



ELECTORAL LAW NEWSLETTER

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Volume 1

EDITOR'S NOTE

In this quarter's newsletter we take a look at Electoral Law, highlighting the current developments in the sector with special emphasis on Nigeria.

Nigeria is in transition mode, the national elections are coming up in a few weeks and there is palpable tension everywhere.

To tackle this challenge the Independent National Electoral Commission (INEC), the body set up in 1998 to oversee elections all over Nigeria, had to even postpone the Elections, the presidential election was postponed specifically from the 14th February to the 28th of March 2015, in other to amongst other pressing reasons, ensure that almost every eligible voter had access to their permanent voters card.

It is however not certain that INECs plan to properly document the eligible voters amongst internally displaced persons, who are currently in about 11 camps, make provisions for them to participate in the upcoming general elections and then subsequently transfer their votes to their relevant states of residence, will come to fruition.

The electoral body has nevertheless put various measures in place to prevent fraud in the 2015 poll. An automated fingerprint identification system will be used to remove duplication of voters, and voters are being issued with biometric voter cards containing their name, age, identity number and fingerprints. These will be checked with card readers at polling stations to prevent multiple voting.

Enlightenment material has also been made available for electorates, for example voters ought to be aware that in the event of a loss of ones voter's card, INEC can replace it, and the simple procedure is, the voter shall apply in person to the Electoral Officer or any other officer duly authorized for that purpose by the Resident Electoral Commissioner, the application must be submitted at least 30 days before an election, the applicant shall state the circumstances of the loss or damage, the voter shall be issued with another copy of his original voters card, the word "DUPLICATE" will be marked or printed on it clearly and finally the date of issue will also be printed on the new voter's card.

In addition, the Nigerian Electoral Act 2010 which is divided into 9 major Parts, 158 Sections and three Schedules and provides for the establishment and functions of the Independent National Electoral Commission (INEC), the Procedure at Elections; National Voters Register and Voters Registration; Formation, Functions and Powers of Political Parties; Electoral Offences, among other things, specifically provides for electoral offences and penalties for such offences that voters must be conversant with, these include and are not limited to the following;

1. A person who is in possession of more than one valid voter's card, is liable on conviction to a maximum fine of N100, 000 or 12 months imprisonment or both.
2. A person who applies for ballot paper in the name of some other person whether living or dead has committed an offence called impersonation, for which he is liable on conviction to a fine of N500, 000.00 or 12 months imprisonment or both.
3. A person who votes more than once in an election is liable on conviction to a fine of N500, 000.00 or 12 months imprisonment or both.
4. A person who forges any ballot paper or official mark on any ballot paper or any certificate of return or result form is liable on conviction to 2 years imprisonment.

"The Independent National Electoral Commission is one of the Federal Executive Bodies created by section 153 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). Its powers are set out and delineated in the third schedule to the Constitution. The Commission has the power among other powers to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation. It is also empowered to carry out such other functions as may be conferred upon it by an Act of the National

Assembly." – This Day News.

"Certainly it is possible for Nigeria's 2015 general elections to come and go without any major incidence. They could indeed prove to become a new benchmark in the country's conduct of elections, especially considering the Presidency's position that free and fair elections are a priority. We must however remain alert to the regular shenanigans that prop up in the run up to elections. Election management is core to the success of the 2015 general elections and this requires the INEC to be well-positioned in terms of readiness, personnel capacity and funding so it can better perform its duties with credibility. The challenges of the

5. A person who willfully places in any ballot box any unauthorized paper or result is liable on conviction to 2 years imprisonment.
6. A person who within the vicinity of polling unit or collation centre on election day convenes public meeting, makes unauthorized official announcements, wears or carries any badge, poster, banner, flag or symbol relating to a political party or election is liable on conviction to a fine of N100,000.00 or 6 months imprisonment for every such offence.
7. A person who acts or incites others to act in a disorderly manner on Election Day is liable on conviction to a fine of N500, 000.00 or 12 months imprisonment or both.
8. A person who communicates at any time to other person, information obtained in a polling unit as to the candidate to whom a voter is about to vote for, or has voted for, basically a violation of the secrecy of vote, is liable on conviction to a fine of N100,000.00 or 6 months imprisonment or both.
9. A person who knowingly votes or attempts to vote in a constituency in which he did not register is liable on conviction to a fine of N100,000.00 or 6 months imprisonment or both
10. A person who snatches or destroys election materials is liable on conviction to 24 months imprisonment.
11. A person who commits an offence of bribery or aids, conspires or abets any other person to commit bribery is liable on conviction to a fine of N500, 000.00 or 12 months imprisonment or both.
12. A person who on election day, canvasses for votes, solicits for the vote, persuades any voter not to vote for any particular candidate, shouts slogans concerning the election, possesses any offensive weapon or wears any dress or facial decoration to intimidate other voters, exhibits, wears or tenders any notice, symbol, photography or party card referring to the election, uses any vehicle bearing the color or symbol of a particular party, loiters without lawful excuse after voting or being refused to vote and uses sirens is liable on conviction to a fine of N100,000.00 or 6 months imprisonment for every such offence.
13. A person who gives voters money to vote for or refrain from voting for a candidate is liable on conviction to a fine of N100,000.00 Or 12 months imprisonment or both.

One of the major factors that will ensure minimal tension during and after the Nigerian Elections, will be the strict adherence of all media houses in the nation to legal and ethical standards in their reporting. Under the ethical requirements, Media houses are expected to place public interests over material/financial gains. The laws of the land have facilitated this ethical obligation, for instance the Freedom of Information Act provides inter alia that all public officers must make information accessible upon demand. So the Media Houses can demand accurate information and need not publish inciting material.

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ELECTION PETITION TRIBUNALS

Electoral cases are said to be sui generis, meaning of their own kind/peculiar.

In Uche Nwole v. Amah Iwuagwu the Court of Appeal held inter alia that "Election petitions are by their very nature peculiar from other proceedings and are very

last general elections must be avoided and all pre-election processes properly completed. It is critical to prioritise the effective distribution of Permanent Voters Card (PVC) and the extension of opportunities to all Nigerians, who have either attained voting age or missed out in the last registration exercise to register.”
Amenaghawon Joseph Idahosa, OSIWA Economic Governance Program Coordinator.

important from point of view of public policy.”

In the same vein, Justice Sampson Uwaifo of the Supreme Court in the case of Buhari v. Dikko Yusuf observed that “An election petition is heard and determined by an appropriate election tribunal as usually provided by the constitution.”

Elections’ Petition Tribunals are equivalent to High Courts and handle petitions arising from the conduct of elections, by determining the authenticity or otherwise of such elections. It is noteworthy that disputes arising from pre-election matters, for instance the nomination of a candidate by a political party are handled by the regular courts.

The Governorship Election Petition start at the Governorship Election Petition Tribunal, then the Court of Appeal and terminate at the Supreme Court (three steps), while the Presidential Election Petition start at the Presidential Election Tribunal, which is the Court of Appeal and terminate at the Supreme Court (two steps) and finally the National and State Assemblies’ poll cases start at the Tribunal and terminate at the Court of Appeal (two steps).

An Election petition must be filed within twenty-one (21) days after the date of the declaration of the final result of the Election, this is specifically provided for in Section 285(5) of the 1999 Nigerian Constitution. Members of the tribunals are appointed by the President of the Court of Appeal in consultation with the Chief Judge of a State, the Grand Khadi of the Sharia Court of Appeal of the state or President of the Customary Court of Appeal of the State as the case may be.

Section 285 (4) of the 1999 Nigerian Constitution provides that the quorum of an Election tribunal is made up of the chairman and any other member, while Section 239 (2) of the Constitution provides that original petitions arising from the conduct of Presidential Elections must be heard and determined by at least three Justices of the Court of Appeal .

Section 234 of the Constitution, provides that the Supreme Court Panel is the proper quorum when it sits with not less than five Justices of the Court to hear and determine Presidential and Governorship Election appeals.

Section 133 of the Electoral Act which identified a candidate in an election and a political party that participated in the election as proper parties to present a petition, further provides that where a party who ought to be joined is excluded, he is deemed to be a party.

What this means is that when the tribunal finds that a party ought to be joined but was not, it ought to make an order including the name of such person as a respondent or petitioner and not as has been erroneously done in past cases, striking out the petition on that ground, which more often than not imposes a heavy burden on the petitioner and promotes judicial decisions based on technicalities, as opposed to substantial justice.

It is suggested that in line with paragraph 49(1) of the First Schedule to the Electoral Act which provides that “non-compliance with any of the provisions of this schedule or with a rule of practice for the time being operative, except otherwise stated or implied shall not render any proceeding void, unless the Tribunal or Court so directs but the proceeding may be set aside wholly or in part as irregular or amended or otherwise dealt with in such manner and on such terms as the tribunal or court may deem fit and just”, the Electoral Tribunals should be dynamic, not quick in striking out petitions, by simply ordering amendments, when technical requirements are inadvertently not met by either party, but most especially the petitioner.

CASE STUDY



It is sadly noted that quite a few Election petitions are struck out by the tribunals on technical grounds, thereby giving no opportunity for the substantive suit to be heard, let alone determined. In *Onokpita v. Uduaghan*, the petitioner challenged the return of the Respondent as governor of Delta State. The petition was dismissed outright pursuant to paragraph 3(1), (4) and (5) of the Practice Direction for non-filing of an application for Pre-hearing notice. The application for extension of time brought by the petitioner was in like manner dismissed.

A case study of the matter between *AJAO AJADI ADAMS V. BABATUNDE UMAR & 4 ORS* (2009) 5 NWLR, Prt 1133, pg. 41 reveals that some courts try not to dwell on technicalities. In this case the elections were held into the various house of assemblies in the Nigerian states, the appellant was the candidate of Democratic Party of Nigeria for Ilorin East constituency, while the 1st Respondent was the candidate of PDP, at the close of the elections INEC, the resident electoral commissioner and the electoral officer of Ilorin East L.G.A credited the 1st respondent with 74,905 votes, and did not credit the appellant and other candidates with any votes.

The 1st respondent upon being sued, filed a conditional appearance and the 2nd Respondent PDP filed same along with a preliminary objection challenging the Election petition, on the grounds that the petition was incompetent as it contravened paragraph 4(1) (c) of the Election Tribunal and Court Practice Direction 2007 (as amended) in that it failed to disclose the names and votes scored by the candidates at the elections, except those of the 1st Respondent. The tribunal in its ruling struck out the petition on the grounds canvassed by the 2nd Respondent. On appeal, the Court of Appeal upheld the appeal and held that as regards technical issue of jurisdiction which is a fundamental issue "There is a difference between jurisdiction over subject matter and procedural jurisdiction. Procedural jurisdiction could be waived or acquiesced in by the affected party. Where the wrong procedure was adopted in commencing a suit and no objection to the procedure was timeously raised by the opposing party, the proceeding based on such wrong procedure is valid."

In speaking more about the need to avoid technicalities and hear Election Petitions on the merit, the Court of Appeal held "The trend these days is to as much as possible hear election petitions on their merit, where such petitions can be saved....In election petitions, every minute matter should be given due considerations so that, in a desire to handle the matter expeditiously, there may not be a tendency to be over-technical in approach.....Tribunals need not rely heavily on technicalities to the detriment of the serious issues needing scrutiny and determination. In a situation where very grave allegations are made by the other party, to shut him up does much harm to the cause of justice....Courts must always strive for the ideal of doing substantial justice rather than technical justice."

Finally, as the Elections draw near, every eligible voter is encouraged to perform their civic duty, as this time around we have our fingers crossed and are hopeful that every one's vote will count.

After the elections we hope that the election tribunals will be agile in dispensing justice with little attention to frivolous applications based on technicalities.

"If Nigerian's had their rights fully protected under explicit consumer protection laws, they would seek to have them enforced more regularly than is the current situation" -
Barrister B.V Enwesi, LLB, BL, LLM (E-commerce Law)





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