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Expeditious Trial of Election Petition under the Nigerian Electoral Act, 2010 (as amended) "A Myth or "Reality"?

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Abstract
Electoral process in Nigeria is generally characterised and fraught with fraudulent practices. Majorly amongst the fraudulent antics in the Nigerian politics are rigging of election and time wasting in getting legal redress in the court of law or in the election tribunals. In an effort to check this ugly menace, the Nigerian National Assembly enacted the 2010 Electoral Act with special provision on election time-line for voting, counting, and declaration of results as well as getting redress in court through expeditious trial. Unfortunately, the just concluded 2011 general election in Nigeria was still fraught with fraud and un-abated delay in getting redress in court. This paper therefore examines the reality or otherwise of the expeditious trial provisions in the Electoral Acts 2010. Due to the situation on ground and the 2011 election experiences in Nigeria, the paper argues that the expeditious trial provision in the Act is a myth rather than reality. Thus, the paper proffers some solutions to aid the practicability and/or reality of the expeditious trial in the 2010 Electoral Act in Nigeria.
Keywords: Expeditious Trial, Election Petition, Nigeria Electoral Act, 2010, Myth, Reality

1.Introduction

The global rave of the moment in terms of government is democracy. North or East, South or West, the clamoring now is the government of the people, formed by the people, to run the affairs of the people. Democracy is today considered as the most desirable form of government and man's best idea on earth for governance (Jacob: 2010:22). Democracy is the government by the people either directly or through representatives (Bryan, 1999:444). Democracy is an institution of governance, which envisages a popular government as practiced in ancient Greece from where it derived it name. It emphasised the rule of the people in the sense that sovereign power is exercised by the people even if it is only indirectly (Olasupo, 2010:23). Through democracy, people are able to freely exercise their franchise devoid of any hindrance for whoever they prefer to govern them. Democracy is characterised with voting in a free and fair process called election.

Since independence in1960, Nigeria has made some attempts towards the institutionalization of democratic rule and these attempts have had a lot of setbacks (Toryina et. al.:2010:9). After independence, an elected government was established and was toppled six years after giving way for a military regime which lasted for fourteen years. In 1979, the second republic was instituted which lasted until 1983 bringing in another military regime which lasted for sixteen years (Toryina et. al., 9). However, on May 29, 1999, Nigeria re-joined the clique of democratic nations through general election on pomp and pageantry with hopes of establishing a peaceful democratic polity (Olatoke and Olokooba, 2012: 22). The term "Election" is "The process of selecting a person to occupy a position or office, usually a public office" (Bryan: 536). In the cases of OJUKWU v.YAR'ADUA (2009) 12 NWLR (pt 1154)50 at 150 Paragraph E and A.P.G.A.V.OHAKIM (2009) 4NWLR (PT.1130)116 at 176 Paragraphs C-F, the term election was elaborately defined in the following ways

> "…an election constitutes accreditation, voting, counting of votes, collating at ward and Local Government Council and announcement of votes. Voting alone or voting in a unit does not constitute whole "election"

From the above, one can deduce that an election itself is more than a mere selection of a person to occupy a position and it is over and above mere voting at a polling unit, rather, it encompasses accreditation of voters, voting for candidate of one's choice, counting of the votes, collating the votes at all levels and announcement of the results of the election.

For an election to be meaningful and credible, it must reflect, right of choice and free-will via the rule of law. This is because, the concept of election and the process associated with it lie at the very heart of a system of representative democracy (Yussuf: 2006). Unfortunately, all the aforementioned attributes, in Nigerian democracy, and election are simply a mirage. Fraud, rigging, chaos with resultant effect of an in-conclusive election has been a constant reflect of Nigerian election. Where the election is conclusive, wrong candidate is a time declared as winner.

In a bid to change the above situation and at least to put some credibility into the Nigerian election, Nigerian Electoral Act 2002 and 2005 was enacted. Unfortunately, despite the availability of these Acts, the issue of unreasonable dragging of election petition for a very long time still persisted. This was the situation before the enactment of 2010 Electoral Act in Nigeria which has a clear provision(s) on time limit for seeking redress on election grievances in Nigeria.

2. Definition of Terms

In consideration of the concept at hand, one must note that there are five (5) words which meaning are to be ascertained from the beginning, they are "Expeditious Trial" "Election Petition" "Nigerian Electoral Act 2010" "Myth" "Reality".

Expeditious trial is a compound word derived from the combination of the word "Expeditious" which means, done with speed and efficiency (Hornby: 2001: 404) and "Trial" which is the examination of and decision on a matter of law or fact by a court of law (Sheila: 2001:385). Expeditious trial therefore is a trial conducted in a quick manner devoid of any wasting of time and within a reasonable time frame.

"Election petition" on the other hand is a way of showing formal grievances on an election filled before a designated court of law/tribunal on the result of a particular election. "Nigerian Electoral Act 2010" is the Act enacted by the National Assembly and passed into law in 2010 to regulate election matters in Nigeria.

A "myth" is a thing that is imaginary or not true (Hornby: 770), while "reality" is a thing that exist in actual fact (Hornby: 969).

Having made the definition of the terms in this work, the question that calls for our consideration now is to ascertain the practicability and/or otherwise of the Nigerian Electoral Act 2010 on the expeditious trial of election petitions, to know whether it is a myth or reality.

3. Historical Development of Electoral System in Nigeria.

Nigeria as a country has never existed as one political unit. The pre-independence era in Nigeria witnessed each of the political unit selecting its leader(s) in their own way. For instance, the old Oyo- Empire was ruled by king selected from one of the ruling houses. Prominent among the king-makers then, were the "Oyomesi" and the Secretive Ogboni Society (Babalola: 2003:1). In fact, the system of selecting political leaders through election was alien to various Kingdoms and Societies in Nigeria. The emergence of the colonial masters in Nigeria did not bring about an immediate introduction of an electoral system as it is today; it took over a century and half before the introduction of a form of electoral process which later developed gradually to what we now witness in the country today. The History of "elective principle" in Nigeria can be traced back to the 19th century. The demand was first made in 1881 during the agitation for separation of Lagos from the Gold Cost colony.

In 1920, there was established the National Congress of British West Africa in Accra by one Joseph Caseley Hayford and Dr. Akinwande Savage of Nigeria (hereinafter referred to as the "Congress").Among the paramount requests of

the congress after its inauguration in 1920 was the grant of elective post but the Governor of the West African Colonies were opposed to the requests of the congress. Sir, Hugh Clifford (who later became the Governor of Nigeria), in one of his address to the Nigeria Council on the 20th, December, 1920 described the congress requests as follows:

> "….Loose and gaseous talk emanating from a group of self appointed self selected gentlemen who collectively styled themselves the National congress of British West Africa"

In 1914, there was amalgamation of the Northern and Southern Protectorate having Lord Lugard as the first Governor- General of Nigeria, and in 1922, Sir Hugh Clifford became Governor- General of Nigeria and a new constitution was granted to Nigeria known as Clifford's constitution which embodied in it, (for the first time in the country) the principle of election. Under this constitution, the new legislative council was to consist forty six (46) members – twenty seven (27) unofficial members and nineteen (19) official members. Four of the unofficial members were to be elected by an adult male suffrage with residential qualification of one year and a gross income of £100 per annum. Three of they were to represent Lagos and one Calabar because these two (2) towns were considered to be the two major towns in Nigeria at that period that had enough educated people who could be entrusted to use the franchise properly. Lagos was the capital and commercial headquarters of Nigeria while Calabar was leading centre of trade and missionary the activities in the Eastern part. With this elective principle, the new constitution paved way for political organizations in Nigeria and the organizations became effective and efficient means of expressing grievances and aspirations.

The Richard's constitution of 1946 replaced the Clifford's constitution of 1922 and it did not increase the number of elective posts as Nigerian has expected even though there had developed other towns in Nigeria with enough educated Nigerians who could exercise the franchise intelligently since western education was considered to be condition precedent to such exercise.

Significantly, the 1951 constitution expanded the electoral field. A central Legislative (House of Representatives) was established which was to be made up of One Hundred and Forty Eight (148) members, One Hundred and Thirty Six of whom were to be elected Nigerians.

The 1954 constitution replaced and repealed the 1951 constitution and further expanded the electoral field as it provided the basis for the independence of Nigeria. Under the constitution, a unicameral legislature of 184 elected members was set up for the country. On the 12th September, 1960, Nigeria became an independent country and the Nigerian Order in Council was passed wherein Nigeria became a sovereign nation with full powers to fill all the elective posts in the country.

3.1 Background to the Enactment of the Nigerian Electoral Act 2010

Prior to the enactment of the 2010 Electoral Act, uncertainty, prolonged of cases and un-ending to election litigation characterized the Nigerian electoral process. Cases that ordinarily suppose not to last more than one or two months after the completion of election, drags on for up to two or three years. In some cases an unduly elected candidate use almost 2/3 of the term before court judgment. This occurred in the case of Governor Amaechi of Rivers state, and Governor Peter Obi of Anambra state.

Nigeria as a country belongs to the committee of nations, as such; it has both national and international legal instruments on Election. The national instruments on election include, the constitution of the Federal republic of Nigeria, the Electoral acts, the Police act, Guidelines for the conduct of police officers on election days issued by the Police Service Commission in 2007, guidelines and regulations for the conduct of Federal, state and Area Council elections issued by the Independent National Electoral Commission (INEC) in 2007(Francis: 2010: 203).

The associated limitation and clogs in the 2002 and 2005 electoral acts in Nigeria necessitated the amendment to the

Acts, an action that gave birth to the 2010 Electoral act. In nutshell, the urge for improvement on election process in Nigeria; especially on the issue of time frame for voting, counting, release of result and expression of grievances on election matters in Nigeria.

4. Is Expeditious Trial of Election Petitions under the Electoral Act 2010 (as amended) a Myth or Reality?

The Electoral Act, 2010 is an Act promulgated by the National assembly to repeal the Electoral Act No.2, 2006 which regulated the conduct of election of the present political administrations at all levels in Nigeria and its provisions governed the hearing and determination of all election petitions arising from the conduct of that election. The Act also repeals the Independent National Electoral Commission Act, Cap.15, Laws of the Federation Nigeria, 2004. The Electoral Act, 2010 is to regulate conduct of Federal, State and Area Council elections; and for related matters[7].

The main features that dichotomized this Act from others used for the conduct of previous elections in Nigeria are the expeditious trial clause enshrined in it. By the clause, an election petition shall be heard is limited to One Hundred and Eighty days from the date of filling the petition and any appeal that may arise from the decision of the Election Petition Tribunal shall be concluded within sixty days from the date of delivery of judgment of the tribunal.

In this paper the relevant aspect of the Electoral Act, 2010 suitable for our discussion is section 134 (1)(2)(3)and (4) which provides inter alia that:

> ***134 (1) - An Election petition shall be filed within 21 days after the date of the declaration of results of the elections.***
> ***(2) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.***
> ***(3) An Appeal from a decision of an election tribunal or court shall be Heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal.***
> ***(4) The Court in all appeals from election tribunals may adopt the practice of the first giving its decision and reserve the reasons thereto for the decision to a later date.***

The question now is what is the necessity for limiting the time within which an election petition may be heard including any appeal arising from them?

The answer to the above question is not farfetched at all. The intention of the legislators regarding time limit in the determination of election petition is akin to avoid time wasting in the determination of election matter which is a **sui generis** and to ensure that, as much as possible, such petition is given expeditious adjudication and to enable the parties concerned know their fate and status on time. This submission can be buttressed with the wisdom of the learned Justices of the Court of Appeal in the case of **BALOGUN V. ODUMOSU (1999) 2NWLR (pt. 592) 590 at 596-597** paragraph B-C where the court held that.

> "It must be remembered that traits of all laws affecting election petition tribunal is that of essentiality of time. The Sprit of the Laws is that as much as possible such petitions are given expeditious adjudication to enable the parties know the status"

The court further held in the same case at page 597 that:

> "The issue of time to complete the filing of all processes relating to the hearing and determination of an election petition was uppermost in the mind of the legislatures. The enactment stretches itself further afield to do away with tardiness and waste of time, and endeavoured to constrict the time of doing a particular act within a time framework. In other words it is the intention of the legislators that parties stick strictly to the times stated in the Decree. The court would not aid anyone who decides to sleep only to wake up when it is too late".

This position was statutorily affirmed in section 82 and paragraph 2 (1) Schedule 5 of the Local Government (Basic

Constitutional and Transitional Provisions) of the Decree No 36, 1998 which was interpreted and applied in BALOGUN V. ODUMOSU (SUPRA).

Similarly, paragraph 2(1) Schedule 6 to the State Government (Basic Constitutional and Transitional Provisions) Decree No 3, 1999 also provides that an election petition relating to the election of Governor of a state shall be heard and determined within 30days from the date of which the Petition is filed. In **JIDDA V. KACHALLAH (1999) 4 NWLR (pt. 599)426 at 433-434 paragraph A-G**, the court of Appeal, Jos Division, held thus:

> "It must be borne in mind that in the determination of all election petition matters, public policy dictates that time is of essence so that as much as possible parties affected and generality of the public would readily know the status of the contestants. While I sympathize very much with the appellant in this matter….It should be appreciated that state Government (Basic Constitutional and Transitional Provisions) decree No.3 of 1999, is meant to be interpreted strictly with regards to the time frame allowed by the provision of the Decree. The Court cannot grant the relief sought as by the efluxion of time the case before us is now died to all intents and purpose**".**

This was also the locus in other chains of cases like **ABAH V. ROBERT (1999)17 NWLR (PT.597)126 AT 136 PARAS C – F; OPIV. IBRU (1992) 3 NWLR (PT 231)658; FLADE V. OBASANJO (1999) 6 NWLR (PT. 606)283, TEJUOSHO V.OMOJOWOGBE (1998) 7 NWLR (PT. 559) 628 AND WAZIRI V. DABOYI (1999) 4 NWLR (PT 598)239.**

It should be noted that the court or the tribunal cannot, under any circumstance extend the time within which the election petition or any appeal from there can be heard and determined because such power has not been vested on the court or the tribunal by the New Electoral Act, 2010 and even where such provision was made, the court held that the provision limiting the time within which an election petition shall be heard overrides the one giving discretion to the court /tribunal to extend time within which such a matter shall be heard and determined. In the case of **ABAH V. ROBERT (SUPRA**), THE COURT OF APPEAL held that:

> "The Election Tribunal is ad hoc bodies constituted for hearing of the petitions. They are enjoined to determine the petitions within a specified period. To hold that they can extend the life span of the petition as limited by law and that in the instant case, the Lower Tribunal was eminently justified in declining the invitation of learned counsel for extending the time within which to hear and conclude the determination of the petition". [15](Underlining is ours for emphasis).

Another question that one would like to pose here is whether the provisions of section 134 (2) and (3) of the Electoral Act, 2010 which limits the time within which an election petition and any appeal arising from them shall be heard and determined by the tribunal/ Court constitutes an infringement of fundamental/ constitutional right to fair hearing.

In one of the decisions of the Court of Appeal, Such provision cannot amount to an infringement of fundamental right to fair hearing enshrined in the constitution. The court in **ABAH V. ROBERT (SUPRA)** relying on the case of Ariori v Elemo, per Obaseki JSC, reported in (1983)1 SCNLR; (1983)1 S.C.13 at 29 further held that:

> "As to whether striking out of the petition in the circumstances narrated above was violative of the petitioner's right to fair hearing, it has been held that fair hearing must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the case….The tribunal having adopted the procedure laid down by the enabling Decree in dealing with the petition until it lapsed when it was truck out, the complaint about the appellant's right to fair hearing cannot be sustained" [16] (Underlining is ours for emphasis).

However, the Supreme Court in **UNONGO V. AKU (1983) 2 SCNLR 332 AND YUSUF V. OBASANJO (2003)16 NWLR (PT.847)554 AT 603- 605 PARAS G-D** took a different stand on this issue and held that such a provision of the Act limiting the time within which election petition shall be heard and determined constitutes an infringement of the petitioner's fundamental right to fair hearing guaranteed by the constitution of the Federal Republic of Nigeria. Specifically, **in Yusuf V. Obasanjo (SUPRA),** the Supreme Court held that:

> "The issue in Unongo V. Aku (Supra) was that the Electoral Act of 1982 provided that an election petition should be determined within a period of thirty days. The Supreme Court held that sections 129 (3) and 140 (2) of the Electoral Act deprive the petitioner of his fundamental right to fair hearing guaranteed by section 33 (1) of the constitution by limiting the period which an election petition must be disposed of and on this account the two sections are unconstitutional and invalid. It was in that circumstance that Uwais, J.S.C.(as he then was) held: that any electoral enactment which specifies a time constraint on the court to determine an election petition, as distinguished from the time of filing same… is to say the least very absurd and indeed defeats the intention of the constitution and the Electoral Act itself, which is to enable an aggrieved candidate to seek redress in court….what the learned Justice of the Supreme Court described as absurd, and I entirely agree with him, is the fixing of a period for the determination of an election petition. That is certainly against all known principles of fair hearing as the court, by the provision, is hammed to affix date within which it must, as a matter of law, deliver judgment. (Underlining is ours for emphasis)

On the Principle of Judicial Precedent otherwise known as *stare decisis*, the decision of the Supreme Court takes precedence over that of the Court of Appeal. It can therefore rightly be said that on the issue of limitation of time within which an election petition shall be heard and determined by the court/ tribunal, the decision of the Supreme Court in Yusuf v.Obasanjo (supra) takes precedence over and above the Court of Appeal decision in Balogunv v. Odumosu (Supra) and the like. The consequence of the above judicial analysis is that, the provision of Section 134 (2)(3) of the Electoral Act, 2010 which stipulates time limit within which an election petition could be heard and determined is unconstitutional, Illegal, null and void and of no effect whatsoever to the extent of its inconsistency with the provision of Section 36 (1) of the constitution of the Federal Republic of Nigeria,1999. Reliance is placed on the Supreme Court decision in **DALHATU V. TURAKI** where **EDOZIE, J.S.C.** held thus:

> "The doctrine of judicial precedent otherwise known as *stare decisis* is not alien to our jurisprudence. It is a well settled principle of judicial policy which must be strictly adhered to by all lower courts. While such lower Courts may depart from their own decisions reached *per incuriam*, they cannot refuse to be bound by decisions of higher courts even if those decisions where reached *per incuriam*. The implication is that a lower court is bound by the decision of a higher court even where that decision was given erroneously". [18]

Very interestingly, the legislators cunningly lifted the provision of section 134 (2) & (3) of the Electoral Act, 2010 and inserted same in the amended constitution [19] So that if the provision of the Act is declared null and void by the Court for being inconsistent with the constitutional provision, they may seek solace under the constitution to maintain and justify their position as regards limitation of time within which an election petition may be heard and determined.

Section 285 (5) (b) and (c)of the constitution as amended provides:-
(b)–an election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition;
(c) An appeal from a decision of an election tribunal or court shall be heard and disposed of within 60 days from the date of the delivery of judgment of tribunal.

We are inclined to settle with the wisdom of the erudite and learned Justices of the Supreme Court in YUSUF v. OBASANJO (supra) that any provision of the Law which tends to limit the period within which an election matter may be heard and determined by the tribunal or court violates the petitioner's fundamental right to fair hearing as enshrined under section 36 (1) of the constitution. The law further provide at paragraph 41 (10) of schedule 5 that petitioner must prove his petition within 14 days of commencement of hearing. The effect of the provision is not farfetched upon due and dispassionate consideration of section of the Electoral Act which provides that it is only where the petitioner proved that non compliance has substantially affected the election that the election will be nullified. The question now are, is it possible for a petitioner in a presidential election to successfully prove his petition within 14 days in a situation where he has allegations in more than fifteen states of the 36 states of the federation. Can he prove the allegations in all the polling units in a state within a day? Will he be able to nullify the election if he could prove the allegations in less than 1/3 of the states of the federation? This is a great clog! And it has shown beyond any doubt that the Electoral Act, 2010 (as amended) was enacted to protect the Respondent who has been declared the winner by the electoral body and not the petitioner for whose purpose it was enacted.

The three arms of the Government of the Federal Republic of Nigeria are:-

(a) The legislator,
(b) The Executive, and
(c) The Judiciary

Each arm must be independent of another and no arm should be allowed to interfere with the functions, duties and responsibilities another, otherwise, the entire aims and objectives of Federalism will become otiose and obsolete. So, if the legislative arm is eventually allowed to impose time limit on the judiciary in the discharge of its Judicial functions as envisaged under section 285 (5) then, the legislature in our humble opinion has interfered with the independence of the judiciary. In **GADE V. MALLE (2010)7NWLR (Pt.1193)225 at 282 Paragraph BC** the court opined that

> "By virtue of section 4 (8) of the 1999 constitution, the exercise of legislative powers by the National Assembly or by a house of Assembly or by a house of shall be subject to the jurisdiction of the courts of law and judicial tribunals established by law, and, save as otherwise provided or a House of Assembly cannot enact any law that oust or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law".

In any event, it has long been settled that where there exists any conflict between the provisions of Chapter four of the constitution (S.36 (1) Inclusive) and any other aspect of the constitution, the provisions of chapter four shall prevail over any other provisions of the constitution. Therefore, the provisions of section 36 (1) shall override the provision of section 285 (5) (a) & (b) thereof. This also received the blessing of the court in the case of **FUNMILAYO RANSOME KUTI v. A/G.FED (1985)2 NWLR (pt.6)211 at 229-230.**

5. The Way Forward

Having established in this discussion, that the Nigerian 2010 Electoral Act is a myth and not a reality, it is not enough for us to stop; this paper therefore offers the following recommendation as a way forward to make it practicable and reality:

i. Establishment of a specialize court managed by very competent, honest hardworking and diligent judge and members (for hearing of election cases) will go a long way in solving the problem of time wasting in the Nigerian electoral process.
ii. Respect for the independent of the judiciary, giving enabling and conducive environment to operate.
iii. Amendment of the Act to reflect a more reasonable and practicable time to the post election conflict settlement in order to ensure equitable hearing of the parties before judgment
iv. Allocation of enough human and material resources including logistics to aid the actualization of the time-line clause in the Act.

v. If need be, election tribunal mat sit on Saturdays and Sundays though with the consent of the parties in order to beat the time. This is in line with the thinking of justice Onu (JSC) when he said in the case of Anie v. Uzorka (1993) 8 NWLR (pt. 309) at page 20 that, "Any judge has the jurisdiction….to sit on Saturdays or Sundays provided he did not compel the litigants who are members of the public and their counsels to attend…."(Mgbolu :2010: 250)

6. Conclusion

It goes without saying and without any element of exaggerations that the urge and agitation for expeditious trial of election petition which resulted to the amendment of both Electoral Act and the Constitution can be best described as a myth and not reality. It is an attempt to preclude the petitioners from ventilating their grievances against the declared candidate successfully. Importantly therefore, the National Assembly should as a matter of urgency look into the injustice created by the Electoral Act, 2010 (as amended), amend its provisions relating to limitation of time within which to conclude an election petition and the appeal arising from them. It is our humble submission that, it is not wise to sacrifice justice at the altar of speed.

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