

KEY ISSUES AND CHALLENGES OF ELECTORAL TRIBUNALS IN NIGERIA

BEING A PAPER DELIVERED BY MR. RICKEY TARFA, SAN,¹

INTRODUCTION

Prior to the colonial era, the different political units which subsequently made up Nigeria had various unique and different ways of appointing their leaders.

The system of recruiting political leaders through elections was alien to the various kingdoms and societies in Nigeria. The electoral system is part of our colonial legacy in Nigeria. It must be noted however, that the coming of the colonialists did not immediately bring about the introduction of an electoral system as it took more than half a century for the gradual introduction of a form of electoral process in Nigeria which later developed with the history of the country to be put in place².

Lord Lugard became the first Governor-General of Nigeria following the amalgamation of the Northern and Southern protectorates in 1914. He was subsequently succeeded by Sir Hugh Clifford in 1922; the Clifford Constitution was introduced in 1922.

The Clifford Constitution embodied the principle of election which brought about the formation of various political organizations in the country and with their formation a more effective vehicle for expressing grievances and aspirations was provided³.

Following the 1922 Constitution, the principle of election was equally provided in the subsequent constitutions though with various modifications by the succeeding Governor-Generals in the 1946, 1951 and 1954 constitutions until 1960 when Nigeria became an independent and sovereign nation following the federal election of 1959.

Upon the attainment of independence the Nigeria Electoral (Transitional Provisions) Act 1961 was enacted and the subsequently, the federal parliament enacted the Electoral Act, 1962⁴ which brought about elaborate provisions on Election Petition to enable aggrieved persons have an opportunity to present their case in respect of the conduct of an election.

Election plays a very vital role in a democratic system of government as it gives the people the chance to choose their government.

Election is defined as;

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² Election law and practice by AfeBabalola, OFR, SAN.

³ Ibid.

⁴ Ibid.

“the process of choosing by popular votes a candidate for political office in a democratic system of government⁵.

It is an exercise of a choice, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies⁶.

The conduct of an election has direct effect on the sustenance of a democratic government like that of Nigeria as it gives the people the opportunity to put the government of their choice which is the fundamental principle/feature of democracy.

Over the years, Nigeria as a Country that operates a Federal System of Governance has consistently developed, amended, repealed and re-enacted the Electoral Act to accommodate the changes that come with modern day challenges and developments, and the system of governance is democracy.

The current statutory framework that regulates elections into the various elective office which includes the executive and the legislature is the Constitution of Federal Republic of Nigeria, 1999 (as amended), and the Electoral Act 2010 (as amended).

Section 153 (f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution), establishes the Independent National Electoral Commission (INEC), and by virtue of the provisions of 2nd Schedule, part 1, item 22, of the Constitution, the National Assembly has the powers to legislate on the Electoral matters for National Assembly and Governorship elections.

The National Assembly has passed the Electoral Act, 2010 (as amended), which is the law that regulates election matters in Nigeria.

For the purposes of the conduct of an election in Nigeria, every political party seeking to nominate candidates for elections in accordance with the provisions of the Electoral Act shall hold primaries for aspirants to all elective positions in line with the provisions of Section 87 of the Electoral Act, 2010 (As Amended) which makes specific provisions on procedures and guidelines for nomination of candidates by parties.

Thus, the law has enjoined all political parties seeking to nominate candidates for elections under the Electoral Act to hold primaries for aspirants to all elective positions.

The constitution makes specific provisions guiding the qualifications/ eligibility of various candidates for elections as follows;

- i. Sections 65, 66, and 68 of the Constitution⁷ , defines the qualification for membership of the National Assembly and the tenure of their offices;

⁵ BuhariVsObasanjo (2005) 2NWLR [Pt 910] pg 241 C.A.

⁶ Black’s Law dictionary, Ninth Edition by Bryan A. Garner.

⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

- ii. Sections 106, 107, 131, 132, 133, and 135 of the Constitution defines the qualification for a person aspiring to be elected as President and Vice President, the election and the tenure of their offices;
- iii. Sections 106, 107 and 109 of the Constitution, defines the qualification for membership of the State House of Assembly and the tenure of their offices; and
- iv. Sections 177, 178, 179, 180 and 182 of the Constitution defines the qualification for a person aspiring to be elected as Governor and Deputy Governor, the election and the tenure of their offices.

Elections like all facets of human endeavours witnesses its own short comings as the conduct of the election processes do come with one or two hitches and problems that subsequently affect outcome of such a process.

The need to correct the problems encountered in the electoral process brought about the birth of the Election Tribunal which has been adequately provided for in the Constitution and the Electoral Act, 2010, (as amended) for the purposes of resolution of disputes that arises out of the conduct of an Election.

Section 133 (1) of the Electoral Act, 2010 (as amended) provides as follows:

“No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Bill referred to as an “Election Petition”) presented to the competent tribunal or court in accordance with the provisions of the constitution or of this Act, and in which the person elected or returned is joined as a party”

Clearly, where any person intends to complain against the conduct of an election that is an undue election or undue return, such persons shall do so through a petition presented before a competent Election Tribunal.

The Election Tribunals are direct creation of Section 285 of the Constitution, this section provides for the establishment of the National Assembly, Governorship and Legislative Houses Election Tribunal. This Election Tribunal have original jurisdiction to hear and determine petitions as to whether a person has been validly elected into the offices as Senators, Members of House of Representatives, Governor and Deputy Governor, and Members of the State house of Assembly.

The Election Tribunal is established for the purposes of hearing and determining petitions as to whether any person through an undue election or return has been elected to an office/position and other related issues.

The Election Tribunals are neither criminal nor civil Courts, though essentially civil in nature, they are usually described as “*sui generis*” which means “in a class of its own”.

The Court of Appeal in the case of **ORJI Vs. PDP**⁸, the described the peculiar nature of an Election Petition tribunal as follows;

“As rightly submitted by the appellants’ learned senior counsel therefore, with the sui generis nature of Election Petition case, the procedural rules and the law applicable are distinctly set in the Electoral Act, 2006, (now Electoral Act, 2010) and the Election Tribunal and Court practice directions 2007, made pursuant to the 1999 Constitution, Section 246 (1) of the Constitution has given the scope of when an appeal can be brought as of right against a decision of an Election Tribunal.”

With the *sui generis* nature of Election Petition case, the procedural rules and the law applicable are distinctly set out in the Electoral Act and the Election Tribunal and Court Practice Directions made pursuant to the Constitution⁹.

The Election Tribunal provides an avenue for aggrieved contestants/political parties to seek redress as appropriate in various circumstances as accommodated under the law following an undue election or return.

Technically, the Election Tribunal protects the sanctity and sustenance of democracy being an avenue to correct/rectify the wrongs following the conduct of an election which is basically the foundation of democracy as it affords the people the chance to choose their government.

This paper highlights the key issues and challenges of Election Tribunals in Nigeria and also makes suggestions on how such challenges can be overcome.

COURTS WITH JURISDICTION IN ELECTION PETITIONS.

Unlike other matters, election matters are heard by specialised courts called tribunals, established by law.¹⁰ The Constitution of the Federal Republic of Nigeria (As Amended) establishes three categories of Election Tribunals.

- a. National and State House of Assembly Election Tribunals¹¹.
- b. Governorship Election Tribunals¹².
- c. Court of Appeal¹³.

⁸ (2009) 14 NWLR Pt. 1161, Page 310

⁹ Orji V P.D.P. (2009) 14 NWLR Pt. 1161, Page 310.

¹⁰ D. I. Efevwerhan, Principles of Civil Procedure in Nigeria (2nd ed); Snap Press Ltd Enugu P. 541

¹¹ S. 285(1) 1999 Constitution of the Federal Republic of Nigeria (as amended); S. 133(2)(b) Electoral Act, 2010.

¹² S. 285(2) Ibid.

¹³ S. 239 Ibid; S. 133(2)(a) Electoral Act, 2010

The National and State House of Assembly Election Tribunals determine all matters arising from conduct of election into the two houses of the National Assembly (i.e. House of Representatives and the Senate); and State House of Assembly.

The Governorship Election Tribunals hear disputes arising from gubernatorial elections. The Court of Appeal, functions as the Election Tribunal to determine disputes arising from the presidential election.

The Electoral Act, 2010 also creates an Area Council Election Tribunal for the Federal Capital Territory¹⁴. The decision of the Area Council Election Tribunals on Area Council Elections is final.¹⁵

The Electoral Act does not create the Election Tribunals that have jurisdiction to entertain disputes arising from Local Government Council Elections. However, there are Local Government Election Tribunals established by the Law of States for this purpose.¹⁶ Perhaps, note was taken of the decision of the Supreme Court in **A.G. (ABIA STATE) & ORS. V A.G. (FED) (2002) 6 NWLR (PT 763) 764**, which vested the power to legislate on Local Government Councils with the states.

It is pertinent to note that while an appeal may lie from the Court of Appeal to the Supreme Court in respect of the Presidential and Governorship Elections,¹⁷ the decision of the Court of Appeal on a matter that arises on appeal from National and State House of Assembly Election Petition is final.¹⁸

COMMENCEMENT OF ACTION IN ELECTION MATTERS

All actions arising from the conduct of an election are commenced by way of petition.¹⁹ An Election Petition must be presented or filed within 21 days of the declaration of the result of the election.²⁰ There is no extension of time within which to file an Election Petition. Once a petitioner fails to file his petition within 21 days, he loses his right of action.²¹

An Election Tribunal must also deliver its judgment in writing within 180 days from the date of the filing of the petition.²² An appeal from a decision of an Election Tribunal or court must be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or court.²³ The requirement as to time within which the tribunal or court shall deliver its judgment is strict and not extendable.

¹⁴ S. 135 Electoral Act 2010

¹⁵ S. 136, Ibid

¹⁶ D. I. Efevwerhan; Op. Cit. P 543.

¹⁷ S. 233(2)(e) 1999 Constitution of the Federal Republic of Nigeria (As Amended)

¹⁸ S. 246(3) 1999 Constitution of the Federal Republic of Nigeria (As Amended)

¹⁹ S. 133(1), Electoral Act, 2010

²⁰ S.285(3) 1999 Constitution of the Federal Republic of Nigeria (As Amended)

²¹ D.O. Efevwerhan, Op. Cit. P. 543; **KAMBA V BAWA (2005) NWLR (PT. 914) 43**; **MOGHALU V NGIGE (2005) 4 NWLR (PT 914) 1.**

²² S. 285(6) 1999 Constitution of the Federal Republic of Nigeria (As Amended)

²³ S. 285(7) Ibid

This 180 days period includes a trial de novo, ordered on appeal.²⁴ Such trial de novo can only take place within 180 days from the filing of the petition. In **ANPP V GONI**,²⁵ the Supreme Court, while interpreting the provisions of S. 285(6) of the 1999 Constitution (As Amended), ruled emphatically that the period of 180 days is not limited to trials but also to de novo trials that may be ordered by an appeal court. Hence, once an Election Petition is not concluded within 180 days from the date the petition was filed by the petitioner, an Election Tribunal no longer has jurisdiction to hear the petition and this applies to rehearing.

GROUND FOR AN ELECTION PETITION

An election may be questioned **ONLY** on any of the following grounds:

- a) That a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act;
- c) That the Respondent was not duly elected by the majority of lawful votes cast at the election; or
- d) The Petitioner or its candidate was validly nominated but unlawfully excluded from the election.²⁶

The parties to an Election Petition are the petitioner, who files the petition and the Respondent, against whom the petition is brought. Under the Electoral Act, 2010, there are two categories of persons who can present; i.e. file an Election Petition viz:

- a) A candidate at an election
- b) A political party which participated at the election.²⁷

On the other hand, the winner of an election is a foremost Respondent in an Election Petition.²⁸ However, where the Petitioner complains specifically of the conduct of an Electoral Officer, Presiding Officer, Returning Officer or any other person who took part in the conduct of an election, it shall not be necessary to join such officer or persons. The Independent National Electoral Commission (INEC) shall be made a Respondent and be deemed to be defending the petition on its behalf and on behalf of its officers or such other persons.²⁹

²⁴ D. I. Efevwerhan, Op. Cit. P. 543

²⁵ (2012) 7 NWLR (PT 1298) 147

²⁶ S. 138(1), Ibid

²⁷ S. 137(1),

²⁸ IbidBUHARI V YUSUF (2003) 14 NWLR (PT 841) 446

²⁹ S. 137(3) Electoral Act, 2010

CHALLENGES FACED BY ELECTION TRIBUNALS IN NIGERIA

The challenges faced by Election Tribunals in Nigeria can be classified into the following non-exhaustive sub-heads for ease of discussion;

- i. The Electoral Body
- ii. Time within which to file Election Petition
- iii. Limitation of time for the hearing and determination of Election Petition.
- iv. The composition of the Panel
- v. The tribunal registry
- vi. The bar and the litigant
- vii. Other socio-economic factors

a. The electoral body

The Independent National Electoral Commission (INEC) is the electoral body charged with the powers and functions to organize, undertake and supervise all elections to specific political offices in Nigeria which include the office of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation.

The electoral body also has the powers to register political parties in accordance with the statutory provisions, monitor the organization and operation of the political parties, including their finances, arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information.

Further, the electoral body arranges and conducts the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election in the country and also monitor political campaigns and provide rules and regulations which shall govern the political parties.

The Independent National Electoral Commission (INEC) is charged with the ultimate responsibility of the conduct of elections in Nigeria (save for the local government elections) and it is the regularity or otherwise that would bring about the need for affected person/parties to seek redress in an Election Tribunal.

Aside from the conduct of election, the INEC is also the custodian of all the documents and materials used by it for the conduct of elections.

Following the challenge to the conduct of an election by the INEC which is brought before a tribunal vide a petition based on the various grounds as

stipulated by the law, there are certain challenges encountered by the tribunal which emanates solely from the conduct and activities of the electoral body.

One of the greatest problems is the delay in release of documents in INEC's custody. The proof of any petition before a tribunal largely rests on the strength of the case presented by a petitioner which ought to be supported by credible evidence.

Basically, to prove the regularity or otherwise of an election either based on qualification, corrupt practice/non-compliance, unlawful exclusion or inability to secure majority lawful votes, the petitioner would need to produce credible evidence before the tribunal for it to be successful.

Most of the documents needed to discharge this burden of proof comprise the electoral documents in the custody of INEC. However, over the years, the electoral body has repeatedly failed to make these documents available to petitioners timeously even when confronted with orders from the tribunals to do so. In most cases, the relevant documents are never available even in some instances till the close of the case of the petitioners which hampers the tribunal from properly delivering justice.

In reality, this is the greatest challenge facing the system today considering the procedure of frontloading of evidence and the time limitation. The truth is that most petitions presented before the tribunals are dead on arrival because in most cases the petitioners are yet to receive the necessary/relevant documents to enable them present their case properly before the tribunal.

Though, we must acknowledge the fact that the documents involved could be voluminous, however, the INEC has a duty to make adequate arrangement to ensure that this documents are made available timeously to parties in order to assist the tribunal in dispensation of justice. There have also over time been allegations that INEC wilfully withholds documents that can indict the commission.

Though the electoral body has a duty to defend its actions/activities which includes the conduct of an election, however, it is under a legal obligation to maintain a neutral position both pre and post-election irrespective of the outcome of an electoral process. In reality however, over the years, what is obtainable is for the INEC to team up with the Respondents in defending the petition to the extent of frustrating the efforts of the tribunals in timeously determining the merit of the case presented before it. This has been frowned up in a number of judicial pronouncements.³⁰

³⁰ Emeka V. Okadigbo (2012) 18 NWLR (Pt. 1331) p. 55

The process of production of relevant documents for the purposes of determination of an Election Petition before any tribunal ought to be improved upon to aid the speed and effectiveness of an Election Petition.

b. Time within which to file Election Petition

An Election Petition shall be filed within 21 days of the declaration of the result of the election.³¹ There is no provision for extension of time within which to file an Election Petition. Once a petitioner fails to file his petition within 21 days, he loses his rights to action.³²

It is pertinent to note that by paragraph 4 sub-paragraph 5 of the first schedule to the Electoral Act, 2010, the concept of frontloading has been introduced into electoral proceedings. A petition which fails to comply with sub-paragraph (5), paragraph 4, shall not be accepted for filing by the Secretary.³³

Hence, the Election Petition shall be accompanied by:

- 1) A list of the witnesses that the petitioner intends to call in proof of the petition.
- 2) Written statement on oath of the witnesses; and
- 3) Copies of or lists of every document to be relied on at the hearing or the petition.³⁴

A Respondent's reply to the petition is also expected to be accompanied by the documents listed above.³⁵

Before I make my submission on this issue, it is pertinent to state also that an Election Petition can only be amended within the time limited for filing it; that is, 21 days from the date of declaration of the result of the election.³⁶ This rule applies to substantial amendments involving the contents of a petition. The same rule also applies to amendment to reply to a petition. Such amendments must be within the time limited for filing which is 14 days from the day of service of petition on the Respondent.³⁷ However, minor amendments as to typographical errors may be allowed any time before judgment.

³¹ Section 285(5) 1999 Constitution (As amended)

³² SULE v. KABIR (2011) 2 NWLR Pt. 1232 p. 504

³³ Paragraph 4(6), First Schedule to the Electoral Act, 2010

³⁴ Paragraph 4(5), First Schedule of the Electoral Act, 2010

³⁵ Paragraph 12(3), Ibid

³⁶ NGIGE V OBI (2006) 14 NWLR (PT 999) 1 AT 226 – 227

³⁷ Paragraph 12, 1st Schedule to the Electoral Act, 2010

The challenge with the above provisions is that based on the fact that elections are held in polling units spread all over the country and involve a lot of people, there tend to be many witnesses involved and many exhibits (documents) to be relied on the trial. The lawyers involved in Election Petition have to interview all the witnesses involved, and prepare their statements on oath and source all the relevant documents within 21 days for filing.

Lawyers being only human, there may be substantial mistakes in the petition and supporting documents. Unfortunately, substantial amendments can only be made within the period limited for filing Election Petitions.

This challenge seems mild in theory, but in practice, the Election Petition is very tasking for the lawyers involved. Lawyers work day and night to prepare the processes for filing within time. This could affect justice because all the relevant facts and documents necessary to give merit to the case may not be included in the haste to file within time.

c. **Limitation of time for the hearing and determination of Election Petition**

Prior to the Electoral Act, 2010, and the consequent alteration of the 1999 Constitution, one of the major problems of our Election Petition regime was the lengthy period it usually took to conclude Election Petitions and appeals therefrom. In a plethora of cases, it took more than two years to conclude an Election Petition. This was extremely awkward for both the Petitioner who sought to get the tribunal to nullify the election of the person who was returned on the one hand, and the person who was returned on the other hand.

The Electoral Act 2010 addressed this fundamental problem. Section 134 of the Electoral Act, 2010 provides as follows:

- 1) An Election Petition shall be filed within 21 days after the date of the declaration of results of the election;
- 2) An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.
- 3) An appeal from a decision of an Election Tribunal or court shall be heard and disposed within 60 days from the date of the delivering of the judgment of the tribunal.
- 4) The court in all appeals from Election Tribunals may adopt the practice of first giving its decision and reserving the reasons thereto for the decision to a later date.³⁸

³⁸ Section 285) – (8) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) contains substantially the same provisions.

As earlier stated, the requirement of the time within which the tribunal or court shall deliver its judgment is strict and not extendable. The Supreme Court held in **ANPP V GONI**³⁹... as follows:

*“The period of 180 days.... is not limited to trials but also to de novo trials that may be ordered by an appeal court. Once an Election Petition is not concluded within 180 days from the date the petition was filed by the petitioner, an Election Tribunal no longer has jurisdiction to hear the petition and this applies to rehearing. The period of 180 days shall at all times be calculated from the date the petition was filed”*⁴⁰

The court held further:

“Courts do not have the vires to extend the time assigned by the Constitution. The time cannot be extended, or expanded or elongated, or in any way enlarged. The time fixed by the Constitution is like the rock of Gibraltar or Mount Zion which cannot be moved. If what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter”.⁴¹

In order to illustrate the hardship of this 180 days rule, it is pertinent to give the facts of **ANPP VS. GONI**. In that case, the 1st and 2nd Respondents filed an Election Petition at the Governorship Election Tribunal for Borno State on May 17, 2011. At the close of pleadings, the 1st and 2nd Respondents filed a motion *exparte* for the issuance of a pre-hearing notice which was opposed by the 1st and 2nd Appellants.

In its ruling delivered on August 10, 2011, the Tribunal held that an *exparte* application was not a proper procedure for the issuance of a pre-hearing notice and struck out the application. The 1st and 2nd Respondents being dissatisfied appealed to the Court of Appeal.

The Appellants in the appeal under review and the other Respondents filed an application for the dismissal of the petition on the ground that it had been abandoned. The 1st and 2nd Respondents then filed an application for an order extending time within which to apply for pre-hearing notice. The applications were taken together and the ruling thereon was reserved for September 20, 2011.

³⁹ Supra

⁴⁰ Ibid at 191, per Rhodes – Vivour, JSC

⁴¹ Ibid at 182, per Onnoghen, JSC

Meanwhile, the appeal against the ruling of August 10, 2011 was fixed for hearing on September, 21, 2011 which date was later brought to September, 19, 2011. On that date, the Court of Appeal ordered the trial tribunal not to deliver its ruling fixed for September 20, 2011. The order resulted in the Appellants' appeals to the Supreme Court which eventually led to the 1st and 2nd Respondents appeal being adjourned sine die by the Court of Appeal to await the decision of the Supreme Court in the Appellants' appeals. The order was made on September 26, 2011 with which the 1st and 2nd Respondents were again dissatisfied and consequently appealed to the Supreme Court.

The Supreme Court consolidated the appeals **No: SC/332/2011; SC/333/2011** and **SC/352/2011**. At the conclusion of hearing of the consolidated appeals, the Supreme Court allowed the appeals of the Appellants and that of the 3rd Respondent (Alhaji Kashim Shettima) and ordered the trial tribunal to continue with the proceedings. The 1st and 2nd Respondents' Appeal **No SC/532/2011** was dismissed in the consolidated judgment delivered on October 31, 2011.

The trial tribunal however re-convened on November 12, 2011 and delivered its ruling wherein it dismissed the petitioner's petition on the ground that it was deemed abandoned.

Aggrieved, the 1st and 2nd Respondents appealed to the Court of Appeal. On December 23, 2011, the Court of Appeal allowed the appeal and remitted the petition to be heard de novo by a different panel. The Appellants' preliminary objection on the ground that the appeal was incompetent and had become an academic exercise was dismissed.

Dissatisfied, the Appellant in Appeal **No: SC/1/2012** and the Appellant in **SC/2/2012** appealed to the Supreme Court. The appeals were consolidated.

In determining the Appeals, the Supreme Court considered the provisions of **Sections 285(6) and (8)** of the **Constitution of the Federal Republic of Nigeria 1999** (as amended) and **Sections 134(2)** of the **Electoral act 2010** (as amended) and in a unanimous decision, allowed the appeal.

The Supreme Court held that the provision of **Section 285(6)** of the **1999 Constitution** on the period within which an Election Tribunal shall deliver its judgment is clear and unambiguous. The court held that an Election Tribunal must deliver its judgment in writing within 180 days from the date the petition was filed and this means that the judgment cannot be delivered after the 180 days from the date the petition was filed.

The Supreme Court also held that the time within which the jurisdiction conferred on an Election Tribunal must be exercised is provided for by **Section 285(6)** of the 1999 Constitution and where the tribunal fails to comply with the provisions, its jurisdiction to entertain the petition lapses or becomes spent and same cannot be extended by any court howsoever well intentioned, neither can a court order, create and confer jurisdiction on any Election Tribunal on any matter where jurisdiction has not been conferred either by statute or the constitution.

The decision of the Supreme Court in **ANPP V GONI (Supra)** was a bold statement by the court on its attitude towards interlocutory appeals from the decision of Election Tribunals. The Supreme Court applied Section 285(6) literally as it is and maintained in the clearest and most profound manner that as the time period for an Election Tribunal to deliver its judgment in writing is fixed same cannot be extended.

In other words, no extraneous considerations will be imported both into the 1999 Constitution and the Electoral Act 2010 (as amended) with regards to when an Election Tribunal shall deliver its judgment after the filing of the petition.

While it is salutary that the 180 days rule sought to cure the mischief of prolonged Election Petitions, which saw the winners of elections successfully complete their tenures during the pendency of petitions challenging their victory; based on the principle that justice delayed is justice denied; it is submitted that strict adherence to the 180 days rule with no exception whatsoever may lead to injustice (Justice rushed they say is justice crushed). This is because, mischievous parties and counsel alike may capitalise on this to raise frivolous objections and go on an appeal when they are over-ruled, knowing full well, that by the time the appeal is determined, the Constitutional time limited would have lapsed.⁴² Again, if an Election Tribunal manifestly errs in its decision, such that it warrants a retrial, it will not be fair on the innocent party to be left without a remedy if caught by the time limit. Justice will not be done when a proper case of retrial is abandoned for no fault of the aggrieved party.

It is submitted that retrials ought to be excluded from this rule, as parties normally are powerless regarding the pace at which courts or tribunals should proceed in determining cases. Applying the rule strictly with no exception would ultimately defeat the purpose for which the provision was made in the first place.⁴³

There are various situations and circumstances they may likely cause a delay and the 180 days would expire without judgment being delivered.

⁴² D. I. Efevwerhan, Op. Cit. P. 545

⁴³ Ibid P. 545

There may for instance be verifiable or allegations that the tribunal members have been compromised and an investigation consequently ordered. It may happen that an investigation is ordered and the tribunal is disbanded and the constitution of a new tribunal and the time for them to properly settle down and the 180 days had expired without hearing having even been concluded.

There may be cases of sickness or death, natural disaster, war, terrorist attack etc, all of which have the potential of causing an undue delay on the proceedings of the tribunal. In these types of situations and many more, the petitioner's petition should not be dismissed for effluxion of time.

d. **The composition of the Panel**

The constitution makes specific provisions as to the composition of the electoral tribunal which shall include the Chairman and two other members⁴⁴.

Paragraphs 1 and 2 of the 6th schedule to the constitution makes provisions for the composition of the Election Tribunal for the National Assembly Election Tribunal and the governorship and state house of assembly Election Tribunal, and these tribunals composition are similar.

The Composition for these tribunals are;

- i. The Chairman, who shall be a Judge of a High Court; and
- ii. 2 other members shall be appointed from among Judges of a High Court, Kadis of a Sharia Court of Appeal and other members of the judiciary not below the rank of a Chief Magistrate.

The panel of the Election Tribunal is the most important and critical component of the Election Tribunal as it take the almighty role of the arbiter who decides the fate of any aggrieved complainant before it.

However, the composition of the panel of an Election Tribunal has been one of the biggest issues and challenges facing the tribunal itself.

The panel of the tribunal is constituted with Judges of High Court and the composition goes a long way in affecting the success or otherwise of an Election Tribunal.

The key identifiable issues that affect the composition of a panel are;

- i. Capacity of judges: most of serving judicial officers are usually inexperienced and not abreast of the challenges and the dynamism of

⁴⁴ Section 285(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Election Petition tribunals, since elections hold every 4 years, judicial officers appointed to the tribunal are rotated and most of the time they find themselves unfamiliar with the practice and conduct at the Election Petition tribunals.

In view of the time constraint in an Election Petition matter the efficiency of the panel goes to the root of their ability to dispense justice timeously.

Though Election Petitions are similar to the regular civil matters with similar procedures to what is obtainable in a regular court, however, in view of the time limitation vis-à-vis the nature and technicality of the documents and evidence which ought to be presented before the court, an inexperienced Judge might not perform efficiently. The inexperience of Judges in election matter has a dire effect on the quality of justice delivered. There is need to specially train all Judges as what may be presented before them might be a little different from what is generally obtainable in the regular courts.

The strength of judges to withstand the pressure in view of the time limitation affect the performance and efficiency of judges in an Election Tribunal as the hearing of an Election Petition is expected to continue from day to day usually sitting till early evening until the hearing is concluded, unless the tribunal otherwise directs as the circumstances may dictate.

Also the experience of tribunal Judges come to play in their ability to effectively oversee and monitor the activities of the administrative officers making up the registry as they are sometimes involved in various acts which could undermine the administration of justice. Further, in some instances, the inability of the Judges to take firm charge and control of proceedings especially where there are uncooperative senior counsels involved, leads to inefficient use of the time available to it by the tribunal.

The inexperience or naivety of a Judge could lead to the Judge being unnecessarily sympathetic to a party's cause because it is often said that; *"though, judges are human beings like us, and they are bound to have sympathy for one party or the other"*. The phrase practically relates to the level of exposure and pedigree of a judge, and the tribunal in certain circumstance to accommodate parties to such extent as to put adverse parties in disadvantaged positions, where they get convinced they will not get.

Aside from the experience and intellectual exposure of the judges, the personal strength and stamina of Judges should be taken into consideration to enable it effectively carry out its tedious duties.

The primary consideration of a judge/court is to strictly and forthrightly uphold and enforce the provisions of the electoral Act, and as right observed by Honourable Justice George M. Oguntade JSC (rtd) in his dissenting decision in the case of **ALHAJI ATIKU ABUBAKAR & 2ORS VS. ALHAJI MUSA YAR'ADUA & 813 ORS**⁴⁵, where he stated as follows;

“In conclusion, I feel compelled to say that the courts in Nigeria have a duty to ensure that the march towards a true enthronement of democracy is not stalled. If elections are to be held in Nigeria which are credible and rancor free, the starting point is the enforcement of the provisions of our Electoral Act. We cannot be witnessing violence resulting in loss of many lives at each election. An interpretation of the Electoral Act in a manner which undermines rather than promotes the advent of democracy is bound to create avoidable problems in the Country.”

- ii. Environmental Factors: Most of the Judges who serve at the Election Tribunal are usually posted to unfamiliar terrains, and adopting to a new social life and or order will have its bearing on their output, for example it would be difficult for a Judge who is used to the quiet life of Zamfara State, to be posted to Lagos to sit on a tribunal. He cannot be expected to perform optimally within 180 days, as it would take a while to adapt to the rigors of the hardship of congestion in Lagos.
 - iii. Inadequate facilities: This is also a key issue and challenge to the Election Tribunal. In a number of instances, there is no standard library for the use of the judges for detailed research limiting the judges to their residual knowledge and also they seldom have serious challenges with accommodation and other ancillary issues which makes impossible or difficult to perform efficiently.
- e. **The tribunal registry**

The registry is saddled with the administrative responsibilities of the tribunal and is headed by a secretary who is the principal administrative staff.

The registry is a very important organ of an Election Tribunal and its administrative duties include the receipt of the petition and other court processes

⁴⁵ (2008) 12 S.C. (Pt. II) page 1 at page 238

for filing, service of court processes timeously on parties, issuance of hearing notices, preparation of court proceedings and orders, custody and safekeeping of the tribunal's documents, compilation of records among various other duties and responsibility.

The effectiveness, quality, efficiency, transparency and speed of the registry has direct impact on the performance and justice delivery of the Election Tribunal.

However, the registry is faced with various enormous problems which have negative effects on the tribunal.

One of the challenges facing the Election Tribunals today is the unprofessional attitude of the registry officials which can be traced to their unchecked activities. The registry officials ruthlessly demand very high sums of monies for processing of court orders and compilations of records and in some cases unnecessarily delay the compilation of records and omits important document when compiling records.

The effects of delays in Election Petitions by the registry cannot be over-emphasize as it often contributes in no small measure to the eventual lapse of a lot of petitions before the tribunals.

Another problem of the registry is the attitude and the perspective of the registry staff. Most of the staff do not show so much commitment and willingness to carry out the tedious tasks associated with an Election Tribunal and it is worsened with the general negative perspective that it is an opportunity to make so much money.

Surprisingly, this negative perspective seeing Election Tribunals as an opportunity to make so much money which initially appeared to be of minor concern now poses a very dangerous threat to the justice delivery system of the Election Tribunal as the registries have now generally developed an attitude to work effectively with the higher paying sides which brings about partiality and also affects the integrity of not only the registries but the whole of the tribunal.

The registry being an integral organ of the tribunal ought to undergo very good training to mentally and intellectually prepare its staff for effective and efficient discharge of its duties and tasks.

Further, the registry is also faced with the challenge of inadequate provisions of materials and in some instances short-staffed which ultimately slow down the pace at which the registry is expected to function making it ineffective to timeously and adequately face the challenges and pressure associated with the running of an Election Tribunal.

f. **The bar and the litigant**

The bar, that is, the lawyers represents the interest of the litigants before the Election Tribunal. The bar plays a very important and crucial role in the conduct of an Election Petition as they represent the interest of the various litigants in working toward securing justice.

One of the major challenges encountered by Election Tribunal is frivolous and baseless accusations by lawyers and litigants against the judges/panel. Often times, there are a number of false and baseless accusations made against judges leading to various petitions against them and in some instances leads to reshuffling of the panel. This often causes anxiety to members of the panel as they would naturally want to avoid the personality damaging effects such actions could have on them.

Another major issue and challenge which impedes the tribunal are the ploys employed by lawyers, particularly respondents' lawyers to delay the hearing of the substantive petition presented before a tribunal. Lawyers unfortunately employ various modes to frustrate a timeous and smooth conduct of proceedings which includes filing of frivolous processes, evasion of service and a host of other uncooperative attitude towards the tribunal all in a bid to frustrate the timeous determination of the substantive petition presented before the tribunal.

Another challenge encountered by the Election Tribunal is badly presented petitions by the lawyers and the litigants who may be faced with the problems of time limitation, unavailability of documents or inexperience and tardiness.

Also, sometimes influenced by the prospect of pecuniary gain, lawyers take on much more than they have the capacity to handle, they then end up not able to diligently prosecute or defend the cases and in such cases end-up wasting precious judicial time which the tribunal could have invested positively in the delivery of justice to the litigants.

The bar does not only serve the interest of the client it represents before the tribunal, but has a duty to the tribunal and the general public as a whole to ensure that justice is manifestly done and not to hinder the course of justice thereby presenting situations to overreach the essence of the creation of the Election Tribunal.

g. **Other Socio-Economic Factors**

There are various socio-economic factors which pose as challenges to the Election Tribunal, are:

- i. Corruption which indicates impurity and impairment of integrity is a major factor which has eaten deep into the society as a whole and it has its direct negative effect on all spheres of the society including the electoral tribunal. Corruption has to be tackled to the barest minimum to enable us have smooth justice delivery by the Election Tribunals in Nigeria.
- ii. Dishonest and fraudulent conducts by officials of the tribunal typically involving bribery is one of the challenges facing the effective delivery of justice by the tribunal which negates the sole purpose of its creation.
- iii. Security is another major challenge limiting the performance of the Election Tribunal in Nigeria. Where there insecurity, the tribunal cannot properly carry out its duties dispassionately for the fear of their lives and property. There are also certain volatile areas and hostile communities whose activities does have serious negative impact on the performance of an Election Tribunal as the official live and discharge their duties in few subject to the dictate and command of the powerful ones who control such an area/communities for the sake of their lives.

An incident that illustrates insecurity in Election Petition is the beating up of a robed High Court Judge in the premises of Ekiti State Governorship Election Tribunal in 2014. If a robed judge is exposed to such a security threat, how much less the members of the Election Tribunal.

Security is a major issue that has to be adequately covered by the government to enable Election Tribunals function properly and effectively without fear and intimidation.

The lack of adequate facilities is another major issue and challenge that hinders the smooth conduct of an Election Tribunal. In most cases, the Election Tribunal conduct its proceedings in unconducive environment with very poor facilities and inadequate materials.

The inadequacy of relevant materials and facilities is another important factor which affects the effective running of an Election Tribunal in Nigeria and in some instances allow for undue penetration when such facilities are sought for through other means.

Also the 'do-or-die attitudes of the politicians and their supporters does have effects on the conduct of proceedings by the tribunal as the tribunal is put under fear and pressure to bow to the dictates and wishes on the aggressive parties due to their activities.

In conclusion, the Election Tribunal play a very integral role in the sustenance of democratic system of government which is being practiced in Nigeria and the

various challenges facing the tribunal ought to be resolved to enable it function effectively and dispassionately in providing recourse for legal redress in correcting any wrong resulting from the conduct of the electoral process in sustaining democracy.

THE WAY FORWARD

I appreciate the efforts made by the legislature over the years to ensure that Election Petition is conducted in an expeditious manner. They did this through the Amendment of the Constitution by the Constitution Alteration Act, 2010 and the Electoral Act, 2010 (As Amended). This is a right step in the right direction.

It is a known fact that our electoral process is marred with a lot of malpractices. Thus, the hope of the common man who has been intimidated via rigging and other electoral malpractices are the courts (tribunals). Hence the Election Tribunal should be as close to perfect as possible.

The challenges analysed above would be drastically reduced if not completely eliminated if the following re-recommendations are implemented:

- 1) The provisions of Sections 285 of the 1999 Constitution and 134 of the Electoral Act, 2010 should be amended to give exceptions to the 180 days rule. The 180 days rule should not be so absolute. Thus, I humbly submit that the 180 days rule should still be amended to accommodate situations;
 - i) where there is a stay of proceedings, the days should stop counting.
 - ii) where there is rehearing, the days should start de novo.
- 2) The Electoral Act must be amended in order to increase the time within which amendments to the petition can be made. A limit should be set as to the number of times amendments are to be made. Maybe once after the petition has been filed. But not to say that all substantial amendments must be made within 21 days. If there could be subsequent amendments, then I do not have a problem with the 21 days rule for filing of an electoral petition.
- 3) The judicial attitude towards interpretation of the Electoral Act should be to do justice. Thus, cases like **ANPP V. GONI** which applied the 180 days rule should be revisited by the Supreme Court.
- 4) There remains a high need to ensure the welfare of the Judges involved in Election Petition. This does not mean interference by the executive. Adequate provision for the wellbeing of the Judges should be made during the Election Petition. Provision for their comfort should be in all the states, not just in the Federal Capital Territory. This will go a long way in mitigating fatigue.

- 5) The Court of Appeal should impose heavy costs for frivolous appeals in an Election Petition. This will discourage frivolous appeals.

Thank you.