

THE JUDICIARY AND THE RULE OF LAW:
CHALLENGES OF ADJUDICATION IN THE
ELECTORAL PROCESS

BEING TEXT OF A PAPER DELIVERED BY:

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I feel highly honoured by the invitation extended to me to be the guest speaker at this very important occasion of the law week celebration of the **Faculty of Law** of the University of Abuja. It is an honour to be able to share my thoughts with the crème de la crème of our tomorrow in the legal profession.

When I received this invitation to deliver a lecture on “**the Judiciary and the Rule of Law: Challenges of Adjudication in the Electoral Process**” I accepted the invitation not because I consider myself to be an expert in the field of electoral law and practice, but firstly, because I feel this is a topical issue in our polity today and that we are all stake-holders. As such I think it is an issue in which everybody should be interested and that we can brainstorm together. Elections have just been concluded into various offices in the nation. We are therefore in the season of election petitions. We have seen the pre-election cases. Secondly, I feel I might have one or two things to contribute in view of the fact that I was an elected Member of the House of Assembly of the old Ondo State between 1992 – 1993. At that time, I had the honour of being the Chairman, House Committee on Judiciary and Public Petitions. Thirdly, as a jurist who had traversed both the inferior and superior Benches for close to two decades now, I feel I might be able to do some justice to the topic since it has to do with the challenges faced by the judiciary in adjudicating electoral disputes. For a combination of these reasons, I felt that it was incumbent on me to accept this invitation.

Before I proceed further, I hasten to commend the organizers of this event for their thoughtfulness in selecting this topic, which is very germane to our development as a nation; and timely too, in the context of the ongoing adjudication of electoral disputes. It shows that our youths are concerned about our development as a nation and are ready to contribute their quota. This rekindles hope in our youths. Please, keep it up.

INTRODUCTION

Traditionally, all modern governments are composed of three distinct arms: the Legislature, the Executive, and the Judicature. These three groups perform

important and distinct roles in modern governments. As a corollary to the principle of separation of powers and the rule of law, their powers are in most modern democracies exercised independently but cooperatively with one another. Modern government is inconceivable without the judiciary. The judiciary is the fulcrum of the rule of law since it is through its adjudication of disputes that the sharp edge of the rule of law is actually felt.

Since the emergence of the social contract and the consequential representative democracy whereby the people surrendered their rights to govern to elected representatives, periodic elections have become an integral part of the rituals of modern democracies¹. Through elections, people are able to reassert the fact that power or sovereignty actually belongs to them by electing those who will carry out their aspirations for a specific period and rejecting those who they do not trust or who had actually failed them in time past. Through this process a government of popular will is put in place. Therefore, sound electoral process is sine-qua-non to asserting the popular will. Consequently, disputes arising from electoral process demand serious attention from the judiciary. This is because the adjudication of such disputes determines the entrenchment or otherwise of government of popular will². In attending to this important assignment, the judiciary has often been confronted with a lot of challenges.

The intendment of this paper is therefore to examine the challenges faced by the judiciary in entrenching the rule of law while adjudicating electoral disputes and to suggest possible panacea.

THE JUDICIARY

The primary role of the judiciary in any democracy is to guard against unlawful and arbitrary use of powers in the polity; to maintain equilibrium between the citizens, the government and the citizens, between government and government or between the three arms of government by way of interpretation and application of the laws of the land. No wonder that the judiciary has always been regarded as the last hope of the ordinary citizens. It is through the judiciary that the cutting edge of the doctrine of rule of law is felt and appreciated. Therefore, the judiciary has a central role to play in electoral dispute resolution. It provides

avenue for electoral grievances to be resolved. The alternative to this is resort to self-help and consequential anarchy.

The *Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999)* vests the judiciary with the power to adjudicate on matters arising between parties. Thus, section 6 of the *CFRN, 1999* provides as follows:

(1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

(3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in sub-section (5) (a) to (i) of this section shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by a State House of Assembly, each court shall have all the powers of a superior court of record.

(4) Nothing in the foregoing provisions of this section shall be construed as precluding –

(a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High court...

(6) The judicial powers vested in accordance with the foregoing provisions of this section-

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law

(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights

and obligations of that person;...

What is apparent from the above is that the judiciary is to act as an arbiter between two parties to a dispute in the country. It therefore determines the rights and obligations of the parties that bring disputes before it in order to secure peace, harmony, development and democratic stability in the nation.

It is also clear that two sets of courts are created in Nigeria: the inferior and superior courts. The implication being that the superior courts have inherent powers while the inferior courts do not and the powers of the inferior courts are limited as regards both the type of cases they can try and the remedies they can award³. The inferior courts can be created by the *CFRN, 1999*⁴ or by the laws of either the *National Assembly* or those of the Houses of Assembly of the States.

The election petition tribunals established by both the *CFRN, 1999* and the State Assemblies to try electoral disputes are therefore tribunals with inferior status to the superior courts by virtue of section 6 (3) of the *CFRN, 1999*. The various electoral tribunals are specialized courts established to specifically handle election petitions and their powers are limited as specified in the enabling laws: they do not have any inherent powers. The appellate courts to the tribunals are as specified in the enabling laws.

THE RULE OF LAW

The rule of law simply means the supremacy of the law. In other words, it means all authorities and persons within a state must be subservient to the law and that nobody, however great, must be above the laws of the state. It is in effect a limitation to the exercise of governmental powers. This doctrine which has become a mantra of all constitutional democracies has no life except as given to it by the judiciary through the instrumentality of adjudication in disputes. The ratio decidendi of a case becomes the concrete and outward manifestation of the rule of law⁵. When the rights of parties to disputes are decided by the courts by the application of the law, the parties are in effect subjected to the rule of law in that they are bound to accept the verdict of the court. A law only assumes life when a court has interpreted it. Therefore, courts have a lot to do in delimitating the frontiers of the rule of law; and the rule of law only thrives when parties to disputes comply with the decisions of courts. As Lord Moulton rightly observes, "...the measure of a civilization is the degree of its obedience to the unenforceable"⁶. Therefore, the import of the rule of law in electoral process and disputes cannot be overemphasized.

CHALLENGES OF ADJUDICATION IN THE ELECTORAL PROCESS IN NIGERIA

The word 'challenge' is synonymous with the word 'problem'. The word 'problem' is defined as, "a matter difficult of settlement or solution"⁷ while the word 'challenge' is defined as, "a... difficult task that tests somebody's ability and skill"⁸. As can be seen, these two words are like the two sides of the same coin. Whenever there is a challenge, there is a problem to be solved. And it is this challenge that would call for human ingenuity, skill and prowess in solving such problem. So in a sense, these two words could be employed interchangeably, and it is in this sense that they have been employed in the context of our discussion. The term, 'electoral process', connotes all the steps that are taken toward the conduct of an election or in the course of an election⁹. In this sense, it includes both pre-election steps and the steps taken in the election proper. The challenges of adjudication in electoral process are therefore the constraints and problems bedeviling the tribunals and courts when adjudicating on pre-election and post-election disputes.

Pre-Election Matters

Pre-election matters deal with those issues that are prior to the actual holding of an election: issues preliminary to the holding of an election. Here issues like the validity or otherwise of the nomination of a candidate and the substitution of the name of a candidate validly submitted by a political party to the *Independent National Electoral Commission (INEC)*, which are pre-election matters, might lead to disputes. Similarly, issues dealing with whether a candidate has met the conditions relating to qualification as a candidate in an election: age, educational qualification, and absence of conviction for an offence involving dishonesty, etc¹⁰, all of which are pre-election matters, can also lead to disputes. The issue is whether a court of law would have jurisdiction.

Generally, a court of law cannot interfere in matters falling strictly within the confines of the internal affairs of a political party. The *INEC* must therefore accept the list of candidates presented to it by political parties and the court cannot inquire into whether the candidate was popularly elected in the party's primary. This rule has often been abused by parties and because of the injustice occasioned by it; attempts have been made to whittle down its effect. For example, once the name of a particular candidate has been submitted to the *INEC*, the party must give cogent and verifiable reason for substituting it and this

must be done not later than 60 days to the election by virtue of section 34 (1) of the Electoral Act, 2006 (repealed by Electoral Act 2010 - see *Amaechi v. INEC* (2007) 18 NWLR (Pt. 1065) and *Ugwu and Another v. Ararume and Another* (2007) 6 S.C. (PT. 1). Also where the issue is caught by the provisions of sections 66, 107, 137 and 182 of the *CFRN, 1999*; it can be raised at any time before the *Federal High Court*. Pre-election matters are not cognizable before election petitions tribunals. The *Federal High Court* is the proper venue for pre-election matters once the *INEC* (a federal agency) is joined – see 251 (r) *CFRN, 1999*.

However, the vast majority of cases causing serious disaffection in the electoral process fall within the confines of internal affairs of political parties. As a testimony to this, we are all living witnesses to the spate of cases that followed the primaries conducted by virtually all the political parties preparatory to the just concluded elections. They nearly frustrated the *INEC* from conducting the elections when courts continued to give conflicting orders on daily basis. Some of the cases are still in courts all over the Federation. Majority of the cases on which the courts cannot interfere have led to the defection of aggrieved persons from their original parties. Herein lies the crux of the matter. It is as clear as day light that without entrenchment of internal democracies in intra-party affairs, there cannot be democracy in the polity itself. This has led Oguntade (JSC, CON) Rtd. to observe thus:

An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their constitutions as to the emergence of candidates for elections is one of the major causes of serious problems hindering the enthronement of a representative government in this country¹¹

If Nigeria truly desires to grow in democratic ethos, critical examination of this rule needs be done. The common law logic of it seems to be faulty. If the courts could interfere in contractual agreements between private parties by holding each party to his promise, then one wonders why the rule suddenly changes when it comes to political parties. Is it been said that debauchery and capriciousness are virtues in party politics? Public policy demands that the law intervenes in the internal affairs of a party, because whatever decision is taken in a party might ultimately have effect on the citizenry as a whole and not on the party members alone. Once a party conducts an election to pick candidates, it

must be held to the sanctity of its outcome, which is a contract between the party and the candidates that contested the primary election. In fact, the law will not be going too far if it precludes parties from incorporating in their constitutions any provision that gives them the discretion not to conduct primaries where there are several party members interested in the same post.

In trying to deal with this problem, section 33 of the *Electoral Act, 2010* has inserted a provision totally banning political parties from substituting candidates once their names have been submitted to the *INEC*. Thus, parties can no longer hide under the pretext of given cogent and verifiable reasons to subvert internal democracy. This provision is salutary.

However, it is being suggested that section 33 of the *Electoral Act, 2010* should be further amended to compel sanctity of primary elections once held and to prohibit party's discretion not to hold primaries where more than one candidate are interested in an office. Once these are done, a major chunk of the problems confronting democracy in Nigeria would have been solved.

Jurisdiction of Election Petition Tribunals

Section 285 of the *CFRN, 1999* spells out the tribunals with the appropriate jurisdictions to adjudicate on matters connected with post election matters. The *Supreme Court* is now the final court of appeal on Gubernatorial elections of the States by virtue of section 233(2)(e)(iv) of the *CFRN, 1999*, as altered while section 239(1)(a) of the *CFRN, 1999, as altered* makes the *Court of Appeal* the Court with original jurisdiction to hear matters arising from the Presidential elections. The *Supreme Court* remains the appellate Court in respect of Presidential and Vice Presidential elections – 233(2)(e)(i) of the *CFRN, 1999*. The various States also have the responsibility to create electoral tribunals to deal with Local Government elections by virtue of section 7(1) of the *CFRN, 1999*.

Legal Framework for the Conduct of Election Petitions

The *Evidence Act* is applicable to election petitions. Election petitions being sui generis ought to have special rules of evidence applicable to them. The *Evidence Act* which was enacted nearly seven decades ago has never been comprehensively reviewed; thus meaning that most of its rules are outdated and cannot meet the challenges of the internet age where many of the documents to be tendered at election tribunals are computer-generated; as such many pieces of

evidence that could have assisted many a party at election petitions tribunals are disallowed¹². Seeing the injustice occasioned by this, the tribunals have had to invent a method of admitting this type of evidence by hiding under the relevancy rule to admit them¹³.

In the same vein, the rules of evidence allow a party to call as many witnesses as he believes would assist his case, even though a case is not proved by calling a host of witnesses. Many litigants, especially the respondents, in election petitions have hidden under this rule to call a host of witnesses that they do not actually need with the intention to prolong the cases, which prolongation is to their advantage since they enjoy the rights of incumbency.

Another constraint faced by the courts in adjudicating in election petitions is the one created by section 138 of the *Evidence Act* in relation to allegation of crime in an election petition: the standard of prove is proof beyond reasonable doubt. This is coupled with the requirement that where an allegation of crime is ascribed to an agent it would not affect the election of a particular candidate except it is shown in law that such agent was approved by the candidate and that the candidate assigned such agent the role¹⁴. Many of the acts giving rise to election petitions in Nigeria are actually criminal in nature. For example, snatching of ballot papers and forging of result sheets. The negative import of these twin impossible legal requirements is succinctly captured in the words of late Hon. Justice Pats-Acholonu (JSC):

While though the main appeal has failed due to what I ascribe as to the impossibility of satisfactorily proving nation wide spread of ineptitude, violence, intimidation and other acts of terrorization as well as other barefaced acts that literally chill the bones...some of the revelation that is, where the evidence was led and proved, are blood cuddling. That in this day and age in this country that has been independent for 45 years we can still witness horrendous acts by security officers who ought to dutifully ensure peace and tranquility in the election process suddenly turning themselves into agents of destruction, and induced mayhem to what ordinarily would have been a civilized way of exercising franchise by the people who are sovereign, is regrettable. ...Some of the evidence elicited are so disquieting that one would wonder whether we have learnt

or in fact can learn a lesson. Such inordinate and impetuous acts are despicable. Such mania to traduce all known civilized practices by supporters of parties is reprehensible and condemnable¹⁵.

As can be clearly seen, it is evident that there were serious vices but to prove them as required by law was impossible. The implication being that evil perpetrators stand to gain! Such a situation is definitely not a good augury for any nation.

Commenting on similar decisions in *Atiku Abubakar & Ors v. Umaru Yar'Adua & Ors¹⁶*, and *Muhammadu Buhari v. Independent National Electoral Commission (INEC) & Ors¹⁷*, Prof. Ben Nwabueze has severely criticized the *Supreme Court* for what he called, 'perverse and narrow legalism' and undue reliance on what he termed 'technical rules of evidence, practice and procedure, and by consideration of expediency' for not voiding the election that brought in President Yar'Adua¹⁸.

It is necessary to look into our laws and amend them to take care of the special nature of election and election petitions with a view to righting the identified anomalies.

However, it needs be said that no one should be under illusion that good laws alone can tackle issues of electoral malaise; the human agent is the most critical. Our political class needs to imbibe the rules of the game. And it is evident that we are getting near it as testified to by the recent elections in the country which on the average has been adjudged the best conclusive set of elections ever conducted in this nation. Thanks to the human agents: Mr. President, the *INEC* and the electorate who tried to play their roles according to the laws. But definitely the laws can assist in molding attitudes if they are enforced.

Before leaving this section, it is necessary to comment on the provisions of section 142 of the *Electoral Act, 2010*. It contains two important rules. One is to the effect that where a candidate is who scored the highest votes in an election is declared by a tribunal or court not to be qualified to contest the election or where the election is marred by substantial irregularities or non-compliance, the election shall be nullified and a rerun shall be ordered. The second is to the effect that where a candidate is declared by the tribunal or court not to have scored the

highest lawful votes, the person who scores the highest number of valid votes shall be declared the winner. These provisions have just provided a legislative basis for the position which the courts of the land have taken.

It is also pertinent for me to comment on the provisions of section 141 of the Electoral Act 2010. The effect of the provision is to abate the legal effect of the decision of the Supreme Court in Amaechi's case supra.

Conduct of Participants in Election Petitions

A - Litigants

Litigants, especially the respondents, have the habit of trying by all possible means to extend the duration of election petitions by exploring all avenues available to do so. This problem is encouraged because of the incumbency advantage enjoyed by the respondents under our laws.

Under the *Electoral Act, 2006* (repealed by Electoral Act 2010), while a petitioner is challenging the outcome of the election in which he participated, his opponent who has been declared the winner is allowed to continue to enjoy the fruit of the contested post for as long as the case lasts. This is replicated under section 143 of the *Electoral Act, 2010*. In fact, the situation is pathetic for the legislative elections for contestants both at the Federal and State levels. Most often the petitioners, if they win at the end of the day might not have more than some few days remaining to enjoy their mandates as they have to use the remainder of the mandates being used by the respondents! Even the situation with the Governorship and Presidential seats is just a little less severe for the petitioners. The respondents in most cases would have spent more than half of the tenures they are adjudged not to have won before they are sent packing. To make matters worse, the respondents would have the state resources at their disposal to fight the cases while the actual winners would have to rely on their own means. No wonder that some respondents are reputed to have openly boasted that their opponents should continue to pursue cases in court while they continue to enjoy the offices!

However, this situation appears to have been partially ameliorated by the insertion of section 285 (5) – (7) of the *CFRN, 1999* (as altered) which seems to have pegged the period within which election petitions matters could spend from the date of filing to the final appeal to about 11 months from the declaration of

the result. At least, this is better compared to the earlier time when the respondents in many cases would have been in office for more than three years of a four-year tenure, leaving the winners with an empty victory. However, the fact remains that the almost one year taken out of a winner's tenure illegally is simply too long. And it is believed that respondents would still continue to explore all means to ensure that they enjoyed the 11 months to the limit. More worrisome is the question as to what happens where a petition is not finally disposed of within the time allowed.

B – Legal Practitioners

Of course, the tactic of delay attributed to litigants cannot see the light of the day if not endorsed by their counsel. Counsel in order to achieve this look for means of securing adjournments, file frivolous applications and proffer protracted arguments on the most flimsy of issues just to ensure that the cases are prolonged¹⁹. It is even more disheartening that any attempt made by the tribunals to prevent undue prolongation of petitions is usually resisted by counsel. Some counsel even find it convenient to resort to subtle or outright blackmail.

C – Institutional Challenge

The *INEC* had also been known to exhibit the habit of disregard for court orders in election petition cases as they often ensured that court orders were not obeyed on time. This has raised the suspicion that it was partisan. In several instances when the courts direct it to allow parties to inspect election materials it has been known to resist compliance with such orders on time hiding under frivolous pretences that would necessitate the applicants going back to the courts several times for clarifications of the ambits of the orders. At times the *INEC* also had been known to refuse to issue certificates of return to litigants as ordered by court. Legislative bodies are also not free from blame in this regard as we have seen occasion in this country when an order of court declaring a person the winner of legislative election was flouted by refusal to admit such a person- see *Emordi v. Igbekwe*²⁰.

This attitude is prevalent perhaps because of the fact that election tribunals being inferior courts have no inherent powers to convict for contempt not committed right in their presence. To be able to do so, the *Electoral Act* must specifically empower them. It is therefore regrettable that no provision of the *Electoral Act, 2010* gives the power to punish ex-facie contempt, just like its predecessor. And if

this attitude is continued it is doubtful whether the attempt of section 285(5) – (7) of the *CFRN, 1999* to tackle this problem by limiting the time within which election petitions are to be completed will see the light of the day.

The cumulative effect of these attitudes on the part of participants in election petitions is unwarranted delay in the prosecution of electoral cases. To stem this attitude, it is necessary to further alter the *CFRN, 1999* and the *Electoral Act, 2010* by providing that election petitions are to be concluded before assumption of offices. It needs to be remembered that election petitions arising from the general elections of 1979 at both state and federal levels were concluded before elected officials were sworn in. This was also the case during the third republic. To achieve this, I propose that elections should be conducted into offices six months to the end of tenures.

Infrastructural Problems

A – Inadequate Courtrooms for Tribunals

Inadequate infrastructure is an adjunct problem militating against proper performance of electoral tribunals and courts in Nigeria. It should be cleared at the outset that there is no permanent institution established to handle election petitions at first instance in Nigeria except with respect to the presidential election which starts at the *Court of Appeal*. The implication of this vacuum is that ad hoc bodies have to be set up each time election takes place to handle the petitions arising therefrom. Like all ad hoc bodies, make-shift plans are made for the ad hoc tribunals with the implication that inconvenient and inadequate court halls and chambers in terms of space are assigned for election petition cases in spite of the mammoth crowd interested in attending the proceedings.

The implication is that some of the cardinal conditions to be met by courts in discharging their duties are negated. The requirement that hearing and determination of cases must be conducted in public²¹ is often breached: can a trial be said to have been conducted in public when those who are sufficiently involved and intend to attend proceedings are not able to do so by reason of inadequacy of space?

B – Residential Accommodation

Accommodation and transport facilities are also sourced ad hoc with the unpalatable occurrence that most often State Governors who are parties to election petitions provide accommodations! There have also been instances where tribunal members stayed in hotels which may be owned by a party member or his relations. Equally, an avenue is created for the various party members to infiltrate the hotels in order to interact with the tribunal members. Hotel owners are also enabled to frustrate uncooperative tribunal members by inducing deliberate power outage at critical times. In short, under this unwholesome atmosphere, the tribunal members are put in a situation that exposes them to grave dangers when considered against the very sensitive duty they are engaged in. Thus, the tribunal members are exposed unnecessarily to bribery pressures. The requirement that election cases be given accelerated hearing and that judgments be delivered within specified time frame may be breached as a result²².

C – Other Factors that Militate Against the Performance of Tribunal Members

Election tribunal judges are not exempted from making returns to the *National Judicial Institute* despite serving in election tribunals. It is common knowledge that election petition trial is a very cumbersome and arduous task that demands utmost attention. This makes it difficult for the tribunal members to concentrate fully on the immediate election petition cases before them as they seize any breathing space to attend to their regular cases. This becomes more so in view of sections 285 (5) – (7) of the *CFRN, 1999* that that now demands that election petitions are disposed off within a specified time limit. With the divided attention of the tribunal judges it might be difficult for this to see the light of the day.

Also, the practice whereby election petition members are not appointed based on proven experience means that expertise in this field of adjudication is not been deliberately cultivated. And cultivating expertise in this field would have definitely assisted in better adjudication in electoral disputes. In addition, court facilities like automatic transcribing machines and electronic facilities that might aid in quick dispensation of cases are not provided. As such, the tribunal members who are expected to perform such arduous task are made to write in long hands.

Delay in Concluding Election Petitions

It has become a notorious fact in Nigeria that election petitions drag on endlessly in spite of the fact that section 148 of the *Electoral Act, 2006* (repealed) provides that election petitions shall be accorded accelerated hearing over all other matters. This provision has been replicated under section 142 of the *Electoral Act, 2010*. Many of the petitions that were filed over the 2007 elections were on till 2010, and some are still on till the moment!

Though as pointed out earlier, section 285 (5) – (7) of the *CFRN, 1999* has provided a time frame within which election petition cases must be concluded and judgments delivered (about 11 months all together). The implication being that the ratio decidendi of *Paul Unongo v. Apar Aku*²³ has been nullified. However, if this section is to fructify, extreme care must be taken.

Section 148 of the *Electoral Act, 2006* has not been helpful for probably a reason. And one can say same in respect of section 142 of the *Electoral Act, 2010* and section 285 (5) – (7) of the *CFRN, 1999*, as altered. The factor that might be responsible for this inordinate delay is not unconnected with the share mammoth number of petitions filed as a result of the unprecedented irregularities that marred the 2007 elections. Even if time limit were to be legally enforceable, it is doubtful if the tribunals and the courts would have been able to meet up. As at December 8, 2009 it was reported²⁴ that a colossal number of 1,299 election appeals were pending in the various divisions of the *Court of Appeal* in Nigeria! Therefore, if unprecedented number of cases is filed like before, the provisions of the laws commanding accelerated hearing and specifying time limit within which judgments are to be delivered might not perform any miracle. Thus, the intimidating number of cases, parties coupled with the complexity and volumes of documents that are tendered at election petitions might make it impossible for the tribunals and the courts to dispose them off as the people and the laws might want. This is aside from other factors earlier discussed.

The solution to this problem appears to me to lie in making sure that elections are properly conducted so that the propensity to go to courts would be reduced when the losers are able to see that they lost fairly and not that they were unjustly rigged out. That this proposition is valid can be seen from the spate of congratulatory messages that have emanated from losers to winners in the just concluded elections: I dare say none was recorded during the 2007 elections. This

new sportsmanship attitude is due to nothing but the generally lauded transparency of the just concluded elections.

In this wise, it is important to ensure that stiffer penalties are stipulated against the *INEC* staff and security officers who are proven to have aided in achieving electoral irregularities; and the penalties must be enforced. This is because it would be totally impossible for riggers of elections and other perpetrators of electoral crimes to succeed without the active connivance of electoral and security officers, because whatever design, it must be ultimately reflected in the result to be announced by the *INEC*. If the *INEC* members of staff refuse to reflect the irregularities in their results and decline from announcing irregular results, the irregularities cannot see the light of the day. One can in confirmation of the opinion herein expressed say that the just concluded elections is not likely going to attract petitions like its predecessor. This is because the spates of accusations against the *INEC* and security staff are lower this time around.

Media Coverage of Election Petitions Proceedings

The role of the media as the fourth estate of the realm is cherished and is sacrosanct to effective performance of all the arms of government by reason of its information dissemination. Through its information dissemination, the media performs the function of watchdog on the three arms of government and democracy itself. This function must be balanced with the need to ensure that information is disseminated correctly and responsibly. Without adhering to this, the media ends up creating more problems than it is billed to solve. Therefore, a situation whereby the media deliberately or recklessly disseminates false or distorted or needlessly sensational news or speculates with respect to cases before the tribunals is not good for the nation, particularly for judicial proceedings. It might prejudice the mind of the courts and might also endanger the lives of the judges. Adverse and unethical coverage of election petition proceedings is a sure recipe for anarchy. We must therefore have a more responsible media.

For example, during the just concluded elections, some media outfits were said to have proceeded to announce results that had not been declared by the *INEC*! This is definitely against media ethics and it is comforting that they were sanctioned.

The Place of Uwais Report

Shortly after the assumption of office of the late President Umaru Yar'Adua consequent to the 2007 elections which was adjudged generally as being marred by irregularities, President Yar'Adua promised to look seriously into how to conduct free and fair elections in Nigeria. In fulfillment of his promise, the Justice Mohammed Lawal Uwais Panel was set up to look into the problems militating against conducting free and fair elections that would meet international standards in Nigeria. After intensive research, deliberations on the memoranda received from people and groups generally in Nigeria, from the international community coupled with visits to various institutions both home and abroad, the Uwais Panel came up with its recommendations in a report submitted to the late President Yar'Adua. This report was widely applauded by Nigerians. It is believed that it contains the blue print to solve the electoral malaise plaguing Nigeria and Nigerians have clamoured for its full implementation. Although, some of the recommendations have been accommodated in the amended Electoral Act 2010, it is my belief that we should give the recommendations fuller consideration in the future.

SUGGESTIONS

Having discussed the challenges confronting the judiciary in the task of adjudicating election petitions, I will now proceed to recommend measures that can eliminate or minimize these challenges. My suggestions are as follows:

- (a) Nigeria should give the Uwais Panel Report a trial since the generality of the citizenry believe it contains the blue print that can solve our electoral problems;
- (b) Permanent structures (courts rooms and accommodation) specifically built with election petition trials in mind should be erected across the nation. This buildings can be put to temporary use during the period before elections but must be vacated for election petitions once they are billed to commence;
- (c) Proper budgetary provisions should be put in place prior to elections to take care of election petition expenses;
- (d) There must be provision for adequate courtroom technology to assist in adjudicating election petitions;
- (e) Our laws must be amended to accord election petition tribunals the powers to punish ex-facie contempt in order to enforce their orders;

- (f) There must be regular training and retraining of election petition members and their support staff;
- (g) Expertise should be nurtured in election petition adjudication by continually appointing people who have had considerable experience and practice of election petition cases, at least as the heads of tribunals;
- (h) The *Evidence Act* must be amended to take care of the special nature of election petition cases and with a view to admitting electronically generated evidence.
- (i) The *Electoral Act* also must be amended to inculcate the practice of internal democracy in our political parties;
- (j) Very stiff penalties should be provided against security and the *INEC* staff that connive in electoral malpractices, misconduct or crimes;
- (k) The politicians and the citizenry must learn to play the game according to its rules. I therefore propose that diverse public enlightenment programmes should be embarked upon;
- (l) Our politicians must cultivate the spirit of sportsmanship;
- (m) Our media should be more responsible and practice according to the ethics of their profession; and
- (n) There is also the need for scholarly discussion of decisions and issues determined by our tribunals by our academia. It is also important that our cream of academics should endeavour to participate in the lawmaking process by ventilating their informed views on proposed laws through public hearings usually organized by lawmakers. I say this bearing in mind that our respected teachers in the Ivory Towers cannot afford to sit aloof and watch only to whine with respect to laws that are enacted. This will go a long way in evolving solutions to identified problems.

CONCLUSION

I have attempted to locate the role of the judiciary, through the application of the rule of law, in adjudicating electoral disputes in Nigeria. I have articulated that the rule of law can only be seen in action through the application of the laws to cases by the Courts. I have also submitted that the rule of law only thrives when people and authorities obey the laws. I have also mentioned some of the factors militating against the judiciary in effectively performing its functions in this critical area of our national development. These problems are mainly traceable to lacuna in our laws and attitudinal factors. Suggestions have been offered on the

problems identified: that serious reformation of our electoral laws be done, especially, as regards the issue of institutionalizing internal democracy in our body polity. I have also suggested the imposition of stiffer penalties against the *INEC* staff and other security personnel that connive in electoral irregularities or the commission of crimes, since no irregularity can see the light of the day without their connivance. I seriously recommended that the recommendations of the *Uwais Panel Report* be given more serious attention since it is seen by Nigerians as capable of solving most of our electoral problems: let the popular will prevail. In any election, there must be a winner and a loser – that is the beauty of electoral contest.

Given the facilities on ground and the enabling legal framework, the judiciary whose main duty is to interpret the laws has creditably discharged its duties in adjudicating electoral disputes in Nigeria. Several wrongs have been righted by judiciary while adjudicating electoral disputes thus stabilizing the polity. And for improvement of the situation, serious reformation needs to be carried out in both our laws and the attitude of the people generally.

On a final note, I wish to thank the Vice- Chancellor, Dean of the Faculty of Law and other relevant authorities of the University of Abuja for creating an enabling environment for this event to hold.

Once more, I commend the students of the Faculty of Law of this citadel of learning for putting together an event of this magnitude. On this note, I declare open the 2011 Law Week of the Law Students' Association of the Faculty of Law, University of Abuja.

Thank you all for your attention.

END NOTES

1. See generally, Jean-Jacques Rousseau, *the Social Contract*, Wordsworth Edition Limited, Hertfordshire, 1998. The idea is that the emergence of modern representative democracy is based on a sort of social contract between the people, the state and the sovereign whereby the people tacitly or overtly surrender some of their natural freedoms to enable them live under the better protection of modern government for the benefit of all.
2. Ben Nwabueze, *Judicialism and Good Governance in Africa*, Nigerian Institute of Advanced Legal Studies, 2009 p. 191.
3. See Ben Nwabueze, *The Presidential Constitution of Nigeria*, C. Hurst & Company, London, 1982, pp. 298-299.
4. See s.6(3) – (5) and section 285 of the CFRN, 1999, and s. 7 (1) & (4) of the CFRN, 1999 under which Local Government Election Petition Tribunals are established by the States.
5. Bryan A. Garner ed., *Black's Law Dictionary*, St. Paul, Minn., 1999 p. 1332. See definition No.4 at the entry for 'rule of law'.
6. As quoted by A.F. Wilcox, in A.F. Wilcox, *the Decision to Prosecute*, Butterworths, London, 1972 p. 63.
7. E.M. Kirkpatrick ed., *Chambers 20th Century Dictionary*, 1983 p. 1024.
8. Sally Wehmeier, *Oxford Advanced Learner's Dictionary of Current English*, Oxford University Press, Oxford, 2005 p. 231.
9. Ben Nwabueze, *Judicialism and Good Governance in Africa*, Nigerian Institute of Advanced Legal Studies, 2009 p. 191.
10. See sections 66, 107, 137 & 182 of the CFRN, 1999.
11. See *Ugwu and Another v. Ararume and Another (2007) 6 SC (Pt. 1) pp. 149 – 150*.
12. *Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1*.
13. See ss. 6 – 18 of the *Evidence Act, 2004*.
14. *Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 supra*.
15. *Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 299 – 300*.
16. (2008) 12 SC (Pt. 11) 1.
17. (2008) 12 SC (Pt. 1) 1.
18. Ben Nwabueze, *Judicialism and Good Governance in Africa*, Nigerian Institute of Advanced Legal Studies, 2009 p. 191 supra.
19. See *Amaechi v. INEC (2007) 18 NWLR (Pt. 1065)* where needless and numerous frivolous applications were brought just to ensure that the end of justice was defeated.
20. ...
21. See s. 36(3) of the CFRN, 1999.
22. See s. 142 of the *Electoral Act, 2010* and section 285 (5) – (7) of the CFRN, 1999.
23. (1985) NSCC 563.
24. See p.8, the *Punch Newspaper* of December 8, 2009.

