly adhering to the rule of the Political Game, thereby injecting sanity into the Political System. Thus, the Court should make a significant positive forward march based on the classical remarks of His Lordship, Paul Adamu Galumje JSC.⁵³

⁵³ *The democratic system this country has adopted was borrowed from the United States of America and other democratic nations of Europe. Those from whom we borrowed this system are steadily forging ahead in all areas of endeavour to create stress-free and economically viable nations. For this great country, some politicians either are ignorant of what party politics is or have continuously dragged this nation backwards out of mischief. If care is not taken, this class of politicians will drag this nation to the Stone Age, where all of us will be consumed. I urge this class of politicians to play the game according to the laws and guidelines that they have enacted. It is only when this is done that sanity will take centre stage in this great nation's domestic and international affairs.*