

The Role of the Judiciary in the Application of Peacebuilding Theory and Methods to Election Dispute Resolution in Nigeria

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Abstract

The judiciary is responsible for discharging justice in every legal dispute arising between petitioners and respondents and political parties in election petition. The general responsibility of the court in the adjudication of election is to hear and determine the winner and consequently, the loser whenever petition comes up for trial. However, this traditional and restricted role devoid of peacebuilding theory could lead to resentment and disagreement expressed through protest, violence, destruction of properties and commission of various kinds of crimes especially by supporters of one candidate or political party considering the outcome of court's decision in each case. This article examines the vital role of the judiciary in preventing the occurrence of violence and promoting peace in the process of adjudicating on election petitions through the application of peace building theory and methods. The paper explores available literature in the area of peacebuilding as well as the jurisprudence of courts through decided cases on electoral disputes and argues that the outcome of court decisions on election matters can either prevent or escalate post election violence in Nigerian context.

Keywords: Peacebuilding, Judiciary, Election, Dispute Resolution.

1.0.0 Introduction

The Judiciary plays complimentary roles within the avowed principle of Separation of Powers (Egbewole O. W., 2008).¹ The judiciary among these organs is an indispensable organ that balances the exercise of powers in the polity of any nation.² The general responsibility of the court in the adjudication of election is to hear and determine the winner and consequently, the loser whenever petition comes up for trial. However, this traditional and restricted role devoid of peacebuilding theory and methods could lead to resentment and disagreement expressed through protest, violence, destruction of properties and commission of various kinds of crimes especially by supporters of one candidate or political party.

The judiciary therefore has a major role to play in the resolution of disputes particularly election petition cases in order to prevent escalation of violence that usually attends election process. This paper appraises the peacebuilding theory and methods. It addresses the roles of judiciary in the adjudication of election petition. This paper has done some in-depth analysis of some judicial decisions with a view to discuss the role of judiciary in the application of peacebuilding theory in the resolution of election petition. The work intends that certain recommendations that this paper will suggest will be potent for the use of judicial personnel to adopt in the adjudication of election and election related disputes.

2.0.0 Peacebuilding Theory and Methods

Peacebuilding is a necessity for every democratic society to survive. That is the reason why the former UN Secretary-General Boutros Boutros-Ghali, in his 1992 Report, "An Agenda for Peace," introduced the concept of peacebuilding to the UN as "action to identify and support structures, which will tend to strengthen and solidify peace in order to avoid a relapse into conflict."³ Over the years, various efforts have been made to elaborate on this definition. The Brahimi Report from 2000 defined peacebuilding as "activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war."⁴ In 2007, the Secretary-General's Policy Committee has described peacebuilding as:

A range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the

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¹Egbewole O. W. (2008). Nigerian Judiciary and Consolidation of Democracy: Analysis of Election Petitions. In Olarinde O. N and Wale Akinlabi Jr. (ed), *Essays and Selected Judgement in Honour of an Incorruptible Judge, Hon. Justice John Olagoke Ige* (p.67). Crown Goldmine Communication Ltd, Ibadan.

² See section 6 and Chapter Seven of the Constitution of Federal Republic of Nigeria, 1999 (as amended) dedicated to the Judiciary among other provisions.

³ United Nations Agenda for Peace (1992). A/47/277 – S/24111, para. 21.

⁴ Brahimi Report (2000). A/55/305–S/2000/809, para. 13.

foundation for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and relatively narrow set of activities aimed at achieving the above objectives.

Peacebuilding, which has not been fully appreciated by conflict researchers, and has been the least operationalized in part because of its wide range of activities that receive less publicity, focuses on the social, psychological, and economic environment at the grassroots level (Johan Galtung, 1996).¹ Therefore, peacebuilding is aimed at achieving a structure of peace that is based on justice, equity, and cooperation which is also known as 'positive peace'. Peacebuilding theory addresses the underlying causes of violent conflict so that they become less likely in the future. In the available literature, peacebuilding is recognized as dynamic, having something to contribute in every phase of a conflict, and always moving or changing in response to the situation and the stage of the peacemaking efforts (Lederach, 1990).² More recently, it has been discovered recognizing that conflicts do not end and that they are seldom resolved. It may not be desirable to "stop" a conflict if it is at the expense of justice, and the best way to guarantee the durability of any agreement is to be proactive and allow for higher mutual participation by the conflict groups (Carolyn Nordstrom, 1995).³

An important peacebuilding theory is the theory of change. A theory of change is simply an explanation of the process and rationale of a set of activities and how they will bring about a project sought to be achieved.⁴ Peacebuilding efforts often set goals, such as promoting nonviolent approaches to conflict, reducing intolerance, or encouraging reconciliation. The theory is important because it is not just an academic hypothesis but rather an everyday expectation about "how the world works" (John Paul Lederach, Reina Neufeldt, Hal Culbertson, 2007). A theory of change is therefore relevant to justice dispensation and justice administration because it operates like working assumptions about how people and entities will likely respond or react to our actions, that is, public perception and reaction to election petition decision by the tribunals and courts.

In a paper delivered by Wahab Egbewole (2010), he noted that a theory of change clearly articulates the intended activity (the 'if' part), and the expected change it will bring about (the 'then' part or parts).⁵ This means that the theory of change offers a clearer picture of the intended result from an action, and explains how programmed activities and results are connected with each other and contribute to achieving results at different levels. Further to this view, "a well-articulated theory of change represents a testable hypothesis regarding how the planned activities will contribute to achieving the desired results for the programme."⁶ Thus, while the judiciary should follow the law in adjudicating the exercise of inherent and discretionary powers, granting of orders, consideration of parties' views, evidences and eventual decision, the court should consider the interest of the peace of the society. This paper believes that peace is one of the essence of law and the judiciary is an indispensable agency of peacebuilding, more so, in the resolution of election petition in Nigeria.

3.0.0 The Role of Judiciary in the Resolution of Disputes in Nigeria Nascent Democracy

Sixteen years of democratic experience in Nigeria, we can say that the judiciary has witnessed ups and downs, high points and low points in the resolution of disputes. The primary role of the judiciary is to hear, adjudicate on disputes between parties by applying the law and interpreting the law.⁷ The judiciary should interpret the law as it is without fear or favour. According to Lord Denning, 'the English Language is not an instrument of mathematical precision.'⁸ Consequently, 'a judge should not be a ... mere mechanic in the power house of semantics. He should be the man in charge of it'.⁹ Hence, developments in the judiciary have shown that the judiciary will rather lend its weight to support substantial justice than technicalities which, supports fairness as it

¹ Johan Galtung, (1996). "Peace Education: Problems and Conflicts," in Magnus Haavelsrud, Guildrod, *Education for Peace*, (ed.), CT: Science and Technology Press; Stephen Ryan, (1995). "Trans- forming Violent Intercommunal Conflict," in ed. Kumar Rupesinghe, *Conflict Transformation*, (p.223-265). London: St. Martin's Press; Ronald J. Fisher, (1997). *Interactive Conflict Resolution*, Syracuse, NY: Syracuse University Press.

² Lederach, (1990). *Preparing for Peace in Laura Nader, Harmony, Ideology, Justice, and Control in Sapotic Mountain Village*, Stanford, CA: Stanford University Press.

³ Carolyn Nordstrom, (1995). "Contested Identities/ Essentially Contested Powers," in ed. Kumar Rupesinghe (Eds.), *Conflict Transformation*, (pp. 93-115). London: St. Martin's Press.

⁴ John Paul Lederach, Reina Neufeldt, Hal Culbertson (2007). *Reflective Peacebuilding: A Planning, Monitoring, and Learning Toolkit*. (p.) Retrieved from <http://krock.nd.edu> 18th July, 2015.

⁵ Wahab Egbewole, (2010). Being A Paper delivered at the International Conference of the Society for Peace Studies and Practice, held in Minna, Niger State.

⁶ Wahab Egbewole, Op.Cit.

⁷ Dahiru Mustapher, (2011). *The Nigerian Judiciary: Towards Reform of Bastion of Constitutional Democracy*, Nigerian Institute of Advanced Legal Studies, Abuja, 7

⁸ Lord Denning in *Seaford Court Estates Limited v. Asher* (1949) 2 K.B. 481 at 489-499.

⁹ Lord Denning, (1979). *The Discipline of Law*, (Butterworths, London) pp.56-57.

was in the days when the principles of equity prevailed over conflicting rule of common law. In the words of Justice Chuckwudifu Oputa JSC (rtd):

The picture of law and its technical rules triumphant and justice prostrate may no doubt have its admirers. Nevertheless, the spirit of justice does not reside in forms of formalities, or in technicalities, nor is the triumph of the administration of justice to be found in successfully picking one's way between pitfalls of technicality. Law and all its technical rules ought to be but a handmaid of justice and legal inflexibility (which may be becoming of law) may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. The court will not endure that mere form or fiction of law, introduced for the sale of justice, should work a wrong, contrary to the truth and substance of the case before it.¹

The upholding of the rule of substantial justice is actually a recourse to peace. It is inclusive of a set of activities geared towards achieving peace for the society. It has been observed that decisions of courts and election petition tribunals in particular if and when based on substantial justice rather than technicalities of law, is mostly celebrated by people and rarely provoke conflict or violence. By doing this, the democratic tenets and principles that will ensure sustainable democracy is maintained for a better tomorrow. The judiciary is often referred to as 'the hope of the common man' and political civilization is often judged by the degree of dispensation of justice by the judiciary.² Oputa (2003) posited that the judiciary provides hope against tyranny of the executive body and that courts adjudicate between the citizens *inter se* and also between the citizens and the state.³

However, it has been argued differently, that limiting the scope of the judiciary as the 'hope of common man' is not excellent because evidence of judicial intervention during the military and democratic dispensation in Nigeria clearly shows that the *judex* is the 'hope of the hopeful and hopeless.'⁴ This view goes to establish the important role of the judiciary is required to play in the polity of any nation because the society comprise of the rich and the poor, the haves and the have not. This is equally true because most often, conflict and resentment is an interplay between the two people and either of them playing the role of 'actor' or 'victim'.

The role and place of the judiciary cannot be underestimated. No society can survive without the input of the judiciary. If the democracy we all nurture must grow, if peace we clamour for must be achieved, then, the doctrines of separation of powers, due process of law and independence of the judiciary must form the bedrock and pillars of our democratic system.⁵

In the past democratic dispensation, the judiciary has been playing a pivotal role in checking any arbitrary exercise of power on the part of the government. The courts have consistently championed the course of the rule of law. For example in the celebrated case of *A. G. Lagos State v. A. G. Federation*⁶, the case relating to the withholding of the Lagos Local Councils' allocations, the Supreme Court in a unanimous decision, condemned the brazen and illegal acts of both the Lagos State Government and the Federal Government as to their roles in the entanglement. The court, while disagreeing with the opinion of the Counsel to Lagos State Government on the definition of Local Government and creation of Local Government Council the court said "in view of the fact that there is no constitutional provision that two Local Government Councils could be created from one Local Government Area, an exercise in dichotomizing the two is largely academic, if not totally so. The Constitution does not define Local Government Area and Local Government Council but the definition clause in section 318 of the Constitution separates the two expressions by the disjunctive conjunction "or". In the circumstances, I do not, with the greatest respect, see much practical strength in the dichotomy or cleavage drawn by the plaintiff when he resorted to Professor Nwabueze's book on Federalism in Nigeria (1983) at page 132."⁷

In the same case, the Supreme Court emphatically stated that Nigeria is a federation and operates a federal constitution. An important attribute of a federal constitution is that there is division of power between the centre or the federal government and the states. The powers or roles given to each of the governments are as defined and set out in the constitution. As a result, the government is allowed to step out of its assigned field. Whatever it does outside its assigned field will be unconstitutional and will be declared null and void by the

¹ Oputa C., JSC (rtd), in Attorney-General of Oyo State (1986) 5 NWLR (Pt. 450), 828 at 886.

² Ibid.

³ Oputa C. JSC, (rtd), (2003). 'Understanding the Place and Role of the Judiciary in Our Society' in Amucheazi E. and Olatawura O. (ed), *The Judiciary and Democracy in Nigeria*, cited in Yakubu J.A., *Constitutional Law in Nigeria*, (Demyax Law Books) p.317.

⁴ Egbewole O. W., (2013). *Judex: Hope for The Hopeful and The Hopeless*, The One Hundred and Thirty-Ninth (139th) Inaugural Lecture, (The Library and Publications Committee University of Ilorin, Ilorin, Nigeria) 2, 14, 40, 56.

⁵ Oyebo A., (2005). The Judiciary and Constitutionalism in a Democratic Society in A. Oyebo, *Law and Nation-Building in Nigeria*, Selected Essays, 117.

⁶ (2005) 1 MJSC, 1; (2004) 20 NSCQR 99; (2004) 18 NWLR (Pt.904)1; (2004) LPELR-10(SC).

⁷ A. G. Lagos State v. A. G. Federation, *Supra* at p.103

court. To this end, the court held that the process of creation of new local government councils is entirely a state affair. The process of creating new local government councils should have been completed before the National Assembly is called upon to perform its own role under section 8 (5) of the 1999 Constitution since the federal government based its reason for the withdrawal of the allocations on the ground that the Lagos State Government created new local government councils.

Apart from the above, the judiciary made tremendous contribution through other constitutional cases in the Nigeria. For example, the case of President Olusegun Obasanjo, Atiku Abubakar, and Major Al-Mustapha are references to show that the courts have reaffirmed its position as the enforcer of civil liberty and justice within the state.¹ The case of Amaechi, Ararume, Ladoja, Dariye, Atiku Abubakar and Yar'adua also present an interesting scenarios. Some with the application of peacebuilding theory while others devoid of the peacebuilding theory. In *Alh. Atiku Abubakar v. Alh. Musa Yar'Adua*,² the petitioner intended to nullify the election on the basis of his exclusion but failed because the court had to clarify the difference between a petition for nullification on the basis of exclusion in an election and other grounds which are made pursuant to an election having being conducted already. According to Katsina-Alu JSC, "the law is settled that in order to prove unlawful exclusion after valid nomination by his party, a petitioner must show the following: "(i) that he was validly nominated by his political party; (ii) that an election was conducted; (iii) that a winner was declared; and (iv) that his name was not included in the list of the contestants."³ Thus, Yar'Adua won on the basis that the effect in law of a petitioner claiming exclusion under section 145(1)(d) of the Act, is that he has shut himself out from presenting his petition under any of the grounds stipulated in section 145(1)(a), (b) and (c), as none of the grounds can still avail him. This is so because the effect of the exclusion ground, if successful, would render the election void and a fresh election would be ordered pursuant to section 147(1) of the Electoral Act, 2006. The court adduced its reason to the fact that doing so would be tantamount to approbating and reprobating which the law does not allow.⁴

However, assuming the election was set aside for a fresh one to be conducted, one would imagine the possible political conflict and violence that would have ensued in the nation at that time. It is the position of this paper that the decision of the court was majorly in the interest of peace of the nation at large.

Earlier, in the saga between Atiku, a sitting Vice-President and former President Olusegun Obasanjo, the court had to wade in to get his rights restored when the sitting President attempted to oust him out of office through a criminal prosecution because of political disagreement with the President.⁵ That attempt would have caused the nation serious unrest not only because it would have been the first in the history but also because of religious and ethnic sentiments that could wade in.

The court equally intervened in cases of impeachments and impeachment moves. For example, Governor Ladoja of Oyo State and Governor Joshua Dariye of Plateau States were impeached from office. In the case of Ladoja, he was purportedly removed by the House of Assembly that sat in a hotel in Ibadan while less than the required members of the House of Assembly in Plateau State sat to remove Dariye. The courts held that the removals were invalid because the two Houses of Assembly did not comply with constitutional provision.⁶ Meanwhile, a similar situation occurred to Balarabe Musa in the Second Republic, unfortunately, he did not have court's intervention to rescue him because the position of the court then was that it is purely a political matter and the court could not be involved (Egbewole O. W., 2013). As much as cases of impeachments are purely the exercise of legislative powers, the decisions of the court so far declaring the moves and attempts null and void has actually promoted peace in the relevant states rather than violence that might have occurred.

What about the court decision over the issue of resource control? It will be recalled that the quest for component littoral states' hegemony over vast mineral deposits within their territories is not necessarily novel and has been a source of political activism and litigation in many jurisdictions.⁷ The Supreme Court was confronted with the same issue for the first time in *Attorney General of Federation v. Attorney General Abia State & 35 Ors*⁸ on the ownership of the offshore seabed between the Federal Government and eight (8) states (Akwa-Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers) which are located on the coast

¹ See Egbewole O. W., (2013). p.55

² (2008) 1 NILR 251.

³ Per Katsina-Alu, J.S.C.(P. 41, paras. B-E).

⁴ See Aromire v. Awoyemi (1972) ANLR 105 at 106, Ibeziako v. Nwagbogu (1972) ANLR 693, Ezekwesili v. Agbapuoonu (2003) 9 NWLR (Pt. 825) 363." Per Katsina-Alu, JSC (Pp. 25-26, paras. C-A)

⁵ A.G Federation & Others v. Alhaji Atiku Abubakar (2007) 10 NWLR (Pt. 1041) 1.

⁶ See Ladoja v. INEC (2007) 12 NWLR (Pt. 1047) 119 at 157, paras. C - E; 160, para. H, 167 -168, paras. D - D; (SC); Dapianlong v. Dariye (No. 2) (2007) ALL FWLR (Pt. 373) 81 at 136 - 137 Paras. D - G (SC)

⁷ Sylvester Adejoh Ogba, (2014). *Nigerian Offshore Seabed: The Challenges of Ownership and Resource Control*. American Journal of Humanities and Social Sciences, Vo1. 2, No. 1, 13-18 Retrieved from <<http://www.worldscholars.org>> 23rd April, 2015.

⁸ A-G of the Federation v. A-G. of Abia State (2001) 11 NWLR (Pt. 725) 689 at 728.

referred to as the littoral states. The court reaffirmed the federal government sovereignty and jurisdictional control over the vast resources located in the offshore and adjacent continental shelf of the littoral states. Although, what follows thereafter is that the judgment has deep-seated implications for municipal maritime laws, international law, seaward boundary, revenue allocation, inter-governmental relationship, national peace and security. It also raises some important issues on true federalism and derivation¹ but it achieved laid to rest the agitations and possible conflict arising from the legal tussle.

Similarly, in the recent case of *All Progressives Congress v. Peoples democratic party & Ors*,² (Fayose's Case) the Supreme Court whipped away sentiments to declare what the position of the law is rather than what the law ought to be since it is not the duty of the court to make laws or cover the *lacuna* created by any of the other organs of government or its agencies or that of the parties appearing before it. The court reiterated the position of the constitution as held in some cases that an incumbent Governor cannot be arraigned before a court of law or the Code of Conduct Tribunal.³ It further elucidates that "if a governor is removed from office but is not taken before the Code of Conduct Tribunal, such a removal will not bar him from contesting election either immediately or before the expiration of ten years from the date of the impeachment." By this judgement, the politics involved in the administration of justice and lack of enforcement of laws by relevant government agencies is once again, revealed. The inaction of law enforcement agencies to do their job often incapacitates the court in making decisions that could favour justice or improve the public confidence in the judiciary. Hence, it is pertinent that for post impeachment proceedings to be taken out against the impeached Governor before the Code of Conduct Tribunal or before a court of law. This is because it is only a court or tribunal established by law that is constitutionally empowered to convict for an offence or find a person guilty of the breach of the Code of Conduct.⁴ If the court had been persuaded or led by the various comments of many stakeholders in the legal profession, it would have held to the contrary and only God can decipher what would have been the state of things in Ekiti State.

The above are some of the instances where the court has made tremendous decisions. Unlike we earlier examined under the military rule, the judiciary during the democratic dispensation had every cause to discharge its duty with little or no hindrances. This accounts for the plethora of cases that made marks during the various regimes. On the other hand, one may also be right to say that the good days of the court, the confidence and energy to perform better came because of some judicial reforms put in place to reorganize the judiciary. And the researcher make bold to say that the judiciary, particularly the tribunal can apply the theory of peacebuilding in the course of resolving election petition.

4.0.0 Judicial Application of Peacebuilding Theory in Election Petition

In the area of contemporary adjudication of election petition, one cannot but agree that the judiciary must be assessed repeatedly, not with a view to ridicule the institution, but to strengthen the judicial system in the face of daunting political manipulations in a growing democracy like Nigeria. We are not yet there as a truly democratic nation but to get there, we must place the judiciary in the right position, equipped with needed apparatus to discharge its functions without fear or favour. If peace is desired from the temple of justice, it is important we must in turn sell the idea of peacebuilding and how the court can be an agent of peacebuilding especially in the resolution of electoral disputes. Indeed the court has unconsciously made decisions in the interest of peace ranging from intra party dispute resolution, restoring stolen made, timeous delivery of justice and through judicial activism.

4.1.0 Resolving Intra-party Disputes through ADR

The courts have equally resolved disputes relating to the internal politics of political parties in Nigeria. In the Electoral Act 2010 (as amended), the court is empowered now to intervene in internal disputes within political parties. This provision is contained in section 87(10) and (11) which provides:

87(10) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and 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, for redress.

87(11) Nothing in this section shall empower the Courts to stop the holding of primaries or general election under this Act pending the determination of

¹ Suberu, Rotimi T. (2008). "The Supreme Court and Federalism in Nigeria." *The Journal of Modern African Studies*, Vol. 46.03, 451-485.

² (2015) LPELR-SC.113/2015.

³ See Tinubu v. I.M.B. Securities Plc (2001) 16 NWLR (Pt.740) 670; Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606.

⁴ Ibid. See also the court's decision in Action Congress v. INEC (2007) 12 NWLR (Pt. 1048) 222.

the suit.

Considering the provision of section 81(11), the power of court to determine issues of primaries is a limited one thus, the issue of political question is still very much alive in Nigeria. The selection process popularly known as primaries had always been fraught with acrimonies most of which the political parties often prove incapable of resolving. Such acrimonies oftentimes snowball into litigations as court is called upon to decide who should carry the parties' flags in general elections. Before now, such aggrieved contestants who went to court thought that they stood little or no chance of success because the established principle has always been that the internal affairs of a political party (including the choice of its flag bearers in an election) is its business (Kelvin Mejulu, 2010). The principle has been that courts have no business intervening in the internal affairs of political parties. The famous case of *Onuoha v. Okafor*¹ had become a *locus classicus*. This principle worked hardship on members of political parties who were very popular but did not enjoy the support of the powers that be within the parties. They could not understand why the justice system seemed to support political parties that had refused to follow its own laid down rules. This effectively led to the dearth of internal democracy in most political parties (Kelvin Mejulu, 2010).

In contemplation of the above scenario, the Electoral Act, 2006 in section 34 introduced a new provision which requires political parties wishing to substitute candidates after their primaries to give cogent and verifiable reasons for doing so. The first person to test this amendment in the law court was Senator Ifeanyi Ararume, who went to court after he was substituted with Chief Charles Ugwu as the Peoples Democratic Party's candidate for Imo State gubernatorial race.

In *Ugwu v. Ararume*,² the Supreme Court held that section 34 (2) of the Electoral Act, 2006 does not invest a political party with an absolute power to substitute a candidate who wins the primary election. The provision makes it mandatory for the political party effecting the substitution to give the INEC cogent and verifiable reasons for the substitution. According to the apex court, the section clearly imposes a duty on any political party intending do so by informing the INEC in writing within a specified period of not later than 60 days to the date of the election. The section contains mandatory provisions which any political party intending to effect any change in the list of its candidates submitted to the Commission to contest any election must comply with. The court clearly stated that the Electoral Act and the party constitutions must be seen to be complementing the Constitution in formulating broader rules, regulations and operation mechanisms for the true convenience. Where any of such enactment, rules or policies comes in conflict with any section of the Constitution, that enactment, rule or policy must surrender to the Constitution. Accordingly, the court further held that, there is no rationale to permit a political party, once it has given its commitment or mandate to a candidate whom it had already nominated whether wrongfully or rightly to bulldoze its way to rescind that mandate for no justifiable cause.³ Politics is not anarchy. It is not disorderliness. It must be punctuated by justice, fairness and orderliness. The admonition of Honourable Justice Muhammad on this point is very apposite, according to the learned Justice "if we want to entrench unpolluted democracy in our body polity, the naked truth must permeate through the blood, nerve and brain of each and every one of us... we should try to blend the two so as to attain a fair, just and egalitarian society where no one is oppressed."⁴

The decision, no doubt is in the interest of peace. The Supreme Court decision opened the gate for aggrieved candidates to rushed to the court for redress. Following the judicial principle of precedent, that is a lower court must follow the decision of higher courts, the Court of Appeal and High Court have no choice but to follow suit. When it became obvious that the defence of court's lack of jurisdiction to interfere in the affairs of political parties had been overridden by the decision of the Supreme Court in *Ugwu v. Ararume*⁵ as it affects substitution, the parties promptly changed their defence in order to defeat the reasoning of the court and the demands of justice in the Ararume's case. The parties raised a new defence to the effect that disputes over party primaries were electoral matters over which only the Election Petition Tribunals can properly adjudicate and as such, the regular courts have no jurisdiction over such matters. Thankfully, the Supreme Court again rejected this roundabout argument in the case of *Amaechi v. INEC*.⁶

Following this decision was the pronouncement of the Court of Appeal in a case seeking to determine who should be the PDP's candidate for Akwa Ibom North East Constituency between Senator Bob Effiong and Chief Albert Ime. The Court of Appeal, Abuja division held that a case bordering on substitution of candidates by parties after the primaries was not an election matter that must be heard by an Election Petition Tribunal. The court consequently dismissed the objection filed by Ime challenging its (court) jurisdiction to hear an appeal

¹ (1983)14 NSCC 494

² (2007) All FWLR (pt.377) 807.

³ *Ugwu v. Ararume* Supra

⁴ *ibid* at p.925

⁵ *Ibid*.

⁶ (2008) All FWLR (pt. 407) 1

filed by Effiong.¹

One of the lessons emanating from the pronouncements of the appellate courts on the issue of substitution is that things must be done orderly for there to be credible election (Kelvin Mejulu 2010). Also, the courts have shown that even political parties are not above the law. Parties must respect the rules and procedures which they set for themselves.² In upholding the supremacy of intra party constitution, rules and procedures, pre-electoral disputes and certain post-election conflicts can be reduced. It will also encourage the exploration of various ADR settlement mechanisms put in place by the various political party's constitution.

4.2.0 Judicial Decisions and Peaceful Interest of the Nation

One recent instance where the this paper believes the judiciary has either consciously or unconsciously applied the theory of change in peacebuilding, that is, the "if" and "then" factors were the various suits instituted against the current President, Muhammadu Buhari (GCFR) which sought *inter alia* to disqualify him from contesting election on 28th March 2015. It became so serious that the suits rose to Ten(10) in number (Ade Adesomoju, 2015). Eight of the 10 confirmed suits were before the Federal High Court in Abuja, one before a Chief Magistrate's Court in Abuja and one other before the Federal High Court in Umuahia, Abia State.³ The case before the Chief Magistrate's Court, a direct criminal complaint, sought the trial of Buhari for alleged perjury for making a false claim on oath of possessing academic qualifications. The suit, before Chief Magistrate Abubakar Babashani of the FCT Magistrate Court, wants Buhari "to be brought to book" for allegedly claiming on oath that he had a certificate he did not obtain." The four complainants were Shield Ufot, Jimmy David, Ogueri Enwerem and Tochukwu Okorie. In their suits, the complainants claimed that Buhari, "with intent to mislead a public officer as to compliance with the provisions of Section 31 of the Electoral Act, 2010 deposed to various affidavits in the High Court of the Federal Capital Territory, Abuja, wherein he stated that he attended Katsina Provincial Secondary School, Katsina State and obtained a West African School Certificate and that the certificates he claimed to have obtained were with the Nigerian Army".

However, the plaintiffs in the other suits sought court order to disqualify him in the presidential poll held on 28th March, 2015. The above mentioned cases were before Justice Adeniyi Ademola.⁴ The ruling of the court was supposed to be given on the 24th March, 2015 after series of adjournment but the court further adjourned the ruling of all the suits to April 22nd and 23rd which were about three weeks after the election. Now, in the practice and procedure of courts including the Federal High Court, ruling is usually given as early as possible especially in a sensitive and national issue like this. Again, considering the several other adjournments before the March 24, the court has every reason to deliver its ruling before the election. However, the adjournment came. Considering all possible reasoning and rationale behind the adjournment of the ruling at the crucial stage when it was needed and whether it will favour the Peoples Democratic Party (PDP) and the incumbent President as at then or the All Progressive Congress (APC) and General Muhammadu Buhari, the only factor that stands out was "peace of the nation". Imagine what would have been the outcome of the suit or the reaction of Nigerian and International Community at that stage of democratic transition if the judgement favoured either of the party. This, apart from the later wisdom displayed by Professor Attahiru Jega and former president Goodluck Ebele Jonathan in the interest of peace, was the first step of wisdom taken by the judiciary to build the peace the nation wanted not minding the negative prophecy of division earlier predicted.⁵

However, despite some landmark decisions of the court during democratic dispensations, it is not impossible to witness the court making pronouncement capable of discouraging the common electorate. Although, it is important to emphasize that no matter the displeasure with which a decision of a competent court of law is viewed, it remains binding on the affected parties until it is set aside, more so when it is a judgment emanating from the hallowed chambers of the Supreme Court. Justice Oguntade made this clear in his dissenting

¹ Chief Imeh Albert Akpan v. Senator Effiong Bob & 4 Ors (2010) 4-7 SC (Pt II) 57 3273; See also The Punch, Monday, July 9, 2007, p. 48.

² Ibid.

³ The cases were: FHC/ABJ/CS/116/15 (between Hon Donald Daunemigha v. Gen. Muhammadu Buhari); FHC/ABJ/CS/13/15 (Hon. Sergin Onuka Ibe v. Gen. Muhammadu Buhari); FHC/ABJ/CS/01/15 (Mr. Chukwunweike Okafor v. Buhari and two others); and FHC/ABJ/CS/14/15 (Barr. Max Ozoka v. Buhari and two others). They also included FHC/ABJ/CS/3/15 (Barr. Friday Ojealoro v. Gen. Muhammadu Buhari and two others; FHC/ABJ/CS/20/15 (Barr. Friday Ojealoro v. Buhari and three others) and FHC/ABJ/CS/68/15 (Ayakeme Whiskey v. INEC and another).

⁴ Another case before the Federal High Court in Abuja seeking Buhari's disqualification was filed on February 10, 2015 by Presidential View and Endorsement Platform and Barr. Smart Iheazor (FHC/ABJ/CS/1040/15). The defendants in the suit were Buhari and INEC. The one before the Federal High Court in Umuahia was filed by Selekeye Victor Ben against Buhari and the Nigerian Army. The suit was numbered FHC/ABJ/CS/114/2015.

⁵ '2015 and The Doomsday Scenario', Vanguard Online Community 27th August, 2012, available at <<http://community.vanguardngr.com/profiles/blogs/2015-and-the-doomsday-scenario>> accessed 5th January, 2016.

opinion in the case of *Inakoju v. Adeleke*¹ when he said:

It is a necessity to abide by the provisions of our constitution. From time to time in this court, we offer dissenting opinions. The purpose of such opinions is to strengthen our law and the administration of justice ... they are for posterity, lawyers and legal scholars". Having said the above, it is necessary for me to say that the judgment we gave on 7-12 - 06 is the judgment of this court. I have not in my opinion in the judgment derogated from the full efficacy of the judgment. It is a pronouncement from the last court in Nigeria; I enjoin all parties to abide by it.

It will be recalled that when the people were uncomfortable with court's decision in electoral disputes they react in form of violence for instance, the breakdown of law and order in the Western Nigeria after the 1964 general election can largely be attributed to the imprisonment of Chief Awolowo who many of his supporters believe should have been the right leader to govern the affairs of Nigeria but for the decision of the court. Thus, the real test of the judiciary as an agent of peacebuilding and midwife in the resolution of election petition at that time was exposed when the court, election petition tribunal and the Supreme Court were called upon to solve the riddle of what should constitute the two-thirds of 19 states² in the celebrated case of *Awolowo v. Shagari and FEDECO*.³ The decision of the court emphasizes 'substantial compliance' rather than the reasonable meaning of the relevant words of the statute and its admonition for the judgement not to be considered as precedent obviously set a bad precedent for subsequent actions brought before the courts on matter bordering on politics (Falola T. and Ihonvbere J., 1979).

One can understand the entire political scenario with the reasoning of Kayode Eso in the case. By and large, the people begin to lack confidence in the judiciary to the extent that its decision lack potency. So, instead of resulting to court or the supporter of political candidates and parties waiting for the outcome of the court they prefer to do 'justice' by themselves through violence because in view of Falola T. and Ihonvbere. J. (1979) "the judiciary had become terribly corrupt". One can deduce recently that one of the ways in which the member of the public hold the judiciary in low esteem is the spread of skepticism about the past decisions and one or two cases of judicial corruption especially against judges at election tribunal.

The challenges of the annulled June 12, 1993, presidential election further put a great strain on the Nigerian judiciary because of its roles in the nation's electoral process.⁴ Regrettably, too, the damaging effect of the many contradictory judgements of the various courts in relation to the annulled June 12 presidential election was unquestionably the last straw in an effort to proffer juridical solution to post-election conflicts in Nigeria's Third Republic. This occurred because the contradictions in the judgement of the courts during the 1993 political or electoral crisis largely hurried the decent of the nation into chaos.⁵ In the words of Achike:

Nevertheless, the many discordant pronouncements handed down by the various State High Courts relative to the annulled June 12, 1993 Presidential election must go down in our legal history as the lowest ebb in the confidence in the Judiciary. The pronouncements were as dismetrically conflicting and disheartening as if the evil had been let loose to precipitate anarchy within the judicature.⁶

Hence, General Babangida, hiding under the atmosphere of incongruous status of the judiciary in the handling of the June 12 1993 presidential election decided to 'step aside' and constituted an Interim National Government (ING) headed by Chief Ernest Shonekan. Consequently, General Sanni Abacha also took advantage of the court decision declaring the ING as illegal to stage a 'take over' on November 17, 1993.⁷ Ironically, General Abacha, who later became Nigeria's worst dictator, took it upon himself to establish a Panel for the Reformation of the judiciary.⁸ He cited as justification the abuses, polarization, corruption and manipulation of the judiciary by previous governments, especially the Babangida's regime (Akinseye, 2009). Alao Aka-Basorun, human rights activist and Former President of the Nigerian Bar Association had cause to argue that ouster clauses in Decrees were illegal but were assaulting justice only because the judges allowed them to tie their hands thereby

¹ (2007) All FWLR (pt 353) 3 at 181 – 182.

² Falola T. and Ihonvbere J., (1979). *The Rise and Fall of Nigeria's Second Republic*, 84 at 225.

³ (1979) NSCC 87.

⁴ Obiyan Sat A. and Olutola I. Oluwole, (2012). 'Judiciary, and Democratic Consolidation in Nigeria', in A. Sat Obiyan, Kunle Amuwo (eds), *Nigeria's Democratic Experience in the Fourth Republic Since 1999: Policies and Politics*, (University Press of America, USA) 163.

⁵ (Obiyan Sat A. and Olutola I. Oluwole, 2012) 63.

⁶ Quoted in approval by Otaru Roland, 'The Role of The Judiciary in Nigeria Since Independence' p.18

⁷ See Agugua, (2004). A., 'Election Day' in Lai Olurode and Anifowose R. (ed), *Issues in Nigeria's 1999 General Elections* (John West Pub. Ltd and Rebonik Pub. Ltd, Lagos; Akanbi, M. M. (1996). *The Judiciary and The Challenges of Justice* Patroni Books, Lagos.

⁸ See The Justice Kayode Eso Panel for the Reformation of the Judiciary, p.30.

subverting the rule of law. According to him, it was as if our judges were legitimizing the very instrument of their own castration.¹

Even more disturbing then were the pronouncements credited to key members of the judiciary, for example, the then Chief Justice of Nigeria, Honourable Justice Mohammed Bello expressed discomfiture at judges giving judgment against the military government advising such judges who were uncomfortable with Decrees to resign (Akinseye, 2009). He even went further to express the lamentable view that the judiciary fared better under military rule (Aka Bashorun, 1993).

The above represented hard times for the judiciary. They were periods when the military short-changed the judiciary in its primus place. Thankfully, the transition back to democratic government in 1979 and 1999 gave hope for the judiciary and reinstatement of its full mandate to defending the rights of the citizens and doing justice without fear or executive sabotage through abysmal enactment/legislation of decrees.

As a result, if we must address the role of the judiciary in a democratic governance in Nigeria, it must be emphasized that judicial independence from both government influence and other interested parties including public opinion, is a constitutional ideal to which the judiciary and indeed every Nigerian must strive. The issues involved concern values fundamental to sustainable democracy in Nigeria and indeed the world. However, Mejulu Kelvin (2010) has said that there is the need to ensure that these machinery and political will do not undermine values fundamental to a democratic society – liberty, the rule of law and the principles of fairness, natural justice, equity and good conscience – values that lie at the heart of the Nigerian constitutional order is an essential duty of the judiciary.

4.3.0 Restoring Stolen Mandates and Tenure

Within the democratic experience so far, the judiciary had equally made reversals of rigged elections, restoring 'stolen' mandates and tenure of political office holders. In *Ngige v. Peter Obi*,² the Court of Appeal (Governorship Election Appeal Tribunal) upheld the nullification of the election of Governor Ngige of Anambra State and his replacement with Mr. Peter Obi. In *Osunbor v. Oshiomole*,³ in a celebrated decision, the Court of Appeal in exercising its jurisdiction as the Governorship Appeal Tribunal sitting in Benin affirmed the decision of the Election Petition Tribunal of Edo State that on 11th of November, 2008 nullified the election of Professor Osunbor of the PDP and declared Comrade Adams Oshiomhole of the AC as the duly elected governor of Edo State. Similarly, in *Agagu v. Mimiko*,⁴ the same Court of Appeal equally upheld the decision of the Election Petition Tribunal that nullified the election of Governor Olusegun Agagu and declared Dr Olusegun Mimiko as the duly elected Governor of Ondo State.

The case of *Fayemi v. Oni*,⁵ the Court of Appeal reversed the decision of the lower tribunal that declared Governor Oni winner of the 2007 Governorship election in the state. The Appeal Court ordered the removal of Oni from office in order to pave way for fresh elections in ten local governments of the state. The rerun elections which took place in April 2007 still returned Oni as the elected governor but under controversial circumstances. Fayemi returned to the election tribunal to challenge the election and on appeal, declared winner of the election.

The fact that litigants in election petition are given adequate fair hearing by the court to vent their grievances is enough to calm nerves of anyone or supporters who would have planned to cause post-election violence or conflict. In other words, conflict is rather minimized or prevented after election when the judiciary makes decisions that favour fair hearing not necessarily the wishes of the majority. It is in the interest and promotion of peace and peacebuilding where the court fearlessly sacks incumbent or ruling party for the opposition to take over where the justice of the case demands. It was observed that in the above-mentioned cases where the opposition were declared by the tribunals and court of appeal to have won the election, the people rather rejoiced than protest or resulting to violence.

4.4.0 Timeous Delivery of Election Cases

Time is of essence not just as required by law for the resolution of election petition at the tribunal and appellate courts but also to avoid conflict and violence that can occur from unnecessary delay. The appeal courts and other election tribunals, to a great extent, exercised their discretion in accordance with the dictates of the Constitution and the spirit and letters of the Electoral Act in that unnecessary adjournments from the parties to the petition,

¹ Aka Bashorun A (1993). 'The Supreme Court and The Challenges of the 90s' in Akinseye-George Y.(ed) *Law, Justice and Stability in Nigeria: Essays in Honour of Justice Kayode Eso* (Opeoluwa Printing Press, Ibadan) 119.

² (2006) 14 NWLR (Pt. 999) 1

³ *Osunbor v. Oshiomole* (2007) 18 NWLR (Pt.1065) 32

⁴ (2009) All FWLR (Pt. 462) p. 1123

⁵ (2011) All FWLR (Pt. 554) p. 1

particularly the Respondent, were not allowed to defeat the justice of speedy determination of the election petitions in view of the 180 days time limit.¹ As a result, Election Tribunals more often than not, refused to dance to the tune of the delaying tactics of counsel in granting adjournments. The truth is that the grant of adjournment is a normal thing but when it becomes necessary especially in the face of the current Electoral Act, the Court reserves the discretion to refuse granting it. For example, there are instances where some Respondents' counsel may decide to come late to court with a view to forcing an adjournment on the court.

In the interest of peace, strict adherence to the time stipulated by the Constitution is key. It becomes a factor to determining the response of a common man to the outcome of the decision of the court. The Courts and tribunals have played tremendous role in checkmating this attitude of counsel by refusing adjournment in some cases. Sometimes, at the hearing stage, where a party to the petition, who had few witnesses had resorted to featuring one or two witnesses per day, the Court have always resented the conduct, and in some cases threatened to close his case for him notwithstanding that the days apportioned to each party to call witnesses were still yet to be exhausted. This portrays the role the tribunal is playing to avoid a situation where the outcome of the court decision is ridiculed or rather turned into an object of debates leading to post-election violence.

4.5.0 Judicial Activism

Judicial Activism is the ideology that in deciding a case the Judges should reform the law if the existing rules or principles appear defective, pervasive or the application is absurd. In most time, it involves the act of departure from existing authority; however prominent and long standing judicial pronouncement has often been termed judicial activism and viewed from various perspectives. It is in fact, the practice in the judiciary of protecting or expanding the law through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.² Different names have been given to this. While some considered it as "legislating from the bench" some critics referred same to judicial tyranny.³ These days, we hardly witness the situations where the judiciary will exercise its inherent power to resolve certain conflicts and save the peace of the nation even though it may be criticized for not following tradition. But for the election tribunal, it will be better they possess the powers and character of court of law to have the liberty to exercise the judicial activism needed for peacebuilding whenever it is desirable. If possible, we advocate a constitutional court to hear and determine election petitions.

It is the opinion of this paper that judicial activism should better be legislated. It is not impossible to harness judicial activism to save a critical situation especially in the interest of peace. Hence, there should be allowance and modality for the exercise of judicial activism even by election petition tribunals.

5.0 CONCLUSION

This paper has examined the role of the judiciary in the application of peacebuilding theory and methods in the adjudication of electoral disputes. The concept of peacebuilding and some theory and methods were examined starting from the United Nation Agenda for peace. It discussed the general role Nigerian judiciary has played so far since sixteen years of democratic experience which is evidenced by some *locus classicus* constitutional and election petition cases. It further delved and painstakingly examined electoral adjudication of the judiciary over the years and how the court has surreptitiously and unconsciously applied the peacebuilding theory while making its decisions in those cases. The outcome of those decisions had one way or the other prevented some crisis that could have escalated. It also presented as well some unpalatable instances where court's decision on election petition aided conflict and violence.

Nevertheless, dispute resolution mechanism has been identified as the climax of the electoral process. The acceptance of the result of elections depends, to a large extent, on how disputes arising from such elections are settled by the court. It has also been said that the legitimacy of the electoral process equally depend largely on the objectivity, transparency, and impartiality of the dispute settlement mechanism and the imperativeness of building people's confidence in the electoral process (Malu, 2006).

Thus, this paper therefore suggests that the judicial personnel need to be trained on peacebuilding theories that can aid the dispensation of justice in election petition and other sensitive constitutional matters. It supports a multidisciplinary approach to disputes in court so as to allow a holistic view of facts and evidence before the court in giving judgement. It posits that while it is obvious that the judiciary is more stable as an organ

¹ S. 285(6) Constitution of Federal Republic of Nigeria 1999 (as amended).

² Abayomi Okubote et al, (2011). *Fundamentals of Electoral Reforms In Nigeria in Honour of Honourable Justice Muhammed Lawal Uwais (GCON)* (Pensbury Publishers, Abuja) 62.

³ Ibrahim Imam, *The Myth of Judicial Activism in Nigeria: Making Sense of Supreme Court Judgements*, Retrieved from <http://www.unilorin.edu.ng/publications/imami/THE%20MYTH%20OF%20JUDICIAL%20ACTIVISM%20IN%20NIGER%20N0%202.pdf>. 88

of government in the discharge of its functions, there appears some factors during its independence and the public confidence in the institution which demand solutions in order for it to ultimately serve as the fulcrum and pillar in the quest for sustainable democracy.

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