

A Synoptic Analysis of Issues in Nigerian Presidential Elections Disputes 1999 – 2007

DR. Lawal Ejalonibu Ebenezer
Department of Political Science, University of Ilorin, Ilorin, Nigeria

Successful management of election disputes is indispensable in democracy. Transparency and impartiality of election disputes enhance trust in the electoral the democratic process and the rule of law. Building public confidence and trust in election is germane to democratic consolidation in Nigeria's nascent democracy as its resolution mechanism is a core step in consolidating democracy and legitimacy of the electoral system (Malu, 2007). The election Tribunals/Court are perceived as capable of effectively and impartially resolving election disputes by political actors and a successful resolution of disputes will eliminate the course to violence and other anti democratic tendencies that lead to instability. Therefore in a democracy, the role of the judiciary is quite pertinent. This explains the reason why people's expectations are always high when matters are before the Court/Tribunal who is expected to be impartial.

The failure of the election tribunals/Courts are to effectively resolve election disputes led to the collapse of previous democratic experiments in Nigeria. The following cases attest to the veracity of this argument – the controversial decisions of Courts/Tribunals in respect of cases between Akintola and Adegbenro, Awolowo and Shagari, Ajasin and Omoboriowo, Unongo vs Aper Aku, Bola Ige and Olunloyo which led to the demise of the First and Second Republics. Malu (2007) posited that the collapse of the First and Second Republics in Nigeria were partially caused by loss of faith in the electoral process and the unsatisfactory manner the court handled election disputes (Malu, 2007).

MANAGEMENT OF ELECTION DISPUTES IN NIGERIA: A HISTORICAL PERSPECTIVE

Party politics in Nigeria is one of the legacies of Colonialism. The Clifford constitution of 1922 paved the way for the conduct of elections in Nigeria as it contained some elective principles. Consequently, the first in the series of elections were held in 1923 in the Lagos colony and the municipal part of Calabar (Alabi, 2008). As afore-stated, these elections and that of the First Republic were not contested in any Court/Tribunal.

In the colonial era, most of the elections were devoid of serious disputes that could warrant judicial intervention. There were no comprehensive laws for elections throughout the country until the promulgation of Order - in- Council to guide the conduct of 1959 elections. There were other electoral laws in Nigeria and these include Electoral Act 1962, Electoral Decree 1977, Electoral Act 982, the Participation in Political and Electoral (prohibition) Decree of 1987, Electoral Decree of 1998, Electoral Act 2002 and Electoral Act 2006. In the post colonial era, Nigeria has witnessed upsurge of electoral disputes and consequent series of electoral malpractices and other problems that are associated with elections. Danjibo (2007) asserted that all the elections conducted in the history of Nigerian politics have been characterized by one form of electoral problem or another.

All the electoral laws in Nigeria charge the courts with responsibility of arbitrating in election disputes. The 1964 federal elections, despite irregularities did not get to courts as aggrieved politicians then did not seek redress in courts but however, there was violence. In the Second Republic, the 1979 presidential election became controversial. However, in the Second Republic, the presidential candidate of the defunct Unity Party of Nigeria (UPN), late chief Obafemi Awolowo went to Court/Tribunal to challenge the FEDECO's declaration of Alhaji Shehu Shagari of National Party of Nigeria (NPN) as the winner of presidential election. The election dispute revolved round the correct interpretation of 2/3 of states. The justice B.O Kazeem led Presidential Election Tribunal upheld the election of Shagari. Awolowo headed for the Supreme Court where Justice Atanda Williams led Supreme Court also validated the election of Shagari. The interpretation of 2/3 of states remains controversial to date.

In the aborted third republic, the judiciary was also embroiled in controversy. The suspension of announcement of June 12 presidential elections by National Electoral Commission (NEC) triggered off series of litigations as individuals and groups approached the Courts to compel NEC to release the remaining results. The High Courts of Lagos and Ibadan ordered NEC and the Benin High Court ordered INEC to release the remaining results. Some courts ordered NEC to release the whole results of the election, but other High Courts restrained the electoral body from releasing the results. It was in the midst of controversial court rulings that the election was annulled by General Babangida.

The unofficial winner of the election, Chief M.K.O. Abiola approached a Lagos High Court to seek redress but the Court was unable to hear the suit because of the decree enacted by military government barring Courts from entertaining suits concerning June 12 presidential election.

The seven-man Presidential Election Petition Tribunal constituted and sworn-in to hear petitions arising from presidential election did not perform its duties due to the annulment of the election. The Fourth Republic

witnessed series of court litigations in respect with disputes arising from elections in the presidential elections of 1999, 2003 and 2007. At the Presidential Election Tribunal/Court, Chief Olu-falae, the presidential candidate of the Alliance for Democracy (AD) and All Peoples Party (APP) challenged the declaration of Olusegun Obasanjo of Peoples Democratic Party (PDP) as winner of the 1999 presidential election; the election was upheld by Tribunal. Again, the outcome of the presidential election of 2003 was also challenged by General Muhammadu Buhari of All Nigeria Peoples Party (ANPP).

The Presidential Election Tribunal and the Supreme Court also validated Obasanjo's election. The 2007 presidential poll result like the preceding elections also became a subject of litigation. The presidential candidates of the Action Congress (AC), Atiku Abubakar and All Nigeria Peoples Party (ANPP), Mohammed Buari prayed the Tribunal to annul Yar'Adua's (PDP) election. The Tribunal eventually validated the election of Yar'Adua and this judgment was upheld by the Supreme Court.

THE MANAGEMENT OF ELECTION DISPUTES IN THE FOURTH REPUBLIC: AN APPRAISAL

Aiyede (2007) posited that section laws form the foundation of an electoral system. The 1999 constitution and the Electoral Act 2006 outline laws that guide the conduct of elections in this Fourth Republic and these contain processes, procedures for conduct and supervision of elections, role of individual, groups/agencies etc. The electoral laws deal with issues such as registration of voters and compilation of electoral register, roles of political parties, electoral disputes etc.

The 1999 constitution and Electoral Act, 2006 contain the necessary procedures in the settlement of election disputes. Part IX of the Electoral Act 2006 deals with the mode or means to be adopted in the resolution of election disputes. Thus:

No election and no return at an election under this Act shall be questioned in any manner other than by a petition complaining of undue return presented to the competent Tribunal/Court in accordance with the provisions of the constitution or this Act, and in which the person elected or returned is joined as a party.

Sections 239 and 285 of the 199 constitution state that the Court of Appeal shall have original jurisdiction to determine petitions arising from presidential election, where appeals lie with the Supreme Court. The Governorship and Legislative Houses Election Tribunals have Jurisdiction to hear and determine petitions from Governorship and Houses of Assembly elections. Appeals shall lie with the Court of Appeal. The National Assembly Election Tribunal has jurisdiction to entertain petitions from National Assembly elections. Appeals in respect of decision of National Assembly Election Petition Tribunal lie with the Court of Appeal. The constitution also states that a party that loses at the tribunal has 21 days from the day of the decision to appeal.

However, the 1999 constitution did not provide for Tribunal for Local Government election. The Area Council in the Federal Capital Territory where the Electoral Acts, 2006 provides with Election Tribunal dubbed Area Council Election Tribunal is the only exception. Section 141 of the Electoral Act states thus "an election petition shall be presented within 30 days from the day the result of the election is declared". This is the reason for a long period of hearing to the extent that the office tenures are almost completed before judgment is passed. However, it is silent on time frame within which Tribunals/Courts should complete election petitions brought before them. This is a radical departure from the Electoral Act of 1982 and 1977 which gave 30 days for completion of proceedings in respect of presidential election and 60 days for other election petitions. This is more reasonable than the Electoral Act of 2006.

Section 144 states that persons entitled to file election petition are candidates in an election and political party in the election.

Secondly, Section 145 contains the ground for presenting election petition, thus:

- (a) That a person whose election is questioned was, at the time of the election not qualified to contest the election.
- (b) Corrupt practice or non compliance with the provision of the 2006 Electoral Act.
- (c) Inability of the respondent to have majority of lawful votes cast at the election.
- (d) The exclusion from election candidates that were validly nominated by their parties.

Section 146 explains certain defects that will not invalidate election:

- i. Non compliance with the provision of the laws except if it substantially affected the result of the election.
- ii. Defect in the title, or want of title of the person conducting the election or acting in the office provided such a person has the right or authority of the commission to conduct the election.

Section 147 deals with nullification of results.

The Electoral Act 2006 failed to give time limit within which to complete petitions and gave room for petitioners and their counsels to seek for unnecessary adjournments which delayed hearing of petitions. Another

major loop hole in the Act is the provision that allows public officers whose elections have been nullified to remain in office pending the determination of appeal. The stay-put provision by the Electoral Act 2006 gives the office holders undue advantage over the petitioner as these office holders use public funds to fight legal battles (The Nation, Nov 12, 2009:3)

Various electoral malpractices that attended series of elections held in this democratic dispensation (Fourth Republic) reveal the fact that the country has not been able to achieve the feat of conducting a free and fair election. Consequently, Election Tribunals are always inundated with election petitions. Justice Umaru Abdullahi, the then president of the Court of Appeal pointed to the fact that a total of 1,475 petitions were received in 2007 as against the 570 received in 2003. This is unprecedented and this development arose because of the fair confidence reposed in this judiciary. Thus, a resort to violence as fairly prevented.

Presidential Election 1999 – 2007: An Overview

This Republic had three presidential elections that were plagued with controversies leading to court actions. The February 28, 1999 election between Chief Olusegun Obasanjo of the people's Democratic Party and Chief Olu Falae of the Alliance for democracy (AD)/ All Nigeria people's party (APP) became a subject of litigation at the Presidential Election Petition Tribunal i.e. the Court of Appeal. Presidential flag bearer of AD/APP, Chief Olu Falae, the Petitioner, prayed the Court to invalidate the presidential poll in which Obasanjo of PDP, the respondent, was declared winner.

Issues in disputes include the following:

- a. Breaching of electoral laws and NEC guidelines. The respondent was said to have contravened electoral laws and INEC guidelines by placing campaign advertisements in some national Newspapers.
- b. The respondent was not qualified for the election having been adjudged guilty of treasonable felony for his alleged role in the 1995 coup plot against the Federal Military Government of Nigeria.
- c. The respondent was not qualified to contest the election as his status as a former head of state automatically confers on him membership of National Council of State, from which he did not resign 30 days to the election.
- d. Respondent's membership of secret society called Ogboni and as such was not qualified to contest the election (Nigeria Tribune, This day and National Concord) on the day of election. Section 14 of decree 6 of 1999 prohibited the conduct of campaign by any candidate 12 hours before the day of election.
- e. Engaging in corrupt acts through distribution of money and foodstuff gratis to the people and the inscription of "vote Obasanjo for president" on the food items. This was seen as an attempt to induce electorates to vote for the respondent.

On 5th December, 1999, the Court of Appeal, viewed at the issues in contention and ruled that the petition lacked merit. The Court ruled on each of the issues in the petition. On the issue of treasonable felony, the Court held that the respondent had been granted full pardon.

The allegation of membership of secret society (Ogboni), also failed as the Court ruled that the petitioner could not prove the allegation. According to the court, "he who avers must prove the allegation by credible evidence".

The claim that the respondent breached electoral laws and (NEC guidelines) by placing campaign advertisements in some newspaper on the day of election equally failed. The Court ruled that there was no evidence that the respondent "authorized" or "ratified" the publication and hence, was not liable.

On the distribution of food items to the electorates, the Court ruled that there was no evidence linking the respondent with the distribution of food.

The issue of membership of National Council of State as reason for disqualification from contesting the election was not also accepted by the Court. The Court held that decree 107 of 1993 exempted him from membership of National Council of State and was therefore qualified to run for the office of the president.

On April 5 1999, the Court of Appeal led by its chairman, Justice Musdapher dismissed Falae's petition against Obasanjo's election. In a unanimous judgment, the Court held that the petition lacked merit because the petitioner could not prove the allegation beyond reasonable doubt (The Punch, April 6, 1999:1).

The justices who heard the case are - Musdapher, Gorge Oguntade, Thompson Akpabio, Mariam Aloma and Dennis Edozie. The verdict of the court of Appeal was hailed by PDP and its supporters. Atiku asserted that the judgment was a triumph of democracy (The Punch, April 6, 1999:6), while Chief Olu Falae, Aihaji Umaru Shinkafi and others in AD/APP condemned the verdict. Chief Falae did not appeal at the Supreme Court.

Presidential Election 2003

The outcome of the election was highly disputed on the ground of alleged gross irregularities. The presidential candidate of the All Nigeria People's Party (ANPP), General Muhamadu Buhari rtd, challenged the declaration of Obasanjo of PDP as winner of the election by INEC at the Court of Appeal on the 20th of May, 2003.

Through, his counsel, Mike Ahamba sought the declaration of the presidential poll null and avoid.

Issues in the Disputes include the following:

- a. INEC's failure to comply with its guideline on thumb printing. According to the petitioner, the guideline issued by INEC was that only the thumb will be used in thumb printing but the electoral body later allowed voters to thumbprint with any of their hands.
- b. Failure of INEC to administer on all its officers, an oath of loyalty to the country. The petitioner opined that failure to administer oath on INEC officers deprived them of fundamental competence to conduct the election and prayed the court to declare the election conducted by these officers null and void.
- c. Bias of INEC in favour of the respondent. The petitioner alleged that loyalists to the party of the respondent were appointed as electoral officers as exemplified with the Resident Electoral Commissioner for Katsina State, Mr. Ogbah who was the brother of the then chairman of PDP, Chief Audu Ogbah.
- d. Non certification of material used for election. The petitioners said this made it difficult to know the authentic items that came from NEC and prayed the court to declare all uncertified materials used for the election invalid.
- e. Wrong allocation of votes to candidates. The petitioner alleged that votes given to the candidates were product of deliberate wrong entry made by NEC.

Court of Appeal verdict: Four justices heard case Justice Frances Tabai who read the leading judgment upheld the results of the presidential elections as released by INEC. He held that the failure of NEC officers to take oath before conducting the election did not invalidate the election. They also argued that the petitioner could not prove beyond reasonable doubt that non-certification of election materials compromised the election. The same argument was made for bias of NEC officers in favour of the respondent.

However, they unanimously nullified the election in Ogun state on ground of irregularities but the cancellation of Ogun state election was not enough to invalidate the poll in general. Justice Tabia said, "I do not agree that because the election in one state is nullified, the election in the whole country should be nullified" (The Punch, Dec, 21 2004:2). Moreover, one of the four justices, Justice Nsofor, gave the dissenting minority judgment which granted the prayer of the petitioner by nullifying the whole election. The learned judge argued that the refusal of INEC to produce the certified true copy of election result showed that the results were falsified. Consequently, he therefore nullified the election, based on non-compliance by NEC on sections 63 and 67 of the Electoral Act which give parties the opportunity to verify election materials. The judge said this negligence rendered the election a farce, pure and simple. It means there was no election" (This day December, 21 2004:4). The chairman of the Presidential Election Tribunal, Justice Ogebe was absent on the Day of Judgment. The then chairman of PDP, Chief Audu Ogebe described the verdict as victory for democracy (This day, Dec, 21, 2004:4) while General Buhari condemned the verdict. Alhaji Umoru Shinkafi said the minority judgment given by one of the justices was a moral victory for ANPP.

Presidential Election Disputes – April 17 2007

Both the presidential candidates of Action Congress (AC) and All Nigeria Peoples Party (ANPP) filed petitions at the Presidential Election Petition Tribunal challenging the return of Yar Adua of PDP as the winner of the election. The petitions filed by the duo of Atiku and Buhari were taken by the court as consolidated petition since the petitions are in relation to the same election or return. The provision for this is contained in Section 164 (46) of the first schedule of the Electoral Act 2006. It states that "where two or more petitions are presented in relation to the same election or return, all the petitions shall be consolidated, considered and dealt with as one petition unless the Tribunal or Court otherwise direct in order to do justice" (Electoral Act, 2006).

Issues in 2007 Presidential Election Disputes

- a. The respondent was not qualified to contest the election due to his indictment by an Administrative panel of enquiry set up by Abia State government.
- b. Unlawful exclusion of one of the petitioners (Atiku) from the poll.
- c. INEC did not substantially comply with the electoral Act, 2006.
- d. Non serialization of ballot papers.
- e. Failure to administer oath of neutrality on INEC staff.
- f. INEC's failure to register millions of voters disenfranchised many supporters of the petitioner from voting.
- g. Elections were held at different times in many polling units contrary to electoral laws.
- h. The Inspector General of police engaged in corrupt practices that affected the results of the election to the disadvantage of the petitioner. The Court ruled on each of these issues as follows:

On the non compliance to electoral laws by NEC, the petitioners did not prove that there was substantial non-

compliance with Electoral Law 2006 by INEC to substantially affect the result of the election to their disadvantage. The court said “the onus of proof of substantiality of non-compliance with the electoral laws rests on the petitioners and they did not discharge that responsibly” (Nigeria Tribune, Feb 27, 2008).

On the failure of NEC to administer the oath of neutrality on its officers, the Court ruled that that was not weighty enough to void the election of the respondent since he could not be blamed for the lapses of INEC. Thus, the allegation was dismissed.

The unlawfully exclusion from the election was also rejected by the Court. The Court said the petitioner had once admitted the presence of his party agents at various polling centres and such agents were there to represent the petitioners.

The non serialization of ballot papers also suffered a setback as the Court held that there was no evidence before it to show that the ballot papers were not serialized.

The allegation that the acts of the Inspector- General of police affected the results of the election could not be proved and consequently, the court dismissed it. The non-registration of millions of voters was also dismissed by the Court. The court ruled that nobody instituted litigation that he or she was denied registration by INEC.

On the claim by the petitioners that the respondent was not qualified to contest the election as a result of an indictment by an Administrative Panel of inquiry, the Court submitted that the petitioners “failed to show in clear terms the basis for the purported indictment of the respondent”. The court held that it was an “indictment on ground of fraud that could disqualify a person from contesting election and that such indictment must be made by the Court.” The Court dismissed the allegation.

As regards the electoral irregularities, the Court said the claim was a non-issue as it was not pleaded before the tribunal.

The allegation on claim of varied times for conducting elections at different polling centres also failed; the Court ruled that the petitioners failed to show how holding elections at different times conferred undue advantage on the respondent to warrant the nullification of the election. The Court of Appeal in its final judgment dismissed the consolidated petitions filed by Buhari and Atiku against Yar Adua’s election. The panel of five judges that heard the petition were Justices James Ogenlyl Fabiyi, Abanakar Jega Abdulkadir, Uwani Abba Aji and Raphael Chikwe Agbo.

The PDP members obviated the verdict while Atiku, Buhari and their supporters condemned the verdict. Reacting to the judgment, Atiku Abubakar said:

“The Presidential Election Tribunal has in its own wisdom decided that the charade called “elections” held in April of last year was a fair ‘representation of the free will of the Nigerian people. The future of constitutional democracy in Nigeria remains imperiled’ (Nigeria Tribune, Feb 27, 2008:4). The opposition parties in Nigeria, under the umbrella of the Conference of Nigerian Political Parties (CNNP) described the judgment as a betrayal of democracy (The Guardian, Feb 27, 2008:5).

To address the irregularities, Buhari and Atiku Abubakar appealed against the judgment at the Supreme Court, and the Supreme Court also upheld the election of Yar’ Adua.

The remarks made by the aggrieved revealed the fact that their confidence in the Judiciary declined as the courts had exhibited some degree of inefficiency of election petitions. Some of the judges of Tribunals have engaged in actions that are detrimental to the integrity of the judiciary due to corrupt acts. For instance, the Akwa – Ibom Election Tribunal was dismissed because the chairman, Justice Adamu was alleged to have collected money from Governor Victor Attah, who was a respondent to the petition before the Tribunal. Again Justice Thomas Narom of Osun State Governorship Election Tribunal was alleged to have romanced with Chief Kalejiaye, the counsel to Governor Oyinlola, a respondent to the petition before the Tribunal. This incident also undermined the integrity of the Tribunal.

The elevation of some members of the Court of Appeal to Supreme Court on the eve of the Tribunal Judgment showed the antics of PDP government.

The chairman of the Court of Appeal that heard the 2007 presidential election petition, Justice Ogebe was elevated to the Supreme Court by President Umar Yar’Adua, a respondent to the petition before the Tribunal. This generated a lot of controversy and this adversely affected the integrity of the Tribunal. To Femi Okurounmi, the elevation has compromised the integrity of the Tribunal and of the Supreme Court itself (Nigeria Tribune, Feb 27 2008:15). The elevation was seen as a means of inducing justice Ogebe to uphold Yar’ Adua’s elections.

In 2003, Obasanjo also adopted the same strategy as Justices George Oguntade and Francis Tabai were promoted to Supreme Court. Chief Awolowo also criticized the appointment of Justice Atanda Williams as the Chief Justice of Nigeria before his appeal to the Supreme Court was heard.

The afore-stated experience pointed to the fact that “hatchment” is appointed to execute specific agenda to compensate for their elevation. Opinions are divided over the efficiency of the courts/Tribunal resolving election disputes in this Fourth Republic. Some analysts have given the judiciary pass mark while some saw the judiciary as having failed with respect to resolving election disputes in Nigeria. While applauding the verdicts of

the Courts in recent election dispute in this democratic era, an AC stalwart, Alake, E., said the recent verdicts which cancelled the victory of some State Governors in the 2007 elections illustrate the judiciary's redemptive role in Nigeria's democracy (The Guardian, Nov 14, 2009:16).

It is becoming obvious that the judiciary in Nigeria is gradually becoming the proverbial Rock of Gibraltar of Nigerian democracy (The Nation, June 18, 2009:10). Some decisions and actions of the Courts have also come under caustic attacks from individuals and organizations in the country. To Bolaji Akinyemi, some judicial interpretations have resulted in staggered elections and the elongation of tenures of some public officers. This is not a good development for our democracy because there is nowhere in the world where this type of situation is obtained (cited in Newswatch December, 15 2009; 19). Some pronouncements of the Courts on electoral petitions are uneven (News watch December, 15 2009:10). It is also not the intention of this paper to assess the performance of judiciary with respect to handling of election petitions in Nigeria. Rather the paper examines the nexus between management of election disputes and democratic consolidation in Nigerian fourth republic. The study submits that effective handling of election disputes by Courts will strengthen our nascent democracy.

CONCLUSION AND RECOMMENDATIONS

This paper has undertaken a linkage between management of election disputes and democratic consolidation in Nigeria. The paper concludes that credible and effective machinery for solving disputes emanating from elections is a sine qua non to deepening democracy and its ideals in Nigeria. The views of majority of Nigerians is that unbiased adjudication of election disagreements by the Courts will no doubt contribute in no small measure to consolidating democracy in Nigeria. However, many Nigerians fear the development of our democracy handling of election disputes by the Courts.

At this juncture, it is necessary to recommend how the Courts can improve on its vital role of managing disputes arising from elections in Nigeria. Firstly, the 1999 constitution and the electoral Act of 2006 should be reviewed to accommodate a specific time frame to complete petitions arising from elections. The government should implement the recommendation of Uwais panel on electoral reform which advocated 180 days for resolution of election disputes. Secondly alternative means of resolving election disputes should be established so as to reduce the burden on conventional courts. Thirdly, the independence of the Courts should be maintained. This will make them to carry out their duties in a fearless manner. Fourthly, the National Judicial Council should not hesitate to discipline judges of Election Tribunals that compromise their integrity through corrupt acts. Lastly the conditions of services of minister in the temple of justice (Judges) should be improved upon. They should be well remunerated so as not to make them fall prey to the manipulating tendencies of rich politicians.

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