Election Dispute Resolution

and the Question of Justice in Nigeria

Key Words

The key words in this paper are as follows:

Election

dispute

resolution

Justice; and

Constitution

Abstract

It is getting widely accepted that key to electoral democracy is the concept of free and fair elections. This has been critically in jeopardy in Nigeria for so many years that it is ultimately warranted that concerted efforts must be embarked upon to ensure that we do not have a democracy anathema in the committee of nations. It is in this vein that this paper seeks to critically examine the performance of Nigeria in electoral democracy, identify problems and challenges bedeviling electoral dispute resolution and to proffer alternative to what is currently obtainable in terms of electoral dispute resolution in order to arrest the degeneration of confidence in the system and prevent the resort to violent choice as being canvassed in some political circles.

Election Dispute Resolution and the Question of Justice in Nigeria

Part I

**Introduction.**

There is growing international consensus, particularly in political and legal circles, that the principle of free and fair elections is a core value of electoral democracy. In fact, this principle is contained in key international instruments and also regional protocols which deal with issues of promoting human rights, democracy, and good governance. In addition, the principle has been incorporated, albeit with different expressions, in national constitutions and other domestic laws. Thus, as electoral democracy has extended to various continents and regions of the globe, the principle of free and fair elections has emerged as the standard for evaluating the extent to which democracy has been attained and entrenched in each part of the world.[[1]](#footnote-1)

It is no longer news that violent struggle for political power, rising spate of electoral disputes and daunting challenges posed to the administration of justice still remain a critical component of political developments in African countries. In Nigeria for instance, since the attainment of political independence in 1960, elections and electioneering campaigns have often been characterised by thuggery, violence, fraud, corruption and other forms of malpractices. The statutory framework and judicial approach to them by the courts and tribunals to this malaise have often left many people disappointed.[[2]](#footnote-2)

A vital part of any election which makes the process credible is the opportunity for contesting candidates and citizens to seek resolution of complaints and disputes relating to the electoral process. Fairness, transparency and legitimacy of elections largely depend on a country’s effective Election Dispute Resolution (EDR) processes. The resolution of complaints and disputes at any stage of elections often go unresolved or are left to uncertain and slow adjudicative resolution.[[3]](#footnote-3)

There is a general understanding that effective electoral dispute resolution mechanisms and processes are *sine qua non* for free and fair elections. Such election dispute resolution mechanism should serve as the ultimate guarantor of the principle of free and fair elections. To fulfill this requirement, the election dispute resolution should uphold, among others, values of independence, impartiality, and the rule of law.[[4]](#footnote-4)

The essence of this paper is to essentially probe the election resolution dispute mechanism in Nigeria against the backdrop of justice and growing disenchantment on the system. The paper seeks to proffer alternative to what is currently obtainable in order to arrest the degeneration of confidence in the system and prevent the resort to violent choice as being canvassed in some political circles.[[5]](#footnote-5) The logic in this regard is simple, since there is no credible complaint machinery, I must do all within my power to achieve victory on the field. This growing thought is further complicated by some similar pronouncements from our courts.[[6]](#footnote-6) In order to properly situate our discussion, it is proposed to start with conceptual clarification of terms. This will then be followed by the Constitutional framework and legal framework for election dispute resolution in Nigeria. Thereafter, an excursion into the typology of electoral disputes will be made, particularly with regard to issues arising from primary and general election. Evaluation of electoral disputes resolution so far shall be undertaken. The paper will then proceed by way of conclusion by proffering viable alternative for effective election dispute resolutions with a view to instilling confidence not only in the candidates and political parties at an election but also to the electorates that are concerned about electoral justice system in Nigeria.

Part II

**Conceptual Clarification**

As indicated earlier, this paper is aimed at examining election dispute resolution in Nigeria. It is in this wise that it becomes apt to examine the basic concepts associated with the topic.

**Election**

Generally, the word ‘election’ is described within the framework of voting to elect certain persons to hold certain offices, which may be public or private. Black’s Law Dictionary defines ‘election’ thus:

“*3****.*** *The process of selecting a person to occupy an office (usu. A public office), membership, award, or other title or status….*”[[7]](#footnote-7)

In the case of ***Ojukwu v. Obasanjo, Edozie, JSC*** attempted to define the word ‘election’ thus:

“*I am of the view of that the word ‘election’ in the context in which it is used in section 137(1)(b) of the Constitution means the process of* *choosing by popular votes a candidate for a political office in a democratic system of government*.”[[8]](#footnote-8)

Further, in the case of **I.N.E.C. v. Ray, Ogunbiyi, JCA** (as he then was) defined ‘election’ as follows”:

“It is trite law that the concept of “election” denotes a process constituting accreditation, voting, collation, recording on all relevant INEC Forms and declaration of result. The collation of all results of the polling units making up the wards and the declaration of results are therefore constituent elements of an election as known to law.”[[9]](#footnote-9)

Similarly, the Court of Appeal in the case of ***Ogboru v. Uduaghan per Dongban-Mensem, JCA*** said thus:

“*The law, as we understand it, is that the word ‘election’ is a generic term; a process which embraces the entire gamut of activities ranging from accreditation, voting, collation to recording on all relevant INEC Forms and declaration of results…. Voting is, thus, a species of the genus, which is election…. Casting of votes alone, therefore, does not constitute election*.”[[10]](#footnote-10)

A look at section 156 of the Electoral Act, 2010 as amended, defines the word ‘election’ to include a referendum. The said section states thus:

“‘***Election’ means any election held under this Act and includes a referendum.***”

The inclusion of ‘referendum’[[11]](#footnote-11) in the definition of election further buttresses the fact that elections are the lifeline of democracy and can also be utilized in the determination of policy options.

The pertinent thing worthy of note and common amongst all the definitions that have been proffered above, inclusive of the judicial authorities is that the word ‘election’ involves a process of choosing person(s) to hold certain offices. This is more in tandem with the description of ‘electoral process’. Therefore, merely casting a vote comes to naught if the votes cast are not only counted, collated and results declared but disputes arising from the process are not judicially settled. Furthermore, the freeness and fairness of collection is also beginning to be questioned in the midst of associated intimidating atmosphere under which it is conducted. A good example is the recent Governorship election contested in Ekiti State of Nigeria on Saturday, the 21st day of June, 2014. In that election, sympathisers of the candidate of All Progressives Congress were prevented from attending the political rally of the candidate prior to the election. The question of militarization also came to the fore where members of the armed forced were, contrary to the provisions of the Constitution, deployed to Ekiti State for the June 21, 2014 election.[[12]](#footnote-12) Further, illegal imposition of curfew was done by an arm of the Federal Government that had no power to do so[[13]](#footnote-13), thereby infringing on the liberty of electorates. Similar feat was repeated in the August 9, 2014 Gubernatorial election in Osun State which I personally experienced. Infact and indeed the State was completely knocked down. With this new trend, observers are now wondering whether it could be said that there was free and fair election in that context when the free will of the people could be said to have been sapped? Is this not litigable to the extent that election dispute mechanism can be invited to pronounce upon?

However, before further voyage, it is considered necessary to briefly analyse the forms of election obtainable under the Nigerian political system.

Basically, there are 2 types of election, namely, primary election and general election. Primary elections are the means by which political parties seeking to nominate candidates for elections into political offices determine their candidates. This is expected to be either through voting or through consensus by way of general endorsement of the sole aspirant.[[14]](#footnote-14) In Nigeria, Section 87 of the Electoral Act, 2010 (as amended) recognises two forms of primary elections: (a) direct primaries; and (b) indirect primaries. A political party is free to choose any of the two forms of primary elections. In direct primaries, all members of the political party are entitled to vote for the aspirant of their choice. Here, section 87(3) of the Electoral Act, 2010 (as amended) stipulates that a political party that has adopted the direct primaries procedure must ensure that all aspirants are given equal opportunity of being voted for by the members of the party.

In the case of indirect primary elections, the candidate of the political party is chosen through votes cast by delegates as against voting by all the members of the political party. The aspirant with the highest number of votes is declared winner of the primaries and becomes the candidate of the political party at the general election. Political parties are mandated to incorporate this into their respective constitutions the mode of adopting indirect primaries.[[15]](#footnote-15) Essentially, this is to enhance and promote the culture of internal democracy in the various political parties.

General elections, on the other hand, are elections that are conducted to fill political offices. It involves voters and candidates in the applicable constituency. A voter does not need to be a member of a political party before he can vote at a general election. Usually, general elections are conducted on a nationwide scale among candidates of the various political parties. This is why the Electoral Act, 2010 (as amended)[[16]](#footnote-16) defines general election to mean “an election held in the Federation at large which may be at all levels, and at regular intervals to select officers to serve after the expiration of the full terms of their predecessors”. It is important to state that in respect of elections at the Local Government Councils, the Electoral Act, 2010 (as amended) is only applicable to the Area Council in the Federal Capital Territory, Abuja[[17]](#footnote-17) and it is the law enacted by the respective Houses of Assembly of each State that governs such.[[18]](#footnote-18)

**Dispute**

According to Oxford Advanced Learner’s Dictionary[[19]](#footnote-19) the word “Dispute” is defined as:

“an argument or a disagreement between two people, groups or countries; discussion about a subject where there is disagreement:”

In The Chambers Dictionary[[20]](#footnote-20), “Dispute” was given the meaning thus:

“to argue about; to contend for; to appose by argument; to call in question.”

Black’s Law Dictionary[[21]](#footnote-21) defines “dispute” thus:

“A conflict or controversy, esp. one that has given rise to a particular lawsuit.”

From the series of definitions of the word “dispute” that have been proffered above, one can safely say that the word “dispute” means an argument, a disagreement, conflict or controversy on an issue or issues between two or more persons, groups, organisations, countries etc. which may or may not give rise to a lawsuit. In the context of our discourse, it will be conflict or disagreement arising from the electoral process.

**Dispute Resolution**

The phrase “dispute resolution” is the process of resolving disputes between parties.[[22]](#footnote-22) The phrase may also refer to a process which applies to applicants whose applications are the subject of a formal objection.[[23]](#footnote-23) From the totality of the descriptions above one can safely say that dispute resolution can be regarded as a process of resolving dispute between parties.

According to Wikipedia,[[24]](#footnote-24)the different method of dispute resolution includes litigation, arbitration, collaborative law, mediation, conciliation, negotiation and facilitation. Dispute resolution may be judicial or extra-judicial.

The most common form of judicial dispute resolution is litigation. Litigation is initiated when one party files suit against another. The verdict of the court is binding, not advisory. However, both parties have the right to appeal the judgment to a higher court. Judicial dispute resolution is typically adversarial in nature, for example, involving antagonistic parties or opposing interests seeking an outcome most favorable to their position.[[25]](#footnote-25)

In regard to Extra Judicial resolution, some use the term “*dispute resolution”* to refer only to alternative dispute resolution (ADR), that is, extrajudicial processes such as arbitration, collaborative law, and mediation used to resolve conflict and potential conflict between and among individuals, business entities, governmental agencies, and (in the public international law context) states. ADR generally depends on agreement by the parties to use ADR processes, either before or after a dispute has arisen.[[26]](#footnote-26)

Part III

**Constitutional and Legal Framework for Election Disputes in Nigeria.**

**Constitutional Framework**

According to Pylee,[[27]](#footnote-27) the word “Constitution” is defined to mean:

“a set of laws and rules setting up the machinery of the Government of a State and which defines and determines the relations between the different institutions and areas of Government, the Executive, the Legislature and the Judiciary, the Central, the Regional and the Local Government. Infact, a Constitution is the source, the jurisprudential fountain head from which other laws must flow, succinctly and harmoniously.”

Wade and Bradley[[28]](#footnote-28) noted that the word “Constitution” has two meaning i.e. narrower and wider meaning. In the narrower meaning, they defined constitution to mean:

“a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government within the state, and declares the principles by which those organs must operate.”

While in the wider sense, they defined constitution to mean:

“the whole system of government of a country, the collection of rules which establish and regulate or govern the government”

From the distinction of a constitution in a narrow and in a wide sense, the narrow meaning strictly refers to a written constitution like the United States of America while the wide meaning refers to unwritten constitution (collection of rules) like the United Kingdom of Great Britain and Northern Ireland.[[29]](#footnote-29)

Constitutional provisions are fundamental to election dispute resolution in every country as it is the instrument that gives birth to other enactments. It is pertinent to note that Nigeria has a written Constitution from which other laws derive their validity. That explains why constitution has been described thus:

“*A Constitution is the organic law of a country and it prescribes rights, powers, duties and responsibilities. It indeed, is the fons et origo from which all other laws derive their validity, that is, in an ideal constitutional democracy.*”[[30]](#footnote-30)

From the above description of the constitution, it becomes patent that all valid exercise of power within a state derives its validity from the constitution. Thus, constitution provides the key enabling legal structure for election dispute resolution in a country.

In Nigeria, an examination of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as the 1999 Constitution) confirms this position. Section 6 of the 1999 Constitution gives the Judiciary powers in respect of all matters, actions and proceedings relating thereto between persons, or government or authority and to any person in Nigeria as to civil rights and obligations of that person. Specifically, Section 6(6) of the 1999 Constitution provides as follows:

“The judicial powers vested in accordance with the foregoing provisions of this section-

1. shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;
2. shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;
3. shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;
4. …”

Section 285(1) and (2) of the 1999 Constitution establishes election tribunals for determination of election petitions. The said section 285(1) and (2) provides thus:

(1) There shall be established for each State of the Federation and the Federal Capital Territory, one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion of any Court or tribunal, have original jurisdiction to hear and determine petitions as to whether-

(a) any person has been validly elected as a member of the National Assembly; or

(b) any person has been validly elected as a member of the House of Assembly of a State.

(2) There shall be established in each State of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.

From the above provisions, it is obvious that two election tribunals were created which are:

1. The National and State Houses of Assembly Election Tribunals and
2. The Governorship Election Tribunals.

While the National and State Houses of Assembly Election Tribunals determines petitions as to whether any person has been validly elected as a member of the National Assembly or House of Assembly of a State, the Governorship Election Tribunals determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.

With regard to whether any person has been validly elected to the office of the President or Vice-President, it is the Court of Appeal, by virtue of section 239(1)(a) of the 1999 Constitution, that has original jurisdiction to hear and determine an election petition in that regard. The said section 239(1)(a) of the 1999 Constitution provides thus:

“(1) Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-

(a) any person has been validly elected to the office of President or Vice-President under this Constitution;”

An election petition before the National and State Houses of Assembly Election Tribunals, the Governorship Election Tribunals and The Court of Appeal shall be filed within 21 days after the date of the declaration of result of the election.[[31]](#footnote-31)

In view of the fact that the word “election petition” is used in Section 285(5) of the 1999 Constitution, it is germane at this point to appreciate the meaning of election petition.

In the case of ***A.N.P.P. v. I.N.E.C***[[32]](#footnote-32) the meaning of election petition was stated by Mohammed JCA as follows:

“What constitutes an election petition therefore is a complaint by the petitioner against an undue election or return of a successful candidate at the election”

In the same vein, Sagay[[33]](#footnote-33) defines election petition as follows:

“An election petition may simply be defined as a complaint of an undue return or undue election lodged before a competent forum (tribunal or court) pursuant to the provisions of the Constitution and the Electoral Act.”

From the above definitions of election petition, one can safely conclude that election petition means a complaint against an undue return or undue election of a candidate at an election.

A National and State Houses of Assembly Election Tribunal and a Governorship Election Tribunal shall consist of a Chairman and two other members.[[34]](#footnote-34) The Chairman shall be a Judge of a High Court and the other two members may be appointed from among Judges of a High Court, Kadi of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or other members of a Judiciary not below the rank of a Chief Magistrate.[[35]](#footnote-35) The quorum of an election tribunal shall be the Chairman and one other member[[36]](#footnote-36) but in the hearing and determination of an election petition by the Court of Appeal, the Court of Appeal shall be duly constituted if it consist of at least three Justices of the Court of Appeal. What is amazing about the quorum of an election tribunal at any given time is that the panel may consist of only two members provided that the Chairman is one of the two members. The implication of this is that where only two members sit at any given time, there could be stalemate on an issue or in a ruling which will certainly cause or lead to confusion in the judiciary and to an extent, the society at large. The law has always made use of odd numbers for the purpose of quorum in the hearing and determination of cases by any court or tribunal. This is basically to avoid situations of stalemate that the provision of section 285(4) of the 1999 Constitution is likely to achieve.

An election tribunal shall deliver its judgment within 180 days from the date of filing of the petition[[37]](#footnote-37) and an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.[[38]](#footnote-38)

**Legal Framework**

As is was earlier said, the Constitution is the source from which all other laws derive their validity and the 1999 Constitution of the Federal Republic of Nigeria is no exception as it is the document from which all other laws in Nigeria derive their root. The 1999 Constitution gives the legislative bodies in Nigeria the power to make laws inclusive of power to make regulations relating to electoral process in Nigeria.

By the provision of Section 4(2)[[39]](#footnote-39) of the 1999 Constitution and item 22 of Part I of the Second Schedule to the 1999 Constitution, the National Assembly is empowered with exclusive legislative power to make laws regulating:

“Election to the offices of President and Vice-President or Governor and Deputy Governor and any other office to which a person may be elected under this Constitution, excluding election to a local government council or any office in such council.”

The provision of section 4(4)(a)[[40]](#footnote-40) of the 1999 Constitution and *Item 11 of Part II of the Second Schedule to the 1999* *Constitution* gives the National Assembly the power to make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council.

It is pursuant to the provisions of sections 4(2), 4(4)(a) and item 22 of Part 1 and item 11 of Part II of the Second Schedule that the National Assembly enacted the Electoral Act, 2010 (as amended) that regulates elections to the offices of the President, Vice-President, Governor, Deputy Governor, National Assembly, Houses of Assembly; and elections to Area Council in the Federal Capital Territory.

On the issue of State laws, it is pertinent to note that notwithstanding the provisions of Item 11 of Part II of the Second Schedule to the 1999 Constitution on the power of the National Assembly to make laws for the procedure regulating local government council elections, Item 12 of Part II of the Second Schedule to the 1999 Constitution enables the House of Assembly of a State to also make laws with respect to local government council election, though not inconsistent with the one made by the National Assembly. The said item 12 of Part II of the Second Schedule to the 1999 Constitution provides thus:

 “***Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any law made by the National Assembly.***”

This provision of item 12 of Part II of the Second Schedule have made several States of the Federation to enact their respective Independent Electoral Commission Law and Local Government Election Tribunal Law. For instance, the Lagos State House of Assembly passed into law, Lagos State Independent Electoral Commission Law, 2001 and the Local Government Election Tribunal Law, 2001.[[41]](#footnote-41) While the Lagos State Independent Electoral Commission Law, 2001 establishes the Lagos State Independent Electoral Commission and also regulates electoral process into the office of the Chairman and Councilors, the said Local Government Election Tribunal Law establishes the Local Government Election Tribunals[[42]](#footnote-42) and stipulates the procedure for questioning of election petition before the election tribunal.

The Local Government Election Tribunals of Lagos State have, to the exclusion of any other Tribunal or Court, original jurisdiction to hear and determine the following questions:

1. election petitions as to whether a person has been validly elected as chairman or councilor of a Local Government Council;
2. any question as to whether the term of office of any person as chairman of a Local Government Council has ceased;
3. any question as to whether an election petition is proper or improper before the Election tribunal.[[43]](#footnote-43)

A Local Government Election Tribunal shall consist of a chairman and four other members all of whom shall be persons of unquestionable integrity and not involved in party politics.[[44]](#footnote-44) The chairman shall be a person who has held the office of a Judge of a High Court or is qualified to hold the office of a Judge of a High Court. The other members of the Tribunal shall be appointed from members of the Judiciary not below the rank of a Chief Magistrate.[[45]](#footnote-45) The appointment of the Chairman and other members shall be by the Chief Judge of the State.[[46]](#footnote-46)

An election petition shall be presented within 21 days from the date of declaration of the result[[47]](#footnote-47) but where an election petition is not presented within 21 days of the declaration of result, such election petition shall not be declared incompetent if the election petition if filed within 21 days from the date the registry of the Election Tribunal was opened.[[48]](#footnote-48) The implication of the above provisions is that an election petition shall be presented either within 21 days from the date of declaration of result or within 21 days from the date the registry of the Local Government Election Tribunal was opened.

An election petition shall be heard and determined within 30 days from the date of filing of the petition[[49]](#footnote-49) and an appeal from the decision of the Local Government Election Tribunal shall be heard and determined within 21 days from the date of filing of the appeal.[[50]](#footnote-50) It is pertinent to note that where an election petition is not heard and determined within the prescribed 30 days or an appeal is not heard and determined within the 21 days, section 54[[51]](#footnote-51) gives the Local Government Election Tribunal and the Election Appeal Tribunal[[52]](#footnote-52) the power, subject to the provisions of sections 2(2) and 27 of the Law, to enlarge the time for determining an election petition on such terms as the justice of the case may require. It is my understanding that by the provision of section 54, the only instances in which either the Local Government Election Tribunal or Election Appeal Tribunal does not have the power to enlarge time are:

1. the 21 days permitted for presentation of election petition as mandated by section 2(2), and
2. the time permitted for amendment of election petition.

It is pertinent to note that the enlargement of time can only be made by way of motion on notice filed and served on all the parties.[[53]](#footnote-53)

Part IV

Primary and General Election Disputes Resolution

As indicated earlier, there are two types of election dispute that usually arises in Nigeria. The first is the election disputes of party primaries that occur in various political parties while in the process of choosing or deciding whom they will sponsor for any elective position. The second is the election disputes that occur in general election conducted by the Independent National Electoral Commission (INEC) or the Independent Electoral Commission of different States for filling the various political offices recognized by the 1999 Constitution of the Federal Republic of Nigeria. We shall hereinafter consider the two types of disputes.

**Primary Election Dispute Resolution**

Generally, courts tread with great caution in internal feuds and other intra-party disputes of political parties. The commonest area, which is the most significant, is in the choice of candidates to contest elections for any political party. It is taken to be within the inviolable domain of political parties to choose or decide whom they will sponsor for any elective position and accordingly the courts should not exercise jurisdiction, same being non-justiciable.[[54]](#footnote-54) The locus classicus being the case of ***Onuoha v. Okafor***.[[55]](#footnote-55) In that case, the plaintiff filed an action before the High Court of Imo State, Owerri and by his writ of summons, the plaintiff prayed the Court for the following reliefs:

1. *A declaration that the decision of the Nigerian Peoples’ Party Nomination Elections Petition panel on Tuesday 19th April, 1983 nullifying the nomination election for the Owerri Senatorial Nigerian Peoples’ Party candidature of 21st March, 1983 is null and void being contrary to natural justice, equity and good conscience.*
2. *A declaration that the nomination election results announced by the presiding officer for the nomination election for Owerri Senatorial District N.P.P. candidature on March, 21 1983 is valid and subsisting as being in accordance with the guidelines for the said election.*
3. *An injunction restraining the Nigerian Peoples’ Party from submitting the name of Hon. Isidore Obasi or any name other than that of Hon. P.C. Onuoha to the Federal Electoral Commission as the N.P.P. candidate for Owerri Senatorial District seat in the 1983 general elections.”*

At the conclusion of evidence and counsel’s address, the Learned Trial Chief Judge, Oputa, C.J. delivered his judgment and granted the reliefs of the Plaintiff. Being dissatisfied with the decision, the Defendants appealed to the Court of Appeal. The Court of Appeal in its judgment allowed the appeal and held that it is the responsibility of each political party to sponsor candidates for election. Being dissatisfied with the decision of the Court of Appeal, the Plaintiff appealed to the Supreme Court. While dismissing the Plaintiff’s appeal on the ground that the dispute of sponsorship of candidates before the Court is not justiciable, Obaseki, JSC held thus:

*“The law is therefore certain as to who is to resolve the dispute where two candidates claim sponsorship. It is the Federal Electoral Commission by consulting with the leader of the political party concerned. In other words, the Federal Electoral Commission is required to act on the advice of the leader of the political party concerned. The real power to make a choice is, in my view, in the political party through its leader.*

*That being the state of the law, the real question must be whether, the matter in dispute now before this court on appeal is justiciable. It is clear to me that the expressed intention of the Constitution of the Federal Republic 1979 and the Electoral Act 1982 is to give a political party, in the instant appeal the N.P.P. (Nigerian Peoples’ Party), the right freely to choose the candidate it will sponsor for election to any elective office or seat in the legislature and in this instant appeal a seat in the House of Senate of the National Assembly. The exercise of this right is the domestic affair of the N.P.P. guided by its constitution. There are no judicial criteria or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. The judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the political party to answer the question.*

*It is therefore my view that the matter in dispute brought before the Court is not justiciable.”[[56]](#footnote-56)*

Since the decision of the Supreme Court in the above case of Onuoha v. Okafor, the Courts have persistently followed this position to the effect that a court of law has no jurisdiction to adjudicate on the issue of which candidate a political party should nominate or sponsor for an election. The case of ***Dalhatu v. Turaki & 5 Ors.***[[57]](#footnote-57) was no exception. The recent case of ***Lado & 43 Ors. v. CPC & 53 Ors***.[[58]](#footnote-58) reinstates the long-aged position of the law that the question of the candidate a political party will sponsor in an election is in the nature of a political question which is not justiceable in a court of law. In dismissing the appeal, Onnoghen, JSC, held as follows:

“The instant case is an election related matter in the sense that it is a pre-election matter arising from the nomination exercise allegedly conducted by the 1st Respondent to elect the candidate to represent it in the April, 2011 General Elections in Nigeria. The issue of jurisdiction raised in this case is therefore as it relates to the competence of the courts to hear and determine matters relating to the nomination of candidates by political parties for general elections which exercise has generally been held by the courts to be within the exclusive domestic jurisdiction of the political parties to the exclusion of the courts of law. It is in line with the above that the courts have held that the question of the candidate a political party may sponsor in an election is in a nature of a political question which is not justiceable in a court of law, see: Onuoha v. Okafor (1983) SCNLR 244; (1983) NSCC 494.”[[59]](#footnote-59)

Onnoghen, JSC, while holding that the power of an aggrieved person who is not satisfied with the conduct of the primaries to elect a candidate must bring himself within the purview of Section 87(4)(b)(ii); (c)(ii) and 9 of the Electoral Act, 2010 (as amended) further held thus:

“The power of an aggrieved aspirant who is not satisfied with the conduct of the primaries by his party to elect a candidate must bring himself within the preview (sic) of Section 87(4)(b)(ii); (c)(ii) and (9) of the Electoral Act, 2010 (as amended), supra. It is only if he can come within the provisions of those subsections that his complaints can be justiceable as the courts cannot still decide as between two or more contending parties which of them is the nominated candidate of a political party; that power still resides in the political parties to exercise. The enactment is not designed to encourage factions emerging from the political parties with each electing its candidates but claiming same to be candidates of the political party concerned.”[[60]](#footnote-60)

It is pertinent to differentiate the above cases from the cases of ***Amaechi v. INEC***[[61]](#footnote-61) and ***Ugwu v. Ararume***.[[62]](#footnote-62) In the cases of ***Amaechi v. INEC*** and ***Ugwu v. Ararume***, the issue before the court was basically, whether in view of the provision of section 34[[63]](#footnote-63) of the Electoral Act, 2006, the substitution by the Peoples Democratic Party after the submission of candidates’ name to the Independent National Electoral Commission satisfies the requirement of cogent and verifiable reasons in section 34(2) of the Electoral Act, 2006. In ***Uwgu v. Ararume***, while holding that the reason given by the Peoples Democratic Party was not cogent and verifiable, Onnoghen, JSC held thus:

*“*It is very clear from the above provisions that the right or power to nominate a candidate to be sponsored by a political party remains with the party just as the party still retains the right to change or substitute such candidate. Under the Electoral Act, 2002 if a political party desired to change or substitute its candidate it has to do so within 30 days to the election whereas under the current law particularly section 34(1) of the electoral Act, 2006, the party must do so within 60 days to the election in question. There is however a condition for the change to be effective which condition was never in the Electoral Act, 2002. That requirement is, that the political party intending to change or substitute its candidate must “give cogent and verifiable reasons” for wanting the change to be effected. It does not stop there, it goes further in subsection 3 to enact that no substitution of a candidate shall be effected less than 60 days to the election except in the case of the death of the previous candidate.*”*[[64]](#footnote-64)

In similar vein, in ***Ameachi v. INEC***, while holding that the reason given by the PDP that the name of Ameachi was erroneously sent to INEC was not cogent and verifiable, Oguntade, JSC, held thus:

“There is no doubt that PDP having previously sent Amaechi’s name to INEC by letter on 26/12/2006 could only validly remove the name or withdraw it if it complied with section 34(2) above. The cogency or the verifiability of the reason for the withdrawal of a candidate’s name has to be considered against the background that INEC officials, pursuant to section 85 of the Electoral Act above, would have been present at a meeting or congress of a party called for the nomination of a candidate for an elective office.[[65]](#footnote-65)

From the above decisions, it is without doubt that courts still refrain from deciding political question as they regard same as non-justiciable. The decisions reached by the courts in the above cases of ***Amaechi v. INEC*** and ***Ugwu v. Ararume*** is not to say that the courts delved into intra-party issue. This is obviously because under the Electoral Act, 2006 once a candidate’s name is forwarded to INEC, a political party still has the power change or substitute such candidate but they must satisfy the requirement of cogent and verifiable reason for the substitution of the candidate to be held valid. These decisions strictly involve compliance with the provision of the Electoral Act, 2006 and hence, goes beyond the realm of political party or intra-party domain. It is to be noted that the Electoral Act, 2006 is no longer in force having been abrogated by the Electoral Act of 2010. Interestingly, under the Electoral Act, 2010 (as amended)[[66]](#footnote-66) political parties are no longer allowed to change or substitute their candidates whose names have been submitted to INEC except in the case of death or withdrawal by the candidates. It is believed that the lawmaker deliberately inserted the provision of section 33 of the Electoral Act, 2010 to halt the abuse of rampant substitution of candidate by political parties. This, however, is a welcome development as this provision has checked political parties from the wanton substitution of candidates whose names have been forwarded to INEC. The only situation permitted is where the candidate dies or the candidate whose name has been forwarded withdraws from contesting. This is geared towards the observance of internal democracy.

**General Election Dispute Resolution.**

As earlier stated, general elections are elections that are conducted to fill in political offices that are recognized by the Constitution. Election disputes in general election are usually resolved by presentation of petitions before the Tribunals and Courts that have jurisdiction to hear and determine such petitions.

Election petition against Presidential and Vice-Presidential election, Governorship and Vice-Governorship election, National Assembly and Houses of Assembly election shall be filed within 21 days after the date of the declaration of result of the elections[[67]](#footnote-67) and may be presented by a candidate in an election or a political party which participated in the election or by both a candidate and its political party that participated in the election.[[68]](#footnote-68) A person whose election is complained of is referred to as the respondent[[69]](#footnote-69) and where a petitioner complains of the conduct of an Electoral Officer, a Presiding Officer or Returning Officer, it shall not be necessary to join such officers provided Independent National Electoral Commission (INEC) is made a respondent because INEC will be deemed to be defending the petition for itself and on behalf of its officers and such other persons.[[70]](#footnote-70)

The grounds upon which an election may be questioned are contained in section 138(1) of the Electoral Act, 2010 (as amended) which provide thus:

“(1) An election may be questioned on any of the following grounds, that is to say-

1. that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
2. that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
3. that the respondent was not duly elected by the majority of lawful votes cast at the election; or
4. that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.”

The above grounds listed in section 138(1) of the Electoral Act, 2010 (as amended) by which an election may be questioned are virtually the same grounds upon which an election may be questioned before the Local Government Election Tribunal of Lagos State.[[71]](#footnote-71)

It should be noted that except for ground (d) (i.e. that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election) which cannot be merged or combined with any other ground[[72]](#footnote-72), an election petition may be questioned with a combination of grounds (a), (b) and (c) of section 138(1) of the Electoral Act, 2010.

An election petition shall contain the following:

1. specify the parties interested in the election petition.
2. Specify the right of the petitioner to present the election petition.
3. State the holding of the election, the scores of the candidates and the person returned as the winner of the election.
4. State clearly the facts of the election petition and the grounds or grounds on which the petition is based and the relief sought by the petitioner.[[73]](#footnote-73)

An election petition shall be filed with the following:

1. a list of witnesses that the petitioner intends to call in proof of the petition,
2. Written statements on oath of the witnesses, and
3. Copies or list of every document to be relied on at the hearing of the petition.[[74]](#footnote-74)

Any petition which is not filed with the above listed documents shall not be accepted for filing by the secretary[[75]](#footnote-75) and where the secretary accepts same for filing, a respondent may file an objection that the petition is not competent on the ground of failure to accompany same with the documents listed above.

Prior to the Electoral Act of 2002, a petitioner is only expected to file a petition without accompanying same with the witness statements of the witnesses. The presentation of petition with witness statements of witnesses commenced in 2007 by virtue of Election Petition and Court Practice Direction No. 2 of 2007[[76]](#footnote-76) The Electoral Act, 2010 has now codified it by including same in the First Schedule to the Electoral Act, 2010.

It is pertinent to note that under the Local Government Election Tribunal Law of Lagos State, an election petition is not required to be filed with list of witnesses, written statement on oath and copies or list of documents as mandated under the Electoral Act, 2010 (as amended) but in order to avoid any preliminary objection from the Respondent(s) on this, it is advised that an election petition be accompanied with list of witnesses, written statement on oath and copies or list of documents since by virtue of section 61 of the Local Government Election Tribunal Law of Lagos State:

1. the practice and procedure of the Local Government Election Tribunal are required to be assimilated as nearly as may be to the practice and procedure of the High Court in the exercise of Civil Jurisdiction,
2. the Civil Procedure Rules of Lagos State shall apply with such modifications as may be necessary to render them conveniently applicable and
3. regard should be had to the need for urgency on electoral matters.

From the above, it is therefore submitted that the applicability of the High Court of Lagos State (Civil Procedure) Rules 2012 to the practice and procedure of the Local Government Election Tribunal will require the petitioner to accompany his petition with list of witnesses, written statement on oath of his witnesses and copies or list of documents to be relied upon since regard will be had to the need for urgency on electoral matters.

A petitioner is to pay security for cost at the time of presentation of his petition.[[77]](#footnote-77)

Respondents shall within 14 days of service of the petition file their reply to the petition.[[78]](#footnote-78) It is significant to note that unlike A Petitioner who is to accompany his petition with list of witnesses, witness statement and copies or list of documents, the Electoral Act, 2010 is silent on what a Reply to the Petition should be accompanied with. Although, to the best of ones knowledge, Replies filed against a Petition are usually accompanied with these documents listed in paragraph 4(5) of the First Schedule to the Electoral Act, 2010 (as amended), it is believed that the Electoral Act, 2010 requires some measure of amendment in this regard to state the documents a respondent is to accompany with his Reply to the Petition. This is the frame work for the resolution of election disputes in Nigeria. How far this has succeeded in the attainment of the objective shall now be the pre occupation or object of the next segment.

**Appraisal of the Operation of the Framework**

The starting point will be an appraisal of the legal framework available to an aggrieved candidate in a pre-election matter.

Where a person has a reasonable grounds to believe that an information given by a candidate in the affidavit or any document submitted to the Independent National Electoral Commission is false, the person may file a suit at the High Court of a State or Federal High Court seeking a declaration that the information contained in the affidavit or document is false[[79]](#footnote-79) and where the Court determines that such an information contained in the affidavit or document is false, the court shall issue an order disqualifying the candidate from contesting the election.[[80]](#footnote-80)

Similarly, an aspirant that complains that any of the provision of the Electoral Act and the 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 State High Court of a State for redress.[[81]](#footnote-81)

It would appear that while section 87(9) of the Electoral Act, 2010 (as amended) gives only an aspirant of a political party the locus to proceed to court for failure to comply with any of the provisions of the Electoral Act and the guidelines of his political party, section 31(5) of the Electoral Act, 2010 (as amended) empowers any person whatsoever (be it an aspirant or not or a member of a political party or not) to proceed to court where he has a reasonable believe that any of the information provided by a candidate in the affidavit or any document submitted to Independent National Electoral Commission.

It is submitted that the provisions of sections 31(5) and 87(9) of the Electoral Act, 2010 (as amended) in relation to those things contained therein obviously shows that they are pre-election matters for which jurisdiction is vested only in the State High Court and Federal High Court.

In as much as I know that pre-election matters are meant to be commenced before the holding of the main election, the question which comes to ones mind is; whether a pre-election matter can be commenced after the holding of the main election before the High Court of a State or Federal High Court? The answer to this is in the negative as the Supreme Court has held that the right of a person to institute a pre-election matter after the holding of the main election is completely extinguished. In the case of ***Hassan v. Aliyu***,[[82]](#footnote-82) The 2nd Respondent (PDP) conducted its primary election to nominate its candidate for the Gubernatorial election for Niger State. The Appellant won the election and his name was forwarded to the 3rd Respondent (INEC). The Appellants name was later substituted for the 1st Respondent and the 1st Respondent rather than the Appellant therefore contested the election held on 14th April, 2007. The 1st Respondent won the election and was sworn in as the Governor of Niger State on the 29th May, 2007. On the 7th of November, 2007, the Appellant instituted an action before the Federal High Court on wrongful substitution. A preliminary objection was filed challenging the jurisdiction of the court which inter-alia on the ground that the issue of nomination and substitution are pre-election matters that are no longer justiciable after holding of the election. The originating summons as well as the preliminary objection were heard and the preliminary objection was upheld and consequently, struck out the action. Dissatisfied, the Appellant appealed to the Court of Appeal. The Appeal was dismissed and the Appellant further appealed to the Supreme Court. While dismissing the appeal, **Onnoghen J.S.C.**[[83]](#footnote-83) held thus:

“It is settled law that in an election or election related matter, time is of the essence. I will add that the same applies to pre-election matters. Election matters are *sui generis,* very much unlike ordinary civil or criminal proceedings. Appellant ought to have instituted the action soon after the substitution to keep his interest in the political contest alive but he did not. If he had, but the election went on and the 1st respondent sworn in as the Governor, by the authority of the decision in *Amaechi .v. I.N.E.C.,* section 308 of the 1999 Constitution would have been rendered a toothless bull dog.

I hold the view that at the time appellant decided to go to court in the circumstances of this case, the question of nomination by way of substitution which is a pre-election matter had ceased to exist leaving only the election proper to be questioned and the proper place to do so is the election tribunal. If the situation in this case is encouraged, it will breed uncertainty in the polity when a person may wake up a year or more after an election and swearing-in of a president or governor to challenge his nomination by way of substitution for the election that brought him to power. Or he may even do so after the tenure of office of the official concerned which attitude ought not to be encouraged by the law. It should be noted that, appellant has the right to waive his right to the nomination by way of substitution which by his inordinate delay, he appears to have projected. Everyone must be watchful of his legal; right and be vigilant, in the instant case, appellant went to sleep until Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 caught up with him upon his waking up. The instant action is clearly a civil action which is not maintainable against the 1st respondent. I therefore agree with the lower court that section 308 of the Constitution of the Federal Republic of Nigerian, 1999 applies to the facts of this case, and resolve this issue against the appellant.

Appellant might have had a good case but he was not diligent in pursuing it. It dangerous to lay the precedent that a party who has substituted wrongfully or otherwise is at liberty to challenge the substitution or nomination by way of substitution of his opponent months or years or at any time during or even after the tenure of the elected government official and have the election annulled and himself declared the winner or governor by the regular court. That will be ambushing the governorship seat at the gate of the judiciary, which I think ought not to be encouraged.

This was the same thing that happened in the recent case of ***Salim v. C.P.C.,***[[84]](#footnote-84) and **Peter-Odili, J.S.C.,** held thus:

“The instant situation where the appellant as plaintiff did not complain to court before election and even then 38 days after the election to talk of a pre-election matter for the first time is a pill too difficult to swallow. He by his lack of consciousness took his matter out of the domain of pre-election can only go before the Election Tribunal to try his luck since the status of the matter was post election clearly outside the ambit of either the Federal High Court, State High Court or High Court of the FCT. The other way to say it is that the matter had become spent or no longer alive to be adjudicated upon by any of those courts above mentioned as in this instance.”

While it is true that there must be an end to litigation, the question is where such vitiating factor was discovered subsequent to the conduct of the election, should it then be that the law must close its eyes no matter how vital or crucial such is to the credibility of the process or the functionary. I think not as I believe that such must still be permissible in so far as such can be justified before the court.

At the other side of the divide are election petitions which are *sui generis* and are so regarded because they are different from the ordinary civil matter before the court in the sense that substantial justice as against technicalities is expected to play a pivotal role in the resolution of election petitions before the Tribunal. This is basic reason why Sagay[[85]](#footnote-85) stated thus:

“The intention of the Electoral Act and other laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities and conclusions that tend to shut out an aggrieved party from the temple of justice, by not hearing it on merit, ought not to be encouraged in the interest of justice and democracy. *See*, *Omoiregbai v. Ogedengbe* [2009] 44 WRN 136 at 161-162)”

To further buttress the position of Sagay, the Supreme Court, **Per Onnoghen J.S.C.** in the case of ***HDP v. INEC***[[86]](#footnote-86) made the following observation:

“It should be noted that though election petitions are said to be sui generis they are concerned with the political rights and obligations of the people- particularly those who consider their rights injured by the electoral process and need to ventilate their grievances. Such people ought to be encouraged to do so with some latitude knowing that in the process of initiating proceedings to ventilate their grievances, mistakes, such as those in the instant case may occur. Since the intention of the Electoral Act and other laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities, any conclusion that tends to shut out an aggrieved party from the temple of justice by not hearing him on the merit not to be encouraged in the interest of peace and democracy.”

However, the various decisions of our respective Tribunals as well as the Appellate Court, obviously reveals that substantial justice no longer play a key role in the resolution of election petitions. Rather, technicalities have been substituted for substantial justice to the extent that most of our election petition cases are either not heard on the merit and even if heard on the merit, technicalities is employed in whittling down the merit of the trial. The use of technicalities in striking out or dismissing election petition cases is employed either (a) as a result of the failure of our tribunals or courts to properly appreciate the law sought to be interpreted vis-à-vis other existing laws or (b) due to a compromise on the part of the tribunals or courts. This shall now be demonstrated anon as follows:

1. **Interpretation on mode of application for issuance of pre-hearing notice**:- There are conflicting decisions on the mode of application for the issuance of pre-hearing session. Some tribunals and Court of Appeal that have failed to do justice in interpreting the provision relating to issuance of pre-hearing notice which in turn led to dismissal of some petitions without being had on the merit. Paragraph 18(1) of the First Schedule to the Electoral Act, 2010 (which provision is *impari materia* with the then paragraph 3(1) of the Election Tribunal and Court’s Practice Directions, 2007 made pursuant to the Electoral Act, 2006) states as follows:

“Within 7 days after the filing and service of the petitioner’s reply on the respondent or 7 days after the filing and service of the respondent’s reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF 007.”

In interpreting the above provision, these tribunals and Court of Appeal that failed to do substantial justice made resort to the provision of Paragraph 47(2) of the First Schedule to the Electoral Act, 2010 (which provision is *impari materia* with the provision of Paragraph 6(2) of the Electoral Tribunal and Court’s Practice Directions, 2007) that provides thus;

“Whereby these Rules any application is authorized to be made to the Tribunal or Court, such application shall be made by motion which may be supported by affidavit and shall state under what rule or law the application is brought and shall be served on the respondents.”

Going by the provision of Paragraph 47(2)[[87]](#footnote-87) these tribunals and Court of Appeal have held that application for issuance of pre-hearing notice in Paragraph 18(1)[[88]](#footnote-88) requires the filing of a motion either on notice or ex-parte and that a letter does not suffice for the issuance of pre-hearing notice. In the case of ***Riruwai v. Shekarau***,[[89]](#footnote-89) Although, the Petitioners/Appellants’ contention that they applied to the tribunal for pre-hearing notice by a letter dated 12th July, 2007 was dismissed by the Court of Appeal on the ground that the alleged letter was not exhibited to the Appellants’ motion neither was it in the record of proceedings yet the Court of Appeal still went ahead to hold that the alleged letter was of no moment as it does not conform with what is envisaged in paragraph 3(1).[[90]](#footnote-90) The Court, **Per Ndukwe-Anyanwu, J.C.A.** held thus:

“Application in legal parlance or court procedure does not mean a letter written to the court but an application by motion either ex parte or on notice. See paragraph 6(2) of the Practice Directions, 2007 and the case of Sincerity and Trust Multi Purpose Cooperative Society Ltd. v. Emenue (2002) 11 WRN 16; (2002) 10 NWLR (Pt. 776) 509.”[[91]](#footnote-91)

Similarly, in the case of ***Nwankwo v. Yar’Adua*,[[92]](#footnote-92) Bada, J. C. A.** held as follows:

“A careful examination of the affidavits and counter affidavits filed in this application would show that no application was made by either party for the issuance of the pre-hearing notice. The application which the petitioners/applicants/respondents claimed to have filed on 13/12/2010 is not in compliance with the provisions of paragraph 6(2) of the Practice Directions because it was not made by way of motion. Apart from that, the purported application was filed outside the 7 days provided in paragraph 3(1) of the Practice Directions.”

The other interpretation placed by the some tribunals or court is to the effect that an application for issuance of pre-hearing notice may be by a letter or motion (either on notice or ex-parte). This interpretation is more preferred as a thorough examination of the making of such application under Paragraph 18(1)[[93]](#footnote-93) is purely administrative and not judiciary and consequently, accords with sense of reason. In the case of ***Gebi v. Dahiru***,[[94]](#footnote-94) while concurring with the lead judgment by **Saulawa J.C.A**, **Dongban-Mensem, J.C.A.** held thus:

“Any method of application, either by a letter, a motion *ex parte* or on notice is acceptable. When an issue arises as in this appeal as to the method of application, the learned members of the tribunal have the discretion to determine whether a letter simpliciter or a motion *ex parte* or a notice is adequate. In my opinion, a lot is required in a request to issue pre-hearing notice. It is the failure to make the request that is fatal to the petition, not the method of making it.”

It is pertinent to state that these conflicting decisions of the Court of Appeal on the method of application for issuance of pre-hearing notice has now been laid to rest by the recent decisions of the Supreme Court. One of such is the case of ***Ugba v. P.D.P.***[[95]](#footnote-95) While interpreting the provision of paragraph 18(1),[[96]](#footnote-96) While allowing the Petitioners/Appellants’ appeal, **Onnoghen J.S.C.** held thus:

“It is my further view that the application required under the said paragraph 18(1) can be made either by letter or *ex parte* motion or on notice, the matter being purely an administrative act, not judicial or quasi-judicial.”

In the same vein, while interpreting the provision of Paragraph 18(1) of the First Schedule to the Electoral Act, 2010 (as amended), Tabai J.S.C., in ***Abubakar v. Nasamu (No. 2)***[[97]](#footnote-97) held thus:

“Next is paragraph 18(3) which applies only to the respondent to the petition in the event of the petitioner’s failure to apply for the issuance of the pre-hearing session notice. Under this provision, the respondent to the petition is at liberty to pursue either of two options open to hum. He may, like the petitioner, bring an application for the issuance of pre-hearing session notice. In such a situation, the respondent has no obligation to serve the application on the petitioner, it being in the nature of an expected application. Alternatively and most importantly, he may bring an application by way of a motion which shall be served on the petitioner to dismiss the petition, (sic) In my view, the purpose and necessary intendment of the provision is quite clear. There is no ambiguity whatsoever as to the distinction between “an application” simpliciter and a “motion”. I agree with learned senior counsel for the petitioners/appellants that the distinction is deliberately set out ‘in the provision. The provision separates the period of the pre-hearing session from the period immediately preceding it. The clear meaning of the provision is that at or during the period of the pre-hearing session all applications must be by way of motion. But at the period before the commencement of the pre-hearing session, an application need not be by a motion. It can be in the form of a letter as was done in this case.

I hold therefore that in the absence of any special mode by which an application can be made at the period preceding the commencement of the pre-hearing session the appellants’ letter dated the 14th June, 2011 is an application within the meaning of paragraph 18(1) of the First Schedule to the Electoral Act 2010 (as amended). The letter constitutes a sufficient compliance with the requirements of the provision.

This view is further supported by the provision of paragraph 47(1) of the First Schedule to the Electoral Act which requires all motions to be brought and disposed of at or during the pre-hearing session. The provision further circumscribes the period at which an application shall be made by way of a motion as provided in paragraph 47(1) of the First Schedule to the Act. Paragraph 47(1) therefore confirms the operations of Paragraph 47(2) to the period during the pre-hearing session. It is clear that a combined reading of Paragraph 18(1) (3) and (4) and Paragraph 47(1) and (2) of the First Schedule to the Electoral Act 2010 (as amended) that the petitioners/appellants’ letter of the 14th of June, 2011 is sufficient compliance with the requirements of the law to activate the pre-hearing session.”

The point we are making here is of what effect is the use of the letter or motion to the determination of the matter submitted before the Tribunal. Of course, as indicated above, as an administrative act, a letter will certainly suffice. However, it will interest you to know that several cases could not be heard on the merit due to the fact that by the time the Supreme Court could resolve this inconsequential issue, the statutory period of 180 days had elapsed, thereby depriving the petitioner any form of hearing and by extension justice. See the cases of ***Ugba v. Suswan,***[[98]](#footnote-98) ***A.N.P.P. v. Goni***[[99]](#footnote-99)

1. **Status of Practice Direction vis-à-vis the Rules of Court and statutory provisions**:- Practice Direction is a direction given by an appropriate authority stating the way and manner a particular rule of court shall be complied with, observed and obeyed while Rules of court are to regulate matters in court and help parties in the presentation of their case within a procedure made for the purpose of a fair and quick trial.[[100]](#footnote-100) Rules of Court and Practice Direction are rules touching on the administration of justice and established for attaining justice with ease, certainty and dispatch. Practice Direction do not have the authority of rules of court. Although they are instructions in aid of the practice in court. They cannot by themselves overrule court decisions.[[101]](#footnote-101) Consequently, practice directions have no force of law and cannot fetter a rule of court and cannot tie the court in the exercise of its discretion. Where there is a conflict between a rule of court and a practice direction, the rule must prevail.[[102]](#footnote-102) Similarly neither the practice direction nor rules of court can override statutory provisions.[[103]](#footnote-103) The above is the position of the law as I know it but it appears that in some election petition cases practice directions have been elevated above rules of court including the statutory provisions. A example is the unreported Appeal petition of ***Prince Abubakar Audu & Anor. v. Captain Idris Wada & 5 Ors.***[[104]](#footnote-104) wherein the Appellants petition was dismissed as lacing in merit at the Kogi State Gubernatorial Election Petition Tribunal. Dissatisfied with the decision, the Appellant lodged an appeal to the Court of Appeal. Upon dismissal of the Appeal by the Court of Appeal, the Appellant filed appeal to the Supreme Court. Briefs of argument were filed and exchanged. Some of the Respondents raised a preliminary objection against the appeal on the ground that the appeal was filed out of time citing the provision of paragraph 1 of Practice Directions Election Appeals to The Supreme Court. The Appellants’ Counsel consequently filed an application for extension of time to appeal. Notwithstanding the fact that the Supreme Court Rules permits extension of time to appeal and the Appellants proffered argument that since the Rules of Court which is above practice direction permits extension of time to appeal, the Supreme Court refused to hear the application and asked Appellants’ counsel to withdraw same on the basis that by paragraph 1 of Practice Directions Election Appeals to The Supreme Court (that was made pursuant to the Supreme Court Rules) the appeal ought to have been filed within 14 days. In fact, the Supreme Court fail to realise that where there is no specific provision in the Practice Direction stating that the time to appeal cannot be extended, extension of time will be granted pursuant to the Supreme Court Rules since in the hierarchy of legislation Practice Direction are less efficacious to the rules of court.[[105]](#footnote-105) Assuming that the said Practice Directions Election Appeals to the Supreme Court is in conflict with the Supreme Court Rules on the issue of extension of time, which is not in this circumstance, the Supreme Court Rules would certainly prevail over the said Practice Directions Election Appeals to the Supreme Court. Besides, as rightly stated by Pats-**Acholonu, J.S.C.** in ***Duke v. Akpabuyo L.G.***[[106]](#footnote-106) rules of the court (which I regard Practice Direction to be) are meant to be obeyed and are used by the courts to discover justice and not to choke, throttle or asphyxiate justice and they are not *sine qua non* in the just determination of a case and therefore not immutable. The question is where lies justice in this case? In fact, most election petition cases before the Osun State Election Petition Tribunals under the Chairmanship of Justice T.D. Naron were, among other things, dismissed by the Tribunal as a result of placing Practice Direction over the Electoral Act, 2006.[[107]](#footnote-107)
2. **Whether written Address can take the place of Evidence**:- The position of the law is that written addresses no matter how brilliant cannot take the place of evidence. This situation is applicable to instances where Counsel written addresses ascribe testimony to a witness which the witness did not in fact give in his or her testimony before the court. This is why the court would hold that such cannot take the place of evidence because such written address is ascribing evidence to what a witness did not say. It is disheartening to realize that some tribunals including the appellate courts regarding election petition cases have summersaulted by holding that analysis in the form of charts is not admissible having not been tested under cross-examination and hence cannot take the place of evidence. This was the decision of the Supreme Court in the election appeal of ***Ucha v. Elechi***[[108]](#footnote-108) wherein **Rhodes-Vivour, J.S.C.** held thus:

“The chart contained in the appellants final address was a brilliant idea, but it was not tested under cross-examination, and it does not show that the figures were arrived at as a result of careful examination and compliance of exhibits P.95 – P. 111, documents that were dumped on the trial court. I must point out that a brilliant address is no substitute for evidence. Counsel submission no matter how brilliant and alluring cannot take the place of legal proof. See *Ishola v. Ajiboye* (1998) 1 NWLR (Pt. 532) p. 71; *Chukujekwu v. Olalere* (1992) 2 NWLR (Pt. 221) p. 86.

The chart relied on by learned counsel for the appellants are of little or no evidential value.”

Also, in the case of ***Chime v. Ezea***,[[109]](#footnote-109) **Saulawa, J.C.A**. held thus:

“What’s more, petitioners’ counsel’s analysis heavily relied upon by the lower tribunal has amounted to a counsel giving an evidence from the bar which is most unacceptable. It is a well trite fundamental doctrine that the submission of a counsel in a case, no matter how articulate or eloquent, cannot serve as a substitute to pleadings and/or evidence.”

How on earth can analysis by way of chart in final written addresses regarding exhibits tendered before the court be regarded as taking the place of evidence. It is just obvious that our courts are not just ready to do substantial justice in election petition cases again.

1. **Dumping of Documents**:- The position of the law is that when a document is admitted in evidence it should be allowed to speak for itself. The implication is that every inscription on the document should attract the reasonable inference it deserves.[[110]](#footnote-110) Hence, by virtue of section 128(1) of the Evidence Act, 2011 oral evidence of fact is not admissible in proof of, or to add to, or in contradiction of a written document. See the cases of **Agbareh v. Mimra,[[111]](#footnote-111) *Anyanwu v. Uzowuaka***[[112]](#footnote-112) and ***Egharevba v. Osagie***.[[113]](#footnote-113)

From some election petition decisions, it would appear that in election petition cases, documents no longer speak for themselves notwithstanding that they have been tendered and admitted in evidence. In the case of ***Goyol v. I.N.E.C. (No. 2)***[[114]](#footnote-114)

“The learned senior counsel for the appellants rightly submitted that documents when tendered and admitted speak for themselves. However documents tendered and admitted in evidence would not be of assistance to the court in the absence of admissible oral evidence by persons who can explain their purpose.”

Further, in the case of *A.C.N. v. Lamido* [2012] 8 NWLR (Pt. 1303) 560 at 584-585, paras. H-A, Mohammed, J.S.C. held thus:

“All these serious allegations in various paragraphs of the petition must be supported by oral evidence to tie the relevant documents admitted in evidence to various acts of non-compliance or alterations complained of in the documents. It is certainly not the duty of the trial tribunal or the court below to place Exhibits ‘E’-‘Z’ and 1-36 on the table and examine them one by one in order to determine whether or not the appellant’s petition had been established to be entitled to the reliefs sought.”

Likewise, in the case of ***Ucha v. Elechi***,[[115]](#footnote-115) **Rhodes-Vivour J.S.C.,** held thus:

“I cannot agree more with the above. When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas of the petition. He must relate each document to the specific area of the case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of a party’s case.

A Judge is to descend from his heavenly abode, no lower than the treepots, resolve earthly disputes and return to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a Judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him, he would most likely be submerged in the dust of the conflict and render a perverse judgment in the process.”

See also the cases of ***A.N.P.P v. I.N.E.C***.,[[116]](#footnote-116) ***A.N.P.P. v. Usman***[[117]](#footnote-117)and **Chime v. Ezea[[118]](#footnote-118)**

It is submitted that the various decisions of these courts in election petition would mean that in election petition cases (a) documents tendered and admitted in evidence no longer speak for themselves (2) oral evidence can be given to add to, contradict or vary the content of documents contrary to the provision of section 128(1) of the Evidence Act, 2011 and (3) documentary evidence is longer the best form of evidence. If this is the case, then this cannot be regarded as substantial justice to election petition cases because rules and laws in election petition cases ought to be relaxed even more than the ordinary civil matters. In fact, this is an obvious case of substantial injustice to the petitioners. Furthermore, what is the role or duty of a judicial officer if it is not to link evidence with Documents?. Beyond this, how on earth within a spate of 180 days does one expect documents to be tendered one by one by each witness. Worse off is even the fact that in most trials, Tribunals allocates number of days for presentation by each party. Where then lies the justice in the face of all these?

1. Interpretation of section 285(6) and (7) of the 1999 Constitution of the Federal Republic of Nigeria:- An election tribunal is expected to deliver its judgment in writing within 180 days from the date of filing of the petition.[[119]](#footnote-119) A petition against Presidential Election that is challenging one-third or half of the States of the Federation will be required to call thousands of witnesses in proof of his petition. If this is the case, how on earth will the petitioner be able to present all his witnesses and for the respondents to present theirs within the time frame of 180 days? This is practically impossible. This situation is also applicable to the Governorship and National Assembly election petition. Petition in this circumstance will only be possible if the petitioner is, in the case of Governorship petition, challenging only one or two local Governments. Where one challenges about 10 local Government in a State, the Petition is likely to be dead on arrival. In the case of presidential election petition challenging just a State of the Federation, it will be a joke for a petitioner to call his witnesses within 180 days and expect to succeed in his petition. Worst still, the Supreme Court in the case of ***Gundiri v. Nyako***[[120]](#footnote-120) held that “The best evidence the appellants could have had was that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at an election. The consequence of shutting them out for whatever reason is very detrimental to the appellants’ case.” This situation fits the latin maxim *lex non cogit ad impossibillia.*[[121]](#footnote-121) The implication of this will then be that the Tribunals either do not want the petition properly tried or that justice should be rushed and murdered. See the words of **Ayoola, J.S.C.** in the case of ***Chairman, NPC v. Chairman, Ikere L.G.***[[122]](#footnote-122)

In fact, virtually all the Governorship election petitions in 2011 failed either as a result of the inability of the petitioners to call enough witnesses to proof their case or the inability of the petition to be heard on the merit due to the 180 day rule. For instance in the case of ***Ugba v. Suswan***[[123]](#footnote-123) The 1st and 2nd Appellants who were not satisfied with the Governorship election in Benue State conducted on the 26th day of April, 2011 filed petition on the 17th day of May, 2011 before the Governorship Election Tribunal of Benue State, Makurdi. On the 19th day of September, 2011, the Court of Appeal allowed an appeal filed by the respondents and struck out the petition for improper commencement of pre-hearing session at the tribunal. The Appellants were dissatisfied with the judgment of the Court of Appeal and appealed to the Supreme Court. On the 14th day of November, 2011 the Supreme Court allowed the appeal by holding that application for pre-hearing session could be made either by a letter or motion *ex parte* or on notice and ordered that the petition be heard on the merit. As at the time of Judgment (i.e. 14th day of November, 2011), the 180 days had expired but the Supreme Court did not consider the effect of same. While re-trial was on, the Tribunal, on the 28th day of February, 2012 held that it lacked jurisdiction to entertain the petition based on the purport and effect of section 285(6) of the 1999 Constitution and consequently struck out the petition. The appellants appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the tribunal. The Appellant further appealed to the Supreme Court. At the Supreme Court, the respondents raised preliminary objections that in view of the provision of section 285(6) of the 1999 Constitution, the appeals had become academic exercise. The Justices of the Supreme Court considered the provisions of section 285(5), (6) and (7) of the 1999 Constitution and held that a tribunal is conferred with jurisdiction to hear petitions within 180 days from the date the petition is filed. Where an appeal court orders a re-trial, the re-trial must be concluded within the unexhausted days of the 180 days and that no court can extend the 180 days period provided by section 285(6) of the 1999 Constitution. This was also the decision of the Supreme Court in the case of ***A.N.P.P. v. Goni***[[124]](#footnote-124)

It is my opinion that where cases are referred back to court for re-trial, rationality would require that the 180 days should start to run upon referral. These decisions of the Supreme Court that there is nothing it can do spells doom to our judiciary that is saddled with the responsibility of interpreting laws in a manner that would entail justice

If the 180 day rule had been codified in the Constitution before the case of ***Aregbesola v. Oyinlola***[[125]](#footnote-125) was heard and determined, obviously, the 180 day rule would have caught up with Aregbesola’s petition. This is because the petition was filed on May 11, 2007 and the final judgment that found the petition to be meritorious was delivered on the 26th day of November, 2010. The implication is that the petition lasted for 3 years and 6 months. Also, the petition of ***Agagu v. Mimiko***[[126]](#footnote-126) and the two respective petitions of ***Fayemi v. Oni***[[127]](#footnote-127) would have been caught up with the 180 day rule.

1. Corruption in the judiciary is also one of the factors that have contributed to substantial injustice in election petitions cases. It is without doubt that corruption has seriously eaten deep into our judiciary, which ought to be regarded, as the last hope of the common man. A number of decisions reached in election petition cases were affected as a result of romance between judicial officers and the parties. A classic example is the petition of Aregbesola v. Oyinlola before the Osun State Governorship Election Petition Tribunal wherein the Chairman of the Tribunal, Justice T. D. Naron was in constant telephone calls with one of the Counsel to Oyinlola and PDP throughout the period of the petition including periods between the time the tribunal went on recess for delivery of rulings to the time of resumption from recess for delivery of these rulings.[[128]](#footnote-128) The said Justice T. D. Naron was compulsorily retired after he was found guilty of romancing with the said Senior Counsel of PDP. Another example is the 2007 gubernatorial election in Sokoto State, an election won by Governor Wamakko of the PDP but questioned by Dingyadi of the Democratic Peoples Party (DPP). Justice Ayo salami (the then President of the Court of Appeal) stated that, after a prior refusal by him to direct the Sokoto Appeal to dismiss the DPP’s appeal, the then CJN, Justice Katsina-Alu, further interfered with the above case by asking him to dismiss the Court of Appeal panel handling the Sokoto Governorship case. Refusal by Ayo Salami caused him to be suspended against the provision of the 1999 Constitution after Justice Ayo Salami also refused an attempt to elevate him to the Supreme Court.[[129]](#footnote-129)

With the above instances, there is no doubt that corruption has seriously eaten deep into the judiciary such that cleansing of same in the judiciary will be a herculean task. It is only when we are prepared to face the reality and ready to be fair and just in our entire dealings that corruption can be reduced or eradicated.

Part V

Recommendation and Conclusion

**Recommendation**

It is clear from the above discussion that resolution of election disputes in Nigeria is basically by way of commencement of action in court or tribunal and since substantial justice has not been really achieved in the various decisions of our courts on election petition cases, be it pre-election and post election, the following recommendation are hereby proffered with a view to ensuring substantial justice to all election petition cases.

Firstly, we may also need to seek for other alternative election dispute resolution with a view to resolving more election disputes in Nigeria. It is in this respect that the alternative election dispute resolution otherwise known as the informal system may play a supportive role, especially in situations in which the formal systems (Election Dispute Resolution) face credibility, financial or time constraints linked to political or institutional crises or to their inadequate design.[[130]](#footnote-130)

It is significant to also note that Alternative Election Dispute Resolution mechanisms have been said to also have some weaknesses. It has been said to be ineffectual in the presence of an extreme power imbalance between disputants, that is, at balancing the interests of a weak disputant with those of a stronger disputant, and may not work when one party is uncooperative – especially in a multiparty dispute.[[131]](#footnote-131) It may also not work where the electorates, who are the mandate giver, do not want their wish to be compromised knowing fully well that there is no way a candidate that has been declared to have won an election will agree to vacate his seat for the loosing candidate. The only possible resolution that could be reached is for the loosing candidate to withdraw his petition and this the electorates may not want the candidate to do other than resolving same at the Tribunal.

Further, it is strongly submitted that since our courts are not in any way ready to interprete the provision of section 285(6) and (7) of the 1999 Constitution in such a way that it would accommodate re-trial cases, then the provision should be removed from the provision of the 1999 Constitution as it is obvious that the provision is a clog to doing substantial justice. It is believed that the agitation for the removal of this provision may be difficult in view of the fact that the legislatures that inserted this provision do not want their elections to be upturned any longer. The consequence of this is that contestants would want to slug it out on the field knowing fully well that an election petition is not an option for them.

Again, it is recommended that jury system be adopted in election petition cases as it is believed that the adoption of jury system in determination of fact of each cases before it will not only go a long way in dispensing justice but will further assist in quick dispensation of justice where competent and uncompromising jurors are picked from the society. With competent and uncompromising jurors, the issue of substantial injustice would certainly be a thing of the past as the Judge would be left to apply the law to the finding of fact already reached by the jurors.

**Conclusion**

It is clear from the above discussion that resolution of election disputes in Nigeria is basically by way of commencement of action in before the tribunal. Even at that, the courts have persistently refrained from delving into intra-party disputes on the ground that the exercise of right to nominate a candidate for any political office is within the domestic affairs of the political parties and hence non-justiciable. Courts are only inclined in resolving intra-party disputes which involve breach of the provisions of the law like the Electoral Act.[[132]](#footnote-132)

Finally, as rightly stated,[[133]](#footnote-133) both Election Dispute Resolution and Alternative Election Dispute Resolution systems ultimately have value when they are trusted and if necessary used when complaints arise. Even when this trust is broadly present, they are still part of an overall electoral process in which the participants are political actors. Politicians make political judgments and the electoral justice system has to be an attractive enough option to encourage them to use it.

Election Dispute Resolution

and

The Question of Justice in Nigeria.

**Paper submitted by:**

Dr. Muiz Banire,

Principal and Founding Associate,

M. A. Banire & Associates,

FCMB/Bedmate Building,

18, Mobolaji Bank-Anthony Way,

Ikeja, Lagos.

Tel: 08033066686

E mail: muizbanire@yahoo.com;mbanire@mabandassociates.com

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2. Kufuor, Others Proffer Solution to Nigeria’s Electoral Disputes. This Day Live Saturday 10, 2014. <<http://www.thisdaylive.com/articles/kufuor-others-proffer-solution-to-nigeria-s-electoral-disputes/73890/>> last visited on10th May, 2014. [↑](#footnote-ref-2)
3. Democracy Reporting International. Briefing Paper 35, January 2013 “Election Dispute Resolution: Analysis of Pakistan’s Mechanisms Prior to the 2013 Parliamentary Elections” 1. <<http://www.democracy-reporting.org/files/dri-pk_bp35_edr.pdf>> last visited on 10th May, 2014. [↑](#footnote-ref-3)
4. Orozco Henriquez and Dr. Raul Avila: Concept paper developed and presented on “Electoral Dispute Resolution Systems: Towards A Handbook and Related Materials” to EDR Expert Group Workshop held in Mexico 27-28 May, 2004. p. 3. <<http://www.idea.int/news/newsletters/upload/concept_paper_EDR.pdf>> last visited on 10th May, 2014. [↑](#footnote-ref-4)
5. See The Nation Newspaper of Thursday, April 24, 2014 on “Tinubu warns against rigging in Ekiti, Osun” at pages 1, 2 and 65. See also The Punch Newspaper of Thursday, April 24, 2014 on “Tinubu warns PDP against rigging in Ekiti, Osun” at page 7. [↑](#footnote-ref-5)
6. In the case of *P.D.P. v. C.P.C.* [2011] 17 NWLR (Pt. 1277) 485 at 507, para. E, while interpreting the provision of section 285(7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) Onnoghen J.S.C. stated that “The intention of the drafters of the Constitution being to stop the practice of unnecessary delays in election matters, it is our duty to ensure compliance with the law by doing what is needed within the time frame. It may be difficult, in fact is very difficult but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box.” See also the case of *Amadi & Anor. v. INEC* (2012) 2 S.C. (Pt. I) 1 at 66, lines 1-10. [↑](#footnote-ref-6)
7. Black’s Law Dictionary, 8th Edition, 2004, p. 557. [↑](#footnote-ref-7)
8. [2004] 12 NWLR (886) 169 at 227, para. F-G. [↑](#footnote-ref-8)
9. [2004] 14 NWLR (Pt. 892) 92 at 123, paras. F-G. [↑](#footnote-ref-9)
10. [2011] 2 NWLR (Pt. 1232) 538 at 589-590, paras. F-A. See also the case of Igodo v. Owulo [1999] 5 NWLR (Pt. 601) 70 at 78-79, paras. H-A. [↑](#footnote-ref-10)
11. Black’s Law Dictionary defines ‘Referendum’ as “[t]he process of referring a state legislative act, a state constitutional amendment, or an important public issue to the people for final approval by popular vote.” *Supra* at 1307. [↑](#footnote-ref-11)
12. See Femi Falana’s Article titled “Militarisation of elections is unconstitutional” at Page 68 of The Punch Newspaper of Monday, July 21, 2014. [↑](#footnote-ref-12)
13. Curfew imposition is a residual matter as same is not contained in either the exclusive legislative list or concurrent legislative list. It is stated that curfew may only be imposed by the Federal Government where a state of emergency is declared in a State by the Federal Government. [↑](#footnote-ref-13)
14. See section 87 of the Electoral Act, 2010 (as amended). [↑](#footnote-ref-14)
15. Section 87(7) of the Electoral Act, 2010 (as amended) [↑](#footnote-ref-15)
16. Section 156 of the Electoral Act, 2010 (As amended). See also the case of *Ojukwu v. Obasanjo* [2004] 12 NWLR (Pt. 886) 169 at 227, paras. D-E. [↑](#footnote-ref-16)
17. See sections 103-116 of the Electoral Act, 2010 (As amended). [↑](#footnote-ref-17)
18. See Lagos State Independent Electoral Commission Law, 2001 and the Local Government Election Tribunal Law, 2001. [↑](#footnote-ref-18)
19. Oxford Advanced Learner’s Dictionary of Current English: Seventh Edition, Oxford University Press, 2005, p. 423. [↑](#footnote-ref-19)
20. The Chambers Dictionary, Chambers Harrap Publishers Ltd., 1993. P. 487 [↑](#footnote-ref-20)
21. Black’s Law Dictionary, 8th Edition, 2004, p. 505 [↑](#footnote-ref-21)
22. Encyclopedia of Wikipedia <<http://en.wikipedia.org/wiki/Dispute_resolution>> Visited on 10th May, 2014 [↑](#footnote-ref-22)
23. <<http://www.ask.com/question/what-is-dispute-resolution>> visited on 10th May, 2014 [↑](#footnote-ref-23)
24. Encyclopedia of Wikipedia <<http://en.wikipedia.org/wiki/Dispute_resolution>> Visited on 10th May, 2014. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. ibid. [↑](#footnote-ref-26)
27. M. V. Pylee, Constitutions of the World, 4th Edn. (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2012). Vol. 1, p. xi. [↑](#footnote-ref-27)
28. E. C. S. Wade & A. W. Bradley, Constitutional and Administrative Law, 10th Edn. (Longman, London, 1986) 4. [↑](#footnote-ref-28)
29. Bola Ige, Constitution And The Problem Of Nigeria (Published by Nigerian Institute of Advanced Legal Studies, Lagos, 1995) 2. [↑](#footnote-ref-29)
30. C. A. Obiozor: *The Constitutional Vesting Of Judicial Powers In The Judicature In Nigeria – The Problem With Section 6(6)(D) Of The Constitution Of 1999* (NIALS Law and Development Journal 2010) page 218 <<http://www.nials-nigeria.org/journals/C.%20A.%20Obiozor.pdf>> last visited on November 13, 2013. [↑](#footnote-ref-30)
31. Section 285(5) of the 1999 Constitution [↑](#footnote-ref-31)
32. [2004] 7 NWLR (Pt. 871) 16 at 55, para. E. [↑](#footnote-ref-32)
33. Itse E. Sagay: The Enforcement of Electoral Laws and Case Law of Election Petition Judgments, 2012 (Spectrum Books Limited) 1. [↑](#footnote-ref-33)
34. Section 285 (3) of the 1999 Constitution and paragraphs 1(1) and 2(1) of the Sixth Schedule. [↑](#footnote-ref-34)
35. Section 285 (3) of the 1999 Constitution and paragraphs 1(2) and 2(2) of the Sixth Schedule. [↑](#footnote-ref-35)
36. Section 285(4) of the 1999 Constitution. [↑](#footnote-ref-36)
37. Section 285(6) of the 1999 Constitution. [↑](#footnote-ref-37)
38. Section 285(7) of the 1999 Constitution. [↑](#footnote-ref-38)
39. Which provides thus: “The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list set out in Part 1 of the Second Schedule to this Constitution.” [↑](#footnote-ref-39)
40. Which provides thus: “In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say- (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto;” [↑](#footnote-ref-40)
41. Cap. L75, Laws of Lagos State of Nigeria. [↑](#footnote-ref-41)
42. Section 1 of the Local Government Tribunal Law [↑](#footnote-ref-42)
43. Section 1(1) of the Local Government Tribunal Law [↑](#footnote-ref-43)
44. Section 1(2) of the Local Government Tribunal Law [↑](#footnote-ref-44)
45. Section 1(3) of the Local Government Tribunal Law [↑](#footnote-ref-45)
46. Section 1(4) of the Local Government Tribunal Law [↑](#footnote-ref-46)
47. Section 2(2) of the Local Government Tribunal Law [↑](#footnote-ref-47)
48. Section 2(3) of the Local Government Tribunal Law [↑](#footnote-ref-48)
49. Section 14(1) of the Local Government Tribunal Law [↑](#footnote-ref-49)
50. Section 14(2) of the Local Government Tribunal Law [↑](#footnote-ref-50)
51. Local Government Tribunal Law of Lagos State. [↑](#footnote-ref-51)
52. Section 62 of the Local Government Tribunal Law of Lagos State defines ‘Tribunal’ to mean “an Election Tribunal or an Election Appeal Tribunal” [↑](#footnote-ref-52)
53. Section 54(6) of the Local Government Election Tribunal Law. [↑](#footnote-ref-53)
54. Bon Nwakanma and Ngozi Olehi: Laws Governing Elections and Election Petitions, (Edu-Edy Publications, 2007), p. 64 [↑](#footnote-ref-54)
55. [1983] N.S.C.C. 494. [↑](#footnote-ref-55)
56. Ibid at 504, lines 7-29. [↑](#footnote-ref-56)
57. [2003] 15 NWLR (Pt. 843) 310 [↑](#footnote-ref-57)
58. [2011] 12 S.C. (Pt. III) 113 [↑](#footnote-ref-58)
59. Ibid at 138-139, lines 26-4. [↑](#footnote-ref-59)
60. Ibid at 140, lines 18-30. [↑](#footnote-ref-60)
61. [2008] 5 NWLR (Pt. 1080) 227. [↑](#footnote-ref-61)
62. [2007] 12 NWLR (Pt. 1048) 220. [↑](#footnote-ref-62)
63. Section 34 of the Electoral Act, 2006 states as follows: “(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election. (2) Any Application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons. (3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section” [↑](#footnote-ref-63)
64. Supra, p. 484, paragraph B-E. [↑](#footnote-ref-64)
65. Supra, p. 317, paragraph B-D. [↑](#footnote-ref-65)
66. Section 33 of the Electoral Act, 2010 (as amended) which states that “ A political party shall not be allowed to change or substitute its candidate whose name has been submitted to section 32 of this Act, except in the case of death or withdrawal by the candidate.” [↑](#footnote-ref-66)
67. Section 258 (5) of the 1999 Constitution. See sections 2(2) and 2(3) of the Local Government Election Tribunal Law. Cap. L75, Laws of Lagos State of Nigeria that also require the filing of an election petition within 21 days from the date of declaration of result or 21 days from the date the registry of the Local Government Election Tribunal was opened. [↑](#footnote-ref-67)
68. Section 137(1) of the Electoral Act, 2010 (as amended). Section 3(1) of the Local Government Election Tribunal Law, 2001 is similar to section 137(1) of the Electoral Act, 2010 (as amended) except that a ‘person claiming to have had a right to contest or be returned at an election’ could also present an election petition before the Local Government Election Tribunal. [↑](#footnote-ref-68)
69. Section 137(2) of the Electoral Act, 2010 (as amended). The first part of Section 3(2) of the Local Government Election Tribunal Law, 2001 is the equivalent provision of section 137(2) of the Electoral Act 2010 (as amended). [↑](#footnote-ref-69)
70. Section 137(3) of the Electoral Act, 2010 (as amended) [↑](#footnote-ref-70)
71. Section 4 of the Local Government Election Tribunal Law. [↑](#footnote-ref-71)
72. In *Abubakar v. Yar’Adua* [2009] All FWLR (Pt. 457) 1 at 79, Katsina-Alu, JSC held thus: “*A careful reading of section 145(1) would reveal that a petition under subsection (1)(a)(b) & (c) does presuppose that the petitioner did in fact participate in the election as a contestant. Whereas a petition under subsection (1)(d) does presuppose that the petitioner was excluded from participating in the election as a contestant. I should imagine that a petitioner who did not contest the election would not be heard to complain that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act or that the respondent was not duly elected by majority of lawful votes cast at the election (sic). See also the case of ANPP v. Haruna (2003) 14 NWLR (Pt. 841) 546 at 570. I think it is plain that the ground provided under section 145(1)(d) of the Electoral Act relating to exclusion of a candidate from contesting the election and the three other grounds provided under the same section 145(a)(b) and (c) relating to disqualification of a candidate who was returned, corrupt practices and non-compliance with the provisions of the Act and failure to secure majority of lawful votes cast at the election are mutually exclusive. Therefore a candidate who did not contest an election cannot legally and logically complain that the election was marred by rigging, corrupt practices, non-compliance with the provisions of the Electoral Act.* *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) 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 fresh election would be ordered pursuant to section 147(1) of the Electoral Act, 2006.* *Clearly, it will be seen that the ground of unlawful exclusion cannot stand with any other ground as presented in the instant petition. This would be tantamount to approbating and reprobating which the law frowns at.”* [↑](#footnote-ref-72)
73. Paragraph 4(1) of the First Schedule to the Electoral Act, 2010 (as amended). Aside from the first content of an election petition (i.e. paragraph 4(1)(a) of the First Schedule to the Electoral Act, 2010 (as amended), the remaining three contents are similar to the content of an election petition in section 17 of the Local Government Election Tribunal Law of Lagos State. [↑](#footnote-ref-73)
74. Paragraph 4(5) of the First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-74)
75. Paragraph 4(6) of the First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-75)
76. Made by the President of the Court of Appeal pursuant to section 285 of the 1999 Constitution, Section 8(2) of the Court of Appeal Act, 1976 and section 149 of the Electoral Act, 2006 No. 2. [↑](#footnote-ref-76)
77. Paragraph 2(1) of the First Schedule to the Electoral Act, 2010 (as amended). Section 15 of the Local Government Election Tribunal Law, 2001 [↑](#footnote-ref-77)
78. Paragraph 12(1) of the First Schedule to the Electoral Act, 2010 (as amended). Section 25(1) of the Local Government Election Tribunal Law requires the respondent to file his reply within 3 days of entering an appearance or seven days or 7 days from the date of receipt of an election petition. [↑](#footnote-ref-78)
79. Section 31(5) of the Electoral Act, 2010 (as amended) [↑](#footnote-ref-79)
80. Section 31(6) of the Electoral Act, 2010 (as amended) [↑](#footnote-ref-80)
81. Section 87(9) of the Electoral Act, 2010 (as amended) [↑](#footnote-ref-81)
82. [2010] All FWLR (Pt. 539) 1007. [↑](#footnote-ref-82)
83. Supra, p. 1046. [↑](#footnote-ref-83)
84. [2013] 6 NWLR (Pt. 1351) 501 at 524-525, paras. H-C. [↑](#footnote-ref-84)
85. Itse E. Sagay (Supra) 2. [↑](#footnote-ref-85)
86. [2009] 8 NWLR (Pt. 1143) 297 at 319, paras. D-F. [↑](#footnote-ref-86)
87. First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-87)
88. First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-88)
89. [2008] 12 NWLR (Pt. 1100) 142. [↑](#footnote-ref-89)
90. Election Tribunal and Court’s Practice Directions, 2007. [↑](#footnote-ref-90)
91. [2008] 12 NWLR (Pt. 1100) 142 at 159, para. F and 164, paras D-E. [↑](#footnote-ref-91)
92. [2011] 13 NWLR (Pt. 1263) 81 at 123, paras. C-E. [↑](#footnote-ref-92)
93. First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-93)
94. [2012] 1 NWLR (Pt. 1282) 560 at 611, paras. E- F. See also the case of *Awojobi v. I.N.E.C*. [2012] 8 NWLR (Pt. 1303) 528 at 554, paras. A-C. [↑](#footnote-ref-94)
95. [2013] 4 NWLR (Pt. 1345) 486 at 492-493, paras H-A. [↑](#footnote-ref-95)
96. First Schedule to the Electoral Act, 2010 (as amended) [↑](#footnote-ref-96)
97. [2012] 17 NWLR (Pt. 1330) 523 at 563-564, paras. E-E. [↑](#footnote-ref-97)
98. [2013] 4 NWLR (Pt. 1345) 427 [↑](#footnote-ref-98)
99. [2012] 7 NWLR (Pt. 1298) 174. [↑](#footnote-ref-99)
100. *Haruna v. Modibbo* [2004] 16 NWLR (Pt. 900) 487 at 535, paras. F-A. [↑](#footnote-ref-100)
101. Supra at p. 591. [↑](#footnote-ref-101)
102. *University of Lagos v. Aigoro* [1984] N.S.C.C. Vol., 15, 745 at 755-756. [↑](#footnote-ref-102)
103. [2010] 13 NWLR (Pt. 1212) 456 at 512, paras. A-C. [↑](#footnote-ref-103)
104. SC/332/2012 [↑](#footnote-ref-104)
105. *Chime v. Ezea* [2009] 2 NWLR (Pt. 1125) 263 at 358, paras. B-D. [↑](#footnote-ref-105)
106. [2005] 19 NWLR (Pt. 959) 130 at 142-143, paras. G-A. [↑](#footnote-ref-106)
107. *Omidiran v. Etteh* [2011] 2 NWLR (Pt. 1232) 471 at 501, paras. A-B. [↑](#footnote-ref-107)
108. [2012] 13 NWLR (Pt. 1317) 330 at 361, paras. F-H. [↑](#footnote-ref-108)
109. [2009] 2 NWLR (Pt. 1125) 263 at 380, paras. B-D. [↑](#footnote-ref-109)
110. See the case of *Saidu v. Abubakar* [2008] 12 NWLR (Pt. 1100) 201 at 301, para. B; [↑](#footnote-ref-110)
111. [2008] 2 NWLR (pt. 1071) 378 at 410-411, para. H-B, Ogbuagu JSCheld thus:

“Documentary evidence in this matter, is crucial. There is therefore, in fact, speaking for myself, no need for any oral evidence which may amount to giving evidence in respect of the contents of a document or documents. This is because of the settled law firstly, that prima facie oral evidence will not be admitted to prove, vary or alter or add to the term of any contract which has been reduced into writing when the document is in existence except the document itself. See the cases of *Da Rocha v. Hussain* (1958) 3 FSC 89 at 92; (1958) SCNLR 280 and *S.C.O.A. (Nig.) Ltd. v. Bourdek Ltd.* (1990) 3 NWLR (Pt. 138) 380 at 389 and many others. Secondly, documentary evidence it is settled, is the Best evidence.” [↑](#footnote-ref-111)
112. [2009] 13 NWLR (Pt. 1159) 445 at 469, para. G-H. [↑](#footnote-ref-112)
113. [2009] 18 NWLR (Pt. 1173) 299 at 327, para. B. [↑](#footnote-ref-113)
114. [2012] 11 NWLR (Pt. 1311) 218 at 233, para. B. [↑](#footnote-ref-114)
115. [2012] 13 NWLR (Pt. 1317) 330 at 360, paras. E-H. [↑](#footnote-ref-115)
116. [2010] 13 NWLR (Pt. 1212) 549 at 596, paras G-H. [↑](#footnote-ref-116)
117. [2008] 12 NWLR (Pt. 1100) 1 at 89, paras. E-H. [↑](#footnote-ref-117)
118. [2009] 2 NWLR (Pt. 1125) 263 at 380, para. F. [↑](#footnote-ref-118)
119. Section 285(6) of the 1999 Constitution. [↑](#footnote-ref-119)
120. [2012] 2 NWLR (Pt. 1391) 211 at 245, paras. B-D. [↑](#footnote-ref-120)
121. Meaning that the law does not command the doing of an impossible task. [↑](#footnote-ref-121)
122. [2001] 13 NWLR (Pt. 731) 540 at 559, paras. G-H. [↑](#footnote-ref-122)
123. [2013] 4 NWLR (Pt. 1345) 427 [↑](#footnote-ref-123)
124. [2012] 7 NWLR (Pt. 1298) 174. [↑](#footnote-ref-124)
125. [2011] 9 NWLR (Pt. 1253) 458. [↑](#footnote-ref-125)
126. [2009] 7 NWLR (Pt. 1140) 342. [↑](#footnote-ref-126)
127. [2009] 7 NWLR (Pt. 1140) 223 and [2010] 17 NWLR (Pt. 1222) 326 [↑](#footnote-ref-127)
128. See The News (Vol. 31, No. 01, 14 July, 2008) titled; “*The Scandal of Judges: How Osun Tribunal was compromised*.” [↑](#footnote-ref-128)
129. See The Punch Newspaper of Thursday, October 31, 2013 at page 12 on “No Regrets over clash with former CJN-Justice Salami”. See also The Nation Newspaper of Thursday, October 31, 2013 at pages 1, 2 and 61 on “Salami unfairly treated by NJC, says Uwais” [↑](#footnote-ref-129)
130. International Institute for Democracy and Electoral Assistance, 2010: Extracted from “*Electoral Justice: The International IDEA Handbook”* p. 183, para. 558. <<http://www.idea.int/publications/electoral_justice/upload/electoral_justice_chapter_8.pdf>> Visited on 19th May, 2014. [↑](#footnote-ref-130)
131. Ibid, p. 188, para 577. [↑](#footnote-ref-131)
132. See *Amaechi v. INEC* (supra) and *Ugwu v. Ararume* (supra) [↑](#footnote-ref-132)
133. International Institute for Democracy and Electoral Assistance, 2010 (supra), p. 193, para. 588. [↑](#footnote-ref-133)