CRITICAL EXAMINATION OF THE RULES OF INTERPRETATION OF STATUTE VIS-AVIS SECTION 134 OF 1999 CONSTITUTION OF THE FEDRAL REPUBLIC OF NIGERIA

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BENIN CITY, NIGERIA

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BEING A LONG ESSAY IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE AWARD OF
BACHELORS OF LAWS (L.L.B HONS) SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA.

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DECLARATION

I, **AGHOGHO JEFASON ARHAMRERE** with the matriculation number **LAW1704676,**
hereby declare that the project report titled " **CRITICAL EXAMINATION OF THE RULESOF INTERPRETATION OF STATUTE VIS-AVIS SECTION 134 OF 1999 CONSTITUTION OF THE FEDRAL REPUBLIC OF NIGERIA**" submitted by me to the Faculty of Law, University of Benin in partial fulfillment of the requirements for the award of a Bachelor of Law (L.L.B HONS) undertaken under the supervision of Professor **B.B BAZUAYE** . All ideas and views are product of my research and those that are not mine are duly acknowledged.

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AGHOGHO JEFASON ARHAMRERE
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CERTIFICATION

This is to certify that this work is properly conducted by **AGHOGHO JEFASON ARHAMRERE** with the matriculation number **LAW1704676** in the Faculty of Law, University of Benin as part of the requirements for the award of Bachelor of Law (L.L.B HONS)

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DEDICATION

I dedicate this project to God Almighty, who has made it possible for me to come this far and to my family for their support and encouragement.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
AER	All England Report
All ER	All England Law Report
All NR	All Nigeria Report
CB	Common Bench
CLR	Commonwealth Law Report
ER	English Report
EXD	Exchequer Division
EWCA Civ.	England and Wales Court of Appeal (Civil Division)
H.L.C	Housing Law Report
KB	Kings Bench
LR HL	Law Report, Hose of Lords
LR Eq	Law Report, Equity Cases
LR Pc	Law Report, Privy Council Appeal
NLR	Nigeria Law Report
NMLR	Nigeria Monthly Law Report
NWLR	Nigeria Weekly Law Report
QB	Queen Bench Division
SC	Supreme Court
WLR	Weekly Law Report

ABSTRACT

This research focuses on the critical examination of the rule of Interpretation of statute vis-a-vis Section 134 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended. The contention existing in the political and legal space after the 2023 presidential general election, bordering on the mandatoriness of 25% of votes cast in the FCT is a novel one in the Nigerian Electoral history. Using the doctrinal/library base methodology, this research investigates canons of Interpretation of Statute as it relates to Section 134(2)(b) 1999 CFRN. The new purposive approach of Interpretating a statute, which encompasses liberal Interpretation of constitution is treated with utmost legal precision as the recent presidential election tribunal position is reviewed. The rationale behind divided opinions x-ray alongside brief theories and presumption that goes with Interpretations. It is reveal that the said section is unprecise, unclear and ambiguous to the common man, therefore there is a need for constitutional amendment. The recommendation is necessary so that justice will not only be done but seen as done in our democratic society.

CHAPTER ONE

Introduction

1.1 BACKGROUND TO THE STUDY

In every democratic society like Nigeria, transparent election base on the correct interpretation of concern statutory provision is considered a chief cornerstone in the democratic process. Election being a critical component of any sane democratic society, as such, Nigeria returned to democratic rule and engaged in democratically process being piloted by the grundnorm, the constitution. Nigeria appetite for democracy led to the general election in 1999, 2003, 2007, 2011, 2015, 2019 and the just concluded or particularly concluded 2023 election. General elections are elections conducted in the federation at large for Federal and State elective position.

A month before the 2023 general election, a former Nigerian Bar Association (NBA) president has written a letter to the Independent National Electoral Commission (INEC) seeking clarification to state its position on the meaning of section 134 particularly subsection 2 of the Constitution, to the public. The learned silk stated that his reguest for the clarification of the provision of the said

subsection was premised on the seemingly ambiguous nature of the said section or the constitution. He said that many Nigerians have contacted him in the previous days seeking correct interpretation of the said section, and that there is urgent need to clarify the correct meaning to the Nigerian public. INEC in her wisdom ignored the legal luminary.

As if he is out to proffer a clarification on behalf of INEC, a respected former electoral commissioner came on a national TV to deepen the ambiguity on the eve of the

2023 election. Mike Igini stated that section 134 imposes an additional duty on every presidential candidate to have or obtain at least 25% of the total votes cast in the Federal Capital Territory (FCT) before such a person can be deem to be duly elected. That was his literal interpretation. Some legal jurists have dismissed that interpretation as narrow and absurd. It seemed to allocate a UN super power type of veto to FCT. It is rather very unfortunate, considering that Nigeria have been operating the 1999 constitution for over 24 years now and a fundamental flaw of such magnitude is just being noticed few months to a general election.

As if the words of the learned silk are those of a divine prophet, the question INEC avoided before the election still subsists. Maybe the electoral umpire assumed that every literate fellow would understand that Abuja had the status of a state, and that the position would be read in the light that the spread requirement would mean 25% of votes cast in 24 states plus Abuja, making it 25 states. Maybe it had no time because of its busy schedule, so it could not bother to clarify when the former REC went on air to confuse the public.

Many Nigerians, legal practitioners inclusive were thrown in disarray after INEC declared the All-Progressive Congress (APC) candidate the winner without securing 25% of vote cast in the FCT. After, INEC announced the result for Abuja, only the second runner-up (LP) met 25% of vote cast in the FCT Abuja.

The Labour Party candidate defeated his closes challenger in FCT with 19,0815 votes. A total of 478,923 people were accredited to vote in Abuja. meaning LP secured about 59 per cent of the votes cast. Neither APC (19 per cent) nor PDP (15 per cent) scored up to 25 per cent of the votes in the Nigerian capital.

However, APC got the highest votes countrywide as it got 25% requirement in 24 states excluding

the FCT.

Since the declaration of the winner by INEC, many respected Nigerians including legal jurist has given their interpretations as it concerns Section 134 of the Constitution. This exodus attempts to interprete the said section was necessitated by the fact that for the first time a winner of presidential election could not secure 25% of the vote cast in FCT, Abuja.

It is not gain said, that these chains of legal minds who have embarked on legal voyage to opine clear interpretion of the said section, where unable to find a common ground. These various opinions has left the man on the street in total confusion.

Prof. Mike Ozekhome, opined:

> *The legal conundrum has suffered several commentaries from political analysts, jurist, scholars and even the not so informed.*
>
> *The only way to appreciate these opinion and positions of the various divides is to x-ray these positions in the light of the "Rules of Interpretation of Statute.*

Statute Interpretation is thus, a familiar process of considerable significance. In relation to state law, interpretation is of importance because the inherent nature of legislature as a source of law. The process of statute making and the process of interpretation of statute takes place separately from each other and two different agencies are concerned. These agencies are; the Legislature and the Judiciary. An interpretation of Act serves as the bridge of understanding between the two.

1.2 STATEMENT OF PROBLEM

The declaration of a winner in a presidential election devoid of 25% of least vote cast in the Federal Capital Territory (FCT) is novel in the history of Nigeria's democratic process. For the

first time since the country's post 1999 transition to multiple party democracy, the fate of electoral candidate was closely scrutinised base on the said 25% requirement provided for in section 134 of the 1999 Constitution federal Republic of Nigeria (CFRN).

However, a question begging the answer is the mandatoriness of the 25% requirement as is concern a presidential candidate. Is it compulsory and necessary requirement, that a candidate who has majority of votes cast as provided for in the statute must in addition has at least 25% of vote cast in FCT for him to be declared winner? Is this the intendment of the drafters of the constitution? If the questions are in the affirmative, is it just? If the electoral umpire (INEC) decides to declare a winner, short of this requirement, what should the court do? What rule of interpretation should be invoked and apply in such situation?

On the other hand, still assuming, but not aligning with any of the positions, if the chapter internment is unjust, what should the court do? Can the court in its wisdom deviate from the literal rule of interpretation of statute to the golden rule of interpretation of statute. What should be the role of the legislative arm of government? Is constitutional amendment needed in situation like this? Flowing from this background, the researcher is humbly out to address and examine the following:

i. Rules of Interpretation of statute
ii. The Application of rules of statute as it affects the provision of Section 134(2)(b) CFRN
iii. The rationality of the 25% of the least vote cast requirement provision in Section 134 CFRN.

1.3 SIGNIFICANCE OF THE STUDY

The issue of interpretation has been traced to be one of the root problems of the 2023 presidential

election and the cause of dissatisfaction in the just concluded general election in Nigeria. Thus, it is an important area which many jurists and professors of law have written and opinionated about. The Judiciary is being call upon to come up with satisfactory solution to this interpretation problem of section 134(2) of the Constitution.

Therefore, this study is significant because its findings provide the following:

1. Information on the rule of interpretation of statute;
2. Point out the rationality behind divided opinions on section 134(2) of the CFRN;
3. Point out the ambiguity of Section 134(2);
4. Point out the need for Section 134 (2) to be subjected to amendment.

1.4 SCOPE AND LIMITATION OF THE STUDY

This research will x-ray the rules of interpretation statute. To limit one's study is quite essential if the study must be focused and yield expected results thus, this research also will be limited to the interpretation of a given section in the Nigeria statute - 1999 Constitution of the Federal Republic (as amended)

Also, due to limited time at space imposed on this research, this work will not be able to focus on all the subsection of the above referred section. Thus, the research will go directly to discuss section 134(2)(b) of the 1999 Constitution.

It is pertinent to acknowledge that the conclusions, viewpoints, and recommendations presented in this research shall be contingent upon the verdict of the court as long as it remains in effect. This step is imperative due to ongoing litigation proceedings in Nigerian Supreme Court, inter alia, regarding this very topic under examination,

1.5 RESEARCH METHODOLOGY

The research methodology to be used in the study shall be doctrinal or library base research. The

presentation of this research shall be in line with the Nigerian Association of Law Teacher (NALT) uniform writing in Nigeria. The work shall critically evaluate the "rules of interpretation of statutes vis-à-vis the provisions of Section 134 of the 1999 CFRN (as amended). The research shall be e-library base, comparing data or information derived from primary sources such as the constitution of the Federal Republic of Nigeria, the Electoral Act 2023, INEC guidelines of 2023 election and other laws and secondary sources such as books, journals/articles by legal scholars and website content relevant to the interpretation of the statute.

CHAPTER TWO

Conceptual Theoretical Framework and Literature Review

2.1 Conceptual Clarification

In this segment, an effort is made to elucidate the pertinent terminologies that constitute the focal point of this research. The conceptual and theoretical framework is scrutinized in conjunction with a comprehensive literature review by renowned scholars. To culminate this segment, an appraisal of the ruling handed down by the Presidential Election Tribunal vis-à-vis Section 134(2)(b) is also undertaken.

2.1.1 **Definition of Terms**

A. **Statute**

According to the online Britannica dictionary, Statute, is a written law that is formally created by a government; a written rule or regulation[1]

B. **Interpretation**

The term has been derived from the Latin term 'interpretari', which means to explain, expound, understand, or to translate[2].
Interpretation is the process of explaining and translating written text. It is discovering the true meaning of language used in statutes by exploring various sources to clarify what is indicated by the words.

C. Construction

In simple words, construction is the process of drawing conclusions of the subjects which are beyond the direct expression of the text[3].
The courts make determinations by scrutinizing the semantics of the language employed in the text or statutes, a process referred to as legal exposition. The court is presented with a specific set of circumstances and construction involves applying the outcome derived from these facts. The focus is to assist the judicial body in determining the real intention of the legislature. Its purpose is also to ascertain the legal effect of the legal text.

D. The Difference between Interpretation and Construction.

Interpretation in law is the process of unearthing and elucidating the actual sense of statutory provisions, as well as comprehending the precise connotations of each word used within any given legal text. Essentially, interpretation involves analyzing and deciphering the linguistic meaning of a particular legal document. In instances where the straightforward or literal meaning of a text is to be adhered to, then this concept can also be referred to as interpretation.
Construction, conversely, pertains to inferring implications from the written texts that surpass the

[1] https://www.britannica.com/dictionary/statute, access on September 10, 2023.
[2] Pooja kapur, " Interpretation of statutes and it Rules" <https://blog.ipleaders.in/rules-interpretation-statutes/> access 15th, Sept. 2023.
[3] Ibid

explicit expression of the legal language. The objective of construction is to ascertain the legal consequences of words and the written text of a statute. When the literal interpretation of legal text leads to uncertainty or vagueness, then construction comes into play.

2.2 **Historical Foundation Of Canon Of Interpretation Of Statute**

The practice of statutory interpretation originated in common law systems, with England serving as a prime example. In contrast to Roman and civil law, where statutes or codes serve as guidance for magistrates without any judicial precedent, Parliament in England did not establish an all-inclusive code of legislation. Consequently, the development of common law was left to the courts; once a case was decided and reasons were provided for the decision, it became binding on subsequent court decisions.

Accordingly, a particular interpretation of a statute would also become binding, and it became necessary to introduce a consistent framework for statutory interpretation. In the construction (interpretation) of statutes, the principal aim of the court must be to carry out the "intention of Parliament", and the English courts developed three main rules (plus some minor ones) to assist them in the task. These were: the mischief rule, the literal rule, and the golden rule.

Statutes may be presumed to incorporate certain components, as Parliament is "presumed" to have intended their inclusion.[4] [5] For example:

i. Offences defined in criminal statutes are presumed to require *mens rea* (a guilty intention by the accused).

ii. A statute is presumed to make no changes in the common law.

iii. A statute is presumed not to remove an individual's liberty, vested rights, or property.[6]

iv. A statute is presumed not to apply to the Crown.

v. A statute is presumed not to empower a person to commit a criminal offence.

vi. A statute is presumed not to apply retrospectively (whereas the common law is "declaratory"[7]

vii. A statute is to be interpreted so as to uphold international treaties to which the UK is a party.

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4 Trevor Lyons (2016), *Notes on the English Legal System,* Liverpool John Mores University

5 *Sweet v Parsley* [1970] AC 132, [1969] 2 WLR 470, 53 Cr App R221, [1969] 1 All ER 347, HL, reversing [1968] 2 QB 418

6 As with EU law, so in the UK an individual who is specifically targeted by a statute will normally have standing to bring a challenge by way of judicial review

7 *Shaw v DPP* [1962] AC 220

In the case of EU law, any statutory provision which contravenes the principle embodied in the EU treaties that EU law is supreme is effectively void.[8]

viii. It is presumed that a statute will be interpreted *ejusdem generis* ("of the same kind"), so that words are to be construed in sympathy with their immediate context.

Where legislation and case law are in conflict, there is a presumption that legislation takes precedence insofar as there is any inconsistency. In the United Kingdom this principle is known as parliamentary sovereignty; but while Parliament has exclusive competence to legislate, the courts (mindful of their historic role of having developed the entire system of common law) retain sole competence to *interpret* statutes.

The Reception of English Law

Nigeria, as we all know, was colonized by Britain. Hence, it is trite that some elements of British law will have a major influence on our legal system. The English law is made up of rules of common law, doctrines of equity and Statutes of General Application. These English laws, the canons of interpretation of statute inclusive, have been imported into the Nigerian legal system, in fact, they make up the bulk of our law. The use of English Law in Nigeria is backed up by the following authorities:

a) Interpretation Act: By the provision of S. 32 of the Interpretation Act, the common law of England, the doctrines of equity and statutes of general application that were in force on 1 st January 1900, will be in force in Nigeria.

b) Supreme Court Ordinance: The Supreme Court Ordinance of 1914 also provided as follows:

> *Subject to the terms of this or any other ordinance, the rules of common law, doctrines of equity and Statutes of General Application*

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8 *R (Factortame Ltd) v Secretary of State for Transport (No 2)* [1991] 1 AC 603

In force on January 1st 1900 shall be in force in the jurisdiction of this court.

From the above, it can be seen that we inherited the common law of England, the doctrines of equity and statutes of general application in force before 1900. The ambiguous term here is "statutes of general application. This meaning of this term would be explained below.

What is a Statute of General Application?

According to the Interpretation Act and the Supreme Court ordinance, statutes of general applications are those that are in force in England on 1st January 1900. Unfortunately, this definition is not adequate. Due to this, the courts have gone at length to elucidate on what Statutes of General Application entail by employing these canons.

- In the case of *Dede v. African Association ltd,*[9]*the* court held that although the Supreme Court ordinance identified that Statutes of General Application are applied in England, nevertheless, it should be taken to mean statutes applicable not just in England but throughout the United Kingdom.

In *Attorney General v. John Holt and co ltd*[10] Osborne CJ, held that Statutes of General Application are statutes that are applied by all civil and criminal courts and bind all citizens. He called this a rough but not infallible test for the authenticity of a Statute of General Application.

In the case of *Lawai v. Younan*[11] the court decided that the Fatal Accident Act of 1846 and the Fatal Accident Act of 1864 are statutes of general application since they concern all citizens.

In addition, in the case of *Young v. Abina?* the West African court of appeal declared the land transfer act 1897 a statute of general application. This is because it applied to all persons who died after 1st January 1898 and it was in force on 1st January 1900.

It is worthy to note that Nigeria having got independence in 1960, the received English law is only

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9 (1910) 1 NLR 130
10 1910 1 NLR1
11 1961 ANLR 1

of persuasive authority in view of the fact that Nigeria is now a sovereign state and as such, Nigerian law is supreme. Nigeria shall not be governed by any other person except in accordance with the provisions of the constitution.[12] [13]

Also, the interpretation Act provides in S. 32(2) that these laws that are foreign would only apply in Nigeria to the extent of local jurisdictions and local circumstances. For instance, the supreme court in the case of *Idehen v. Idehen,*[14] refused to apply the Wills Act of 1837 (a statute of general application) since there was a local law in place; the Wills Law of Western Nigeria.

Also, in the case *of Alli v. Okulaja,*[15] involved a plaintiff suing a defendant for damages resulting from the defendant's negligence. The defendant requested that proceedings be stayed until the plaintiff was examined by their doctor, citing the English court of appeal case of ***Edmeads v. Thames Board Mills Ltd*** as precedent.

However, Beckley J ruled that Nigerian courts are not bound by decisions made in English courts and that they are at best persuasive.

A legal system is an indispensable feature of any civilized society, as it provides a mechanism for the administration of justice. It serves to uphold civilization and ensure adherence to laws within any given community. To assume that Nigeria had no legal system prior to British colonization would be erroneous, as each territory comprising Nigeria possessed its own legal system long before colonialism. In most areas of present-day northern Nigeria before 1862, the Muslim law of the Maliki school was administered through Alkali courts by knowledgeable Islamic scholars known as Alkalis. The south relied on unwritten customary law. Law is dynamic and continuously evolves to suit the needs of society in which it operates.

When trading coastal areas such as Lagos, Benin, Bonny, Brass, New Calabar (now Degema), and

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12 1940 10 WACA 180
13 S. 1(2) CFRN 1999 as amended
14 (1991) 6 NWLR (Pt.198)
15 (1971) 1 (U.I.L.R) 72

Old Calabar (now Calabar) experienced disputes between indigenous citizens and foreigners, their indigenous court systems proved inadequate in resolving such issues fairly. Foreigners often felt that they were denied justice; hence there arose a need for an improved justice administration system. In 1849, the British government appointed its first consul in Nigeria whose mandate was to settle trade disputes between indigenes and foreigners while establishing equity courts and consular courts accordingly.

Even though Nigeria gained independence in 1960, the Privy council still remained the highest court of the country, entertaining appeals from the Federal Supreme Court. It was in 1963 that a new development was introduced, with the Federal Supreme Court abolished to establish a new court known as the Supreme Court of Nigeria, which became the highest court in the country. This Supreme Court exists till present, headed by the Chief Justice. There are also other courts, such as the Court of Appeal, High Courts of states, High Court of the Federal Capital Territory, High Court of the Federation, Sharia Court of Appeal, Customary Court of Appeal, National Industrial Court, Magistrate Courts, Customary Courts, and Sharia Courts. Their cardinal function is to interpret the law, whether written or unwritten, for the interest of justice.

2.3 **LITERATURE REVIEW**

Section 134(2) (b) provides thus;

> A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-
>
> (b) He has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.[2]

The inquiry that arises subsequent to perusing this section is - what precisely does the law endeavor to convey? To elucidate on this matter, a selection of perspectives from legal expert will

be examine. There are some experts who hold the belief that a Presidential Candidate does not necessarily require one-quarter of the votes cast in the Federal Capital Territory to be declared victorious, provided that they have already secured one-quarter of the votes cast in more than two-thirds of all 36 States within the Federation. On the other hand, there exist those who argue that according to Constitutional provisions, obtaining at least one-quarter of all votes cast in the Federal Capital Territory is an absolute prerequisite for any Presidential Candidate to be declared a winner, even if said candidate has achieved more than one-quarter of all votes cast in over two-thirds of all 36 States within Nigeria.

2.3.1 **Perspectives of legal experts regarding Section 134(2)(b) in the 1999 Constitution of Nigeria.**

Oluwaleke Atolagbe[16], moving under the first banner, posited in his work[17], that the interpretation that a Presidential Candidate must have one-quarter of the votes cast in the Federal Capital Territory in addition to other requirements for such a Candidate to be declared a winner is grossly absurd and in fact against other provisions of the Constitution itself. If Section 134 (2) of the Constitution is interpreted to mean that a Presidential Candidate must have at least one-quarter of the votes cast in the Federal Capital Territory then this will surely be violating the express provision of Section 42 (1) of the same Constitution as this would subject citizens of Nigeria in the 36 States of the Federation to disabilities or restrictions based on the communities they live in and their political opinions.

In moving further, he said that such an absurd interpretation would also accord citizens of Nigeria in the Federal Capital Territory privileges or advantages over citizens of Nigeria in the 36 States of the Federation based on the communities they live in and their political opinion. Section 42 (1) of

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16 ACIArb (UK) Legal Practitioner and Notary Public, Abuja, Nigeria, 08032411227, 08156164057.<https://lawpavilion.com/blog/does-section-134-2b-of-the-constitution-intend-to-discriminate-against-non-fct-voters/> accessed 12 September 2023.

17 Oluwaleke Atolagbe, Does Section 134 (2)(B) Of The Constitution Intend To Discriminate Against Non-FCT Voters? <https://lawpavilion.com/blog/does-section-134-2b-of-the-constitution-intend-to-discriminate-against-non-fct-voters/> accessed 12 September 2023.

the Constitution provides for instance that:

> (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person: -
>
> (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
>
> (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Interpreting the provision of Section 42 (1) of the Constitution, the Supreme Court noted in ***LAFIA LOCAL GOVT v. EXECUTIVE GOVT NASARAWA STATE & ORS"*** *by the* provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or be accorded either expressly by or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions. And no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

The Respondents, in this case, were civil servants in Nasarawa State but were redeployed based on a government policy from Lafia Local Government Area to Nasarawa Edgon Local Government Area on the ground that after screening they were found not to be from Lafia Local Government Area. The Supreme Court found that they were discriminated against based on their ethnicity or their place of origin. The Supreme Court further held in the case thus: "There is no doubt about it that in the due interpretation of the provisions of the Constitution which is the ground norm, the Court should embark upon broad interpretation more especially when same relates to the fundamental rights of the citizen. The Court should employ a liberal approach or take what is often called a global view. This is so as the rights of the citizen must not be toyed with under any guise. This was so State also in *Rabiu v. The State*

Furthermore, related sections of the Constitution ought to be interpreted together so as to produce a harmonious result. As seen in *Senator Abraham Adesanya v. President*[18] *and Akaighe v. Idama*[19]

The Apex Court further noted:

> "***Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of Government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the Constitution are never trampled on."***

One thing that is obvious from the decision of the Supreme Court is the high pedestal on which the Courts are to hold the Fundamental Rights of persons in Nigeria. It would therefore be absurd for the provision of Section 134 (2) of the Constitution to be interpreted to defeat or violate the provision of Section 42 (1) of the same Constitution especially when the provision of Section 42 (1) relates to the fundamental right of citizens which is held in the higher pedestal.

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18 *(1981) 5S.C. 112 at 134, 321;*
19 (1964) 1 All NLR, 322."

It is important to further note that there are other provisions of the same Constitution that point to the fact that all voters in Nigeria are intended by the drafters to be equal and not for some to be more equal than others.

Section 132 (4) For the purpose of an election to the office of the President, the whole of the Federation shall be regarded as one constituency.

(5) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President. Similar provisions relating to the Governorship election are contained in Section 178 (4) and (5) of the Constitution.

Sections 77 (2) and 117 (2) of the Constitution prescribe who can vote at the election of members of legislative houses as Nigerian citizens that are 18 years of age and above.

If Section 134 (2) is intended to be interpreted to mean that for a Presidential Candidate to be declared winner in an election he must have one-quarter of the votes cast in the Federal Capital Territory then a similar provision would have been made in respect of State Capitals. However, no such provision is contained in Section 179 (2) which prescribes similarly that for a Governorship Candidate in a State to be declared a winner in an election he must inter alia have one-quarter of votes cast in at least two-thirds of the Local Government Areas of the State. Since Local Government Area(s) always form the State Capitals there is no need to separate State Capitals or specifically mention such in the Constitution as done in respect of the Federal Capital Territory which is not a State and needs to be mentioned separately.

Furthermore, Section 299 of the Constitution provides:

The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly -

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the

National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section.

From this provision, it is clear that for the purpose of the Presidential election, the Independent Electoral Commission would only regard and treat the Federal Capital Territory as the "37th State" of the Federation.

In his final thought he said that, Section 134 (2) of the Constitution does not intend to create out of the Federal Capital Territory super voters whose votes would be worth more than that of voters in the 36 States of the Federation and interpreting the Section this way would discriminate against voters in the 36 States of the Federation.

In support of the above position, *Femi Falana* a legal giant, in an article[20], posited that Section 299(1) of the Constitution provides that the provisions of the Constitution shall apply to the Federal Capital Territory (FCT), as if it were one of the States of the Federation. It means that, the FCT is the 37th State. So, Section 134 of the Constitution which provides that "not less than one-quarter of the votes cast at the election in Each of at least two-thirds of All The States *And* the FCT" means 25 States or 24 States plus the FCT. Winning the FCT by a candidate, is not compulsory.

In *Baba-Panya v President, F.R.*A.[21] the Court of Appeal held inter alia:

> It is therefore, doubtlessly clear that by virtue of Section 299 of the

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20 It Is Not Compulsory for a Presidential Candidate to Win 25% of FCT.

21 (2018)1 5 NWLR (Pt. 1643) 395

Constitution of the Federation, the Federal Capital Territory is in law a State. In others words, the Federal Capital Territory should be treated as one of the States in the Federal Republic of Nigeria. It follows therefore, that bodies like the Federal Capital Development Authority are to be regarded as an agency of "a State", independent of the Federal Government.

It would appear that the only relationship existing between the Federal Government and the Federal Capital Territory, is that its executive and legislative powers and duties are exercised for it by the President through the Minister of the Federal Capital Territory and the National Assembly respectively. From the provision of Section 299(a), where the President through the Minister of the Federal Capital Territory Acts, he does so as a Governor of a State, so also where the National Assembly legislates for Abuja, it does so as a State House of Assembly.

Thus, in his final thought,

> by the combined effect of Sections 134 and 299 of the Constitution, a candidate shall be deemed to have won the Presidential election if he scores the highest number of lawful votes cast at the election, and 25% of lawful votes in 37 States or 36 States plus the FCT. It is not compulsory, for a Presidential candidate to win the FCT. The FCT, is not the Electoral College of the Federal Republic of Nigeria.

Resonating with Falana's view on the subject matter, Distinguished *Professor Taiwo Osipitan, SAN* is of the opinion that FCT is part of the two-third spread, contemplated in Section 134 of the Constitution. The word 'and' which appears immediately after the word Federation and before

Federal Capital Territory conjoins FCT with the States, as to make FCT part of the two-third spread. "Had the word 'in' featured immediately after the word 'and' in the section, the argument of proponents of separate treatment of FCT may have been stronger."

He further said that the proponents of separate treatment of FCT, are interpreting Section 134 of the Constitution in isolation of other relevant provisions of the same Constitution. FCT is like a State, but definitely not a State. FCT is the Federal Capital.

It is not the capital of any State, the way Ikeja served as capital of Lagos State when Lagos was the Nation's capital. FCT has no State or Deputy State Governor. The executive powers of FCT vests in Mr President. FCT also has no separate legislative body. National Assembly legislates for FCT.FCT is also not one of the 36 States of the Federation listed in Section 3(1) of the 1999 Constitution. Unlike States that have Local Governments, FCT has six Area Councils. Finally, while each State has three Senatorial seats, FCT has only one. FCT is not superior to the States, as to justify being accorded separate status. Section 299 of the Constitution, is designed to bring FCT to the same level with the States. The section certainly does not confer on FCT a separate and superior status, as being argued by protagonists of separate treatment of FCT.

To solidify the position of the non-separate and non-superior status of FCT the case of *Ibori v Ogboru*[22] was cited, where it was held that *"..the Federal Capital Territory is to be treated like a State, it is not superior or inferior to any State of the Federation"*.

Flowing from the above, it is clear that the learned silk believes that FCT is part of the two-third spread contemplated in Section 134 of the 1999 Constitution. A candidate who has the highest number of votes and satisfies the 25% spread in not less than two-thirds of the States including FCT, is entitled to be declared the winner of the election, even if he is unable to score at least 25% of the votes cast in FCT.

Aligning with the above view, *Aikhunegbe Anthony Malik, SAN,* Constitutional Lawyer, in his

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22 (2005) 6 NWLR part 920 page 102

article[23] Stated that "the foregoing constitutional provisions, represent the epicentre of varying interpretations and seeming unending arguments to which I have, in accord with the tenets and spirit of the law, accorded a merciless scrutiny."

The author notes that the courts have long taken a liberal approach to interpreting constitutional provisions. This means that they seek to avoid interpretations that would undermine the Constitution's intended purpose, and instead favor constructions that align with the language and intent of its provisions. As evidence, reference is made to two Supreme Court cases - **Agro Ventures Ltd. v FCMB Ltd. 24 and Fawehinmi v IGP**25 - in which it was stated that the Constitution should be interpreted using its natural ordinary meaning and given a purposive construction as a living organism. Also in **Buhari v Obasanjo26** Belgore, JSC [as he then was] posited that, the Constitution must not be interpreted to extend beyond its written provisions, yet it should be interpreted liberally to ensure coherence and efficacy. This will prevent any awkward anomalies that may cause a void in office or lead to severe crises in the political sphere. It is essential to note that the Constitution serves as a broad outline of how Nigerians desire their governance, while the actual mode of governance is embodied in all laws that align with the Constitution.

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He submitted that there is no ambiguity in the provisions of Section 134(2) of the 1999

Constitution. Accordingly, the furore that have been generated regarding the proper or correct interpretation thereof, are completely misplaced. The words used in the section are clear, lucid, unambiguous, and they clearly evince the intention of the draftsmen. The reference to the FCT in the provision, is clearly indicative of the unimpeachable fact that the territory is treated as part of the constituent units from where a candidate who is desirous of being declared the winner of the presidential election in Nigeria can amass, at the very least, one-quarter, that is, 25%, of the total valid votes cast at the election.

It, therefore, imports a serious remiss, for anyone to contend that the mention of FCT in the section implies the erection of an additional constitutional hurdle that must be dismantled by a candidate.

No court of law that will be persuaded by such argument.

In point of fact, the provisions of Section 134(2) of the Constitution fell for consideration and

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24(1998) 4 NWLR (Pt. 547) 542 at 559

25(2000) 8 NWLR (Pt. 665) 481 at 528

26 (2003) LPELR - 813 (SC),

determination by a full panel of the Apex Court in **Buhari v Obasanjo**[27] aeons ago!. In a unanimous judgement of the court, it was held that the purport of the provisions is simply to ensure that a winning candidate should have the required majority. The court stated further that once a candidate attains such majority, the requirement of the section is/are fulfilled.

Those who propose a narrow interpretation of Section 134(2) requiring a Presidential candidate to obtain at least 25% of votes in two-thirds of the 36 States, as well as an additional 25% of votes cast in the FCT, appear to disregard the crucial conjunctive nature of the word "and"used in this provision. In legal terms, its usage implies conjunction rather than disjunction. This principle he said, was established by Yusuf v Obasanjo[28]

It appears, rather clearly, that the quagmire which some writers and commentators have harped on in relation to the provisions of Section 134(2) of the Constitution is self-inflicted. If the drafters of our constitution had intended a separate or additional "25% vote requirement" for a candidate, they would have so stated.

The learned Silk, invited attention to Section 48 of the 1999 Constitution whereat the composition of the Senate of the Federal Republic of Nigeria is stated unequivocally as follows: *"The Senate shall consist of three Senators from each State and one from the Federal Capital Territory".*

From the afore-quoted constitutional provision, it is beyond any argument that, whereas, each State in the country is entitled to produce a maximum of three Senators, a different requirement of one is deliberately set or prescribed for the FCT, the use of the word "and" notwithstanding.

It will be ridiculous, if not out rightly absurd, to argue that the intention of the draftsmen of the Constitution is to erect a requirement, not otherwise contemplated by the grundnorm, insisting that a candidate who, for instance, has already scaled the popularity threshold by scoring the highest number of votes cast in all the 36 States of the Federation, must have no less than 25% of the votes in the FCT. With respect, the intention of the draftsmen is not, and could not have been to confer any "super" status on the FCT, or elevate it over and above the States that make up the federating

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[27] (2005) All FWLR (Pt. 273) 1,

[28] (2006) All FWLR (Pt. 294) 387 at 453.

unit. The letters, spirit and intendment of Section 134(2) of the Constitution, hardly would lend credence to such strictures.

It is beyond any argument that the FCT is regarded and treated as a State. as he also cited a ***Baba-Panya v President FRN***[29] where the Court of Appeal held that the Federal Capital Territory is, in law, a State, and Ib***ori v Ogboru***[30] where the Court of Appeal held that the provisions of the Constitution apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation. In other words, the Federal Capital Territory is to be treated like a State, and it is not superior or inferior to any State in the Federation. See Section 299 of the Constitution. This writer holds the respectful view that the proper interpretation that accords with the purposive prescription handed out by the Apex Court is one which treats the "FCT" as a State, and regards it as a critical part of the constituent units (two-thirds of all the States) from where a candidate is at liberty to draw his "one-quarter" [25%] votes. Any other interpretation, is clearly a product of mechanical jurisprudence.

In essence, he stated that Section 134(2) of the Constitution does not impose a mandatory requirement for a candidate to obtain at least 25% of the total valid votes cast in the Federal Capital Territory (FCT) before being declared the winner of a Presidential election if they already secured the highest vote count and capped it with 25% of the total votes in at least two-thirds of Nigeria's 36 States. Therefore, mathematically speaking, the two-thirds mentioned or anticipated in Section 134(2) can only mean precisely 2/3 of 36+1 [which is equal to37], rather than being interpreted as both 2/3 of FCT and also as part of two-thirds from each State. Any argument against this notion is merely an irrelevant distraction put forth solely for fanciful and sensational purposes.

On the other side of the divide, are legal luminaries like Olisa Agbakugba, SAN, Chief Mike Ozekhome CON, SAN etc.

Dr Olisa Agbakoba, SAN posited clearly, stating that Section 134(2)(b) of the 1999 Constitution (as amended) is clear and unambiguous, direct and simple.

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[29] (2018)15NWLR(Pt1642)395 at 30.
[30] [2005] 6 NWLR [Pt. 920] 102 at 138

To be declared Presidential winner, a candidate must secure at least 1 /4th (25%) of votes cast in 2/3rd of the entire 36 States of Nigeria (that is in 24 states). Also, the candidate must also secure not less than 25% of the votes cast at the FCT.

The literal interpretation of this section is that a candidate must secure 1 /4th (25%) of votes cast in 2/3rd of the entire 36 States of Nigeria and 1 /4th (25%) of votes cast in FCT. This provision is so clear, direct and unambiguous, that "you don't need a Professor of Constitutional Law to comprehend. The use of the word "and" had been held by the Supreme Court to be conjunctive, which implies that the conditions in Section 134(2)(b) are conjunctive and mandatory".

The respected learned Silk said, resort to Section 299 (which states that the FCT is to be treated as a State in Nigeria), is a general provision that has no bearing on Section 134. A general provision cannot override a specific provision. Section 134(2)(b) is a specific provision on the conditions for declaration of a candidate and the presidential winner at the polls.

In his view, none of the candidates in the 2023 General Election meet legal threshold in Section

134, so the election is result still open.

Supporting the aforementioned stance, Chief Mike Ozekhome CON, SAN expounded in his composition[31] that the phrasing of the Constitution is unequivocal and straightforward. It stipulates that not less than one-quarter of votes cast at elections must be obtained in each of no fewer than 2/3 of all States including the Federal Capital Territory. By means of a judicial mathematical analysis, it can be deduced that 24 States equate to 2/3 of 36 States along with the FCT, Abuja. To illustrate this point further, he contended that if he requested to meet with 24 Corps members at his law firm alongside Okon, then this would imply he desired to see a total number of individuals amounting to 25; however, Okon must be included as one among these twenty-five persons. So if twenty-five people were present in his law firm but without Okon's attendance, could it be said that he had met his requirement? The answer according to him is negative since for his request to be fulfilled Okon's presence was essential in addition to the other twenty-four individuals thereby making up a total number equaling twenty-five persons - which is what he aimed for.

The erudite Silk elaborates that a candidate vying for the presidency must secure at least 25% of

the votes in the States and Federal Capital Territory, Abuja. It is not required by law that such a

[31] Titled "The gravamen of this discourse, is the mathematical exactitude of the requirement of 25%".

candidate wins those particular States. The underlying legal principle guiding this provision is to guarantee that the President, as the foremost citizen of the Nation, garners considerable acceptance from a majority of individuals he intends to govern, including those residing in the political capital where he will preside over affairs.

He expounded that in order to determine whether a candidate must secure 25% of the vote across all 24 States, excluding the Federal Capital Territory (FCT), Abuja, in order to be declared victorious, we must examine Section 134 within the context of Sections 2(2), 3(1) &(4), 48, 297, 298, 299,301 and302 of the Nigerian Constitution of1999. These provisions were established and upheld in **Bakari v Ogundipe**[32] by Bode Rhodes-Vivour JSC.
Furthermore, he contended that unlike other states within Nigeria's federation which have their own courts and governors exercising executive powers on behalf of them respectively; FCT has its own Chief Judge and courts while its executive authority is vested upon the President. Legislative power lies with National Assembly instead of state Houses of Assembly. In addition to this an administrative Minister oversees affairs concerning FCT rather than a Governor as seen in other states. This unique set up distinguishes it from other states within Nigeria.

The learned Silk claimed to have easily untied this Constitution "imbroglio" when recalling some precedents.

In ***Awolowo v Shagari & 2 ORS***[33], the Apex Court considered Section 34A(1)(c)(ii) of the Electoral Decree which is *impari materia,* except that it did not add "And the FCT, Abuja." It held:

> *A candidate for an election to the office of President shall be deemed to have been duly elected to such office where-*
>
> *(c) There being more than two candidates*
>
> *i. He has the highest number of votes cast at the election; and*
>
> *He has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation.*

[32] (2020) LPELR - 4957 (SC).
[33] (1979) FNLRVol. 2.

The difference between this Decree and Section 134 of the Constitution being considered is the addition of "and the Federal Capital Territory, Abuja" under our extant 1999 Constitution.

In Awolowo's case (Supra), Fatayi-Williams JSC (later CJN), held that Section 34(1)(c)(ii) of the Decree was a clumsily worded section which was nevertheless, devoid of any semantic ambiguity. In that same case, Obaseki JSC, construed the meanings of the word "each" and the words "States in the Federation". He held that the word "each" in subsection (1)(C)(ii) of section 34A qualified "a whole State"; and that the words "States in the Federation" referred to the land area and not votes. To avoidance of doubt, he reproduce the exact words of the learned Justice; thus:

> *"The word 'each' in the subsection (1) (c)(ii) of Section 34A qualifies a whole State and not a fraction of a State, and to interpret otherwise is to overlook the disharmony between the word 'each' and the fraction 'two-thirds'. ...Looking at the subsection still further, the words 'States in the Federation' can only refer to the land area and not the votes. Arising from the interpretation that 2/3 of all the States in the Federation refers to the land area and not the votes, the result of the voting in Kano State can only mean what is stated in Exhibit T and 'T2' and nothing else...."*

The Status of the FCT in the Constitution by way of extrapolation, the "land area" of the FCT must be distinguished from the land area of each of the 24 States of the Federation according to him. Relying on the above, he then examined Section 299 of the 1999 Constitution.

In ***Bakari v Ogundipe*** (Supra), the Apex Court of the land held:

> By virtue of section 299(a), (b), of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the provisions of the Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly all the Legislative powers, the executive powers and the judicial powers

vested in the House of Assembly, the Governor of a State and in the courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the provisions are courts established for the Federal Capital Territory, Abuja; all the powers referred to in paragraph of the section shall be exercised in accordance with the provisions of the Constitution; and the provisions of the Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of the section. By virtue of the provisions of section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria, has the status of a State. It is as if it is one of the States of the Federation. (Pp. 36-37, paras. E-A).

With approval, he also cited the following authorities; **NEPA v Endegero**[34] **Baba- Panya v President, FRN**[35] **Ibori v Ogboru** [36] as he said that "there no ruckus or brouhaha with the clear position of the courts, as stated above. This is because the Constitution is clear, on the separate and distinct status of the FCT. It is treated as any other State in Nigeria".

2.3.2 A Review: The Presidential Election Tribunal Position.

Amidst the array of conflicting opinions from erudite intellectuals, emerged the ruling of the 2023 Presidential Election Tribunal and its construction of Section 134(2)(b) in the 1999 Constitution, in the century most contended case between **Peter Obi and Labour Party v. INEC and 3 ORS**[37]

In resolving of the issue 4 in the tribunal that basically borders on the interpretation of section 134(2)(b) of the 1999 constitution, the court per Tsunami (JCA) noted that “it is pertinent to state

[34] (2002) LPELR-1957(SC)

[35] (2018) 1 5 NWLR (Pt.1643) 395; (2018) LPELR-44573(CA)

[36] (2005) 6 NWLR (Pt. 920) 102.
[37] Petition No. CA/PEPC/03/2023

that unlike interpretation of statutes, the constitution has its own judiciary principles" relying on **FRN v Nganjiwa**[38] he outlined the guiding principle as follows:

a. In interpreting the constitution, which is the supreme law of the land, mere technical rule of interpretation of the statute should be avoided, so as not to defeat the principles or the government enshrined there in. Hence, a broader interpretation should be preferred, unless there is something in the text or in the rest of the constitution to indicate that narrower interpretation will best carry out the object and purpose of the constitution.

b. All section of the constitution are to be construed together and not in isolation.

c. Where the words are clear and unambiguous, a literal interpretation will be applied, thus according to words their plain grammatical meaning.

d. Where there is ambiguity in any section, a holistic interpretation would be resorted to in order to arrive at the intention of the framers.

e. Since the draft person is not known to be extravagant with words or provisions, every section should be considered in such a manner as not to render other sections redundant or superfluous.

f. If the words are ambiguous, the law maker's intention must be sought. First in the constitution itself, then in other legislation and contemporary circumstances and by resort to mischief rule.

g. The proper approach to the construction should be one of liberalism and it is improper to to construe any of the provision of the constitution as to defeat the obvious ends which the constitution was designed to achieve; other related cases were cited in support of the above position.[39]

The tribunal further posited that the petitioner's fixation with the word "and" appearing between the phrases "he has not less than one-quarter of the vote cast at the election in each of at least two

[38] (2002) LPELR-58066(SC)
[39] Petition No:CA/PEPC/03/2023

third of all the states in the federation" and "the federal capital territory, Abuja" is completely fallacious, if not intriguingly ludicrous. As their recourse to the case of ***Abubakar v Yar' Adua***[40] does not help their argument because **Tobi, JSC** made it clear that a purpose rule of interpretation will not be appropriate "…***where the intention of the lawmaker is clear, precise and unequivocal so much so that a person can say "yes, that is what the lawmaker has in his mind***".

The triunal further opined that in the interpretation of the constitution, the principle upon which the constitution was established rather than the direct operation or literal meaning of the word used, measure the purpose and scope or its provision. This position was reinforced by ***Bronik Motors LTD v Wema Bank Ltd***[41] where where **Nnamani JSC** of blessed memory, speaking for the apex court, confirmed it when after a painstaking analysis of the case on the point said at page 30-32 that "***A constitution is a living document (not just a statute) providing a framework for the governance of a country not only for now but for generations yet unborn. In construing it, undue regard must not be paid to merely technical rules otherwise object of the provision as well as the intention of the framers of the constitution will be frustrated".***

A constitution should not be construed in a manner to rules which apply to acts of parliament.[42] Although the manner of interpretation of a constitutional instrument should give effect to the language used, recognition should also be given to the character and origin of the instrument. Such instrument should be treated as sui generis calling for principles of interpretation of its own suitable to its character without necessary acceptance of the presumption that are relevant to legislation of private law.

It further held that the liberal interpretation should prevail in interpreting the constitution as is shown in ***Nafiu Rabiu v The State***[43] "***The principle upon which the constitution was established rather than the direct operation or literal meaning of the words used measure the scope and purpose of the provision. The worlds of the constitution are therefore not to be read with stultifying narrowness", per Onnoghen, JSC, later CJN.***

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[40] (2008)19 NWLR (Pt. 1120) 7
[41] (1983)LPELR-808(SC)
[42]
[43] (1980)8-11 SC-130, 148

The court further opined that every constitution has a life and moving spirit within it and it is this spirit that form the "raison de' entre" of the constitution without which the constitution will be a dead piece of document.

Flowing from these, the court pointed out that the life and moving spirit of the constitution of this country (Nigeria) is contain in the preamble, and said that, It was held in **Thakuru v Union of India**,[44] that "***when a constitution is interpreted, the cardinal rule is to look at the preamble to the constitution as a guiding star and the Directive Principle of the State Policy as the "book of interpretation" and that while the preamble embodies the hopes and aspiration of the people, the directive principle set out the proximate ground: the governance of the country".***

By these guidelines, the argument of the petitioners was unlock and also relying on some other points, the issue was held against the petitioner.

In summarise, the tribunal has ruled that the constitution must be interpreted and understood as a whole document, rather than in isolation. Justice Haruna Tsammani, delivering the leading judgment, referred to the preamble of the constitution which stipulates that every citizen is entitled to equality of rights and obligations. He emphasized that this provision cannot be construed to imply any form of superiority for any voter over others. Additionally, he cited Section 299 of the constitution which states that "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation." Unless overturned by the Supreme Court, this verdict may effectively resolve lingering doubts regarding compliance with 25 percent requirement.

CHAPTER THREE

[44] (2008) 6 SCC1

Critical Examination of the Rules of Interpretation of Statute

3.1 Introduction

Statutory interpretation is crucial in determining the exact meaning of laws, and ensuring that judicial decisions are based on accurate interpretation of those laws. It allows judges to apply laws in a way that is consistent with both their legislative intent and societal values, while also Providing clarity and guidance in the development of legal principles. Without this process, the legal system would be vague and unpredictable, potentially leading to inconsistent and unjust outcomes. Therefore, statutory interpretation is an essential tool for ensuring fairness, consistency, and certainty in the law.

The purpose of interpreting a statute is to determine its meaning and intent. It involves analyzing the language used in the statute, as well as considering its purpose, history, and context. The ultimate goal of interpretation is to give effect to the intention of the legislature in enacting the statute.

Interpretation can be both a legal and a linguistic exercise. Lawyers and judges must apply legal principles and precedents to interpret statutes, while also using linguistic tools such as grammar, syntax, and semantics. The interpretation process may also involve consideration of extraneous evidence, such as legislative history, to understand the intent behind the statute.

It is important to note that interpretation is not the same as amendment. Interpreting a statute involves determining its existing meaning, while amendment involves changing that meaning through new legislation.

Additionally, interpretation must always be guided by the principle of legislative supremacy, meaning that the interpretation must always be consistent with the intent of the legislature.

In other words, the purpose of interpreting a statute is to give effect to the intent of the legislature.

This requires both legal and linguistic analysis, and is guided by the principle of legislative supremacy.

3.2 Overview of Section 134 of 1999 Constitution

Amidst the keenly-contested 2023 presidential election, Nigerians have been asking questions following the constitutional requirement for a candidate to have a quota of 25 percent of the total votes cast in Two-thirds of all the States including the Federal Capital Territory, before being declared as president.

What the constitution says?

There are two (2) conditions for determining a winner of a presidential election:

1. A presidential candidate must secure the highest number of votes cast at the election
2. He/she must secure not less than 25% of votes cast in at least two-thirds of all the States of the federation and FCT

Section 134 (2) of the CFRN 1999 provides that "A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election: (a) he has the highest number of votes cast at the election; and (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja"

Electoral Act 2022

The Electoral Act (2022) states that the winner of the presidential election will be subjected to the provisions of section 134 of the Nigerian Constitution.

"In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133,134 and 179 of the Constitution," (the Electoral Act partly read.)

According to the 1999 Constitution, presidential candidates must not only win a single majority but whoever will be recognised as an elected president must have won a stipulated minimum in every region of the country.

The candidate that receives the highest number of votes shall be declared elected only if they also fulfill a quota of 25 percent of the total votes cast in about 24 states including the Federal Capital Territory.

Flowing from this, the failure of one candidate to fulfill this requirement will make the election on February 25 inconclusive. This implies that INEC will have to conduct a Run Off (second election). It must be conducted within 21 days from the date of the first election from the date of the declaration of the results for the first round of the election.

3.4. Rules of Interpretation of Statute

There are different rules of interpreting statutes. In this part we will explore the number of rules developed by the courts to assist with the interpretation of a statute. These are:

i. the literal rule
ii. the golden rule
iii. the mischief rule
iv. the purposive approach.

These rules each take different approaches to interpretation of a statute. Some judges prefer one rule, while other judges prefer another. Some judges also feel that their role is to fill the gaps and ambiguities in the law whilst others think that it should be left to Parliament as the supreme law-maker. As the rules can result in very different decisions, it is important to understand each of them and how they may be used.

3.4.1 The Literal Rule of Interpretation.

This is a means of interpreting the law by ordinary or natural meaning of the words of the statutes. Under this rule the judge considers what the statute actually says, rather than what it might mean. In order to achieve this, the judge will give the words in the statute a literal meaning, that is, their plain ordinary everyday meaning, even if the effect of this is to produce what might be considered as an otherwise unjust or undesirable outcome. The literal rule says that the intention of Parliament is best found in the ordinary and natural meaning of the words used. As the legislative democratic part of the state, legislature must be taken to want to effect exactly what it says in its laws. If judges are permitted to give an obvious or non-literal meaning to the words of law, then the will of legislature, and thereby the people, is being contradicted.

Lord Diplock once noted: "Whe***re the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral***[45]***."***

The use of the literal rule is illustrated by the case of *Fisher v Bell* [46]. The Restriction of Offensive Weapons Act 1959 made it an offence to offer for sale certain offensive weapons including flick knives. James Bell, a Bristol shopkeeper, displayed a weapon of this type in his shop window in the arcade at Broadmead. The Divisional Court held that he could not be convicted because, giving the words in the statute a tight literal meaning, Mr Bell had not offered the knives for sale. In the law of contract, placing something in a shop window is not technically an offer for sale; it is merely an invitation to treat. (An invitation to treat is an invitation to others to make offers, as by displaying goods in a shop window.) It is the customer who makes an offer to the shop when he proffers money for an item on sale. The court upheld that under the literal meaning of offer, the shopkeeper had not made an offer to sell and so was not guilty of the offence. Parliament

[45] Duport Steel v Sirs (1980) 1 All ER 529
[46] (1960) 1 QB 394.

subsequently changed the law to make it clear that displaying a flick knife in a shop window was an offence.

In the case of ***Bronik Motors ltd v Wema Bank***[47] Nnamani Jsc held that it is indeed the first of rules of interpretation that words must be given their ordinary, plain and natural meaning.

The court has employed the literal interpretation style in many cases.

In ***R v Bangaza***[48], the Court was faced with the issue of interpreting section 319(2) of the Criminal Code. The section provides that; "***Where an offender who is in the opinion of the court has not attained the age of 17 years has been found guilty of murder, such offender shall not be sentenced to death but shall be ordered to be detained".'***[49]

The court in applying the literal rule of interpretation held that the relevant age was at the time of conviction and not the time of the commission of the offence.

Also in ***Nkwocha v. Governor of Anambra State***[50], the issue before the court was regarding whether the Governor of Anambra State was the proper authority to execute the power vested in the military Government under the provisions of the Land Use Act, 1978. The court by per Kayode Eso JSC held that the ordinary meaning of the word 'vested' would clearly suggest that the land which was vested by Section 1 of the Land Use Act,1978 on the military Governor of the state has now become vested in the civilian Government of the State.

3.4.2 Golden Rule of Interpretation

The golden rule interpretation guides the court where an ordinary interpretation of statute will result into absurdity or ambiguity or defeat the intent of the law makers. The court would have to look at the interpretation of the statute from another point of view in order to achieve the aim of the lawmakers[51]

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[47] [1983] NSCC (Vol. 14) 1589.
[48] (1983) ALL N.L.R 272

[50] (1984) 1 SCNLR634.
[51] 5 Major Rules of Interpretation of Statutes by Edeh Samuel Chukwuemeka ACMC

In **Becke v Smith**[52], Parke B formulated the golden rule of interpretation and said;

> ***"It is a very useful rule on the construction of a statute to adhere to the ordinary meaning of the words used in the statute up to the grammatical construction unless such is in variance with the intention of the legislature to be collected from the statutes itself or leads to any manifest absurdity or repugnancy, in which case the language may be varied or modified so as to avoid such inconvenience, but no further".***

Thus where a literal interpretation will result to inconsistency or lead to absurdity, the court will take a departure from the literal rule and apply the golden rule.

In the case of **Council of the university of Ibadan v Adamolekun,** the Supreme Court was faced with a jurisdictional issue as to whether it has the power to declare an edict of the Western Nigeria Military Governor void for its inconsistency with a Federal Military Governor's decree. **Section 6 of the constitution (suspension and modification) decree no 1, 1966** ousted the jurisdiction of the court to entertain any matter as to the validity or otherwise of edicts and decrees in Nigeria. Counsel contended that by the literal rule of interpretation of this section, the Supreme court cannot declare the edict void, but the court held that it could not have been intended by the legislature that an inconsistent and therefore void law will be permitted to co-exist with the superior laws, as this will not only be absurd, but be legally anomalous as well. Thus, the Supreme Court in applying the golden rule of interpretation declared the edict void.

The Golden Rule is considered to be an old law which has been used since the 16th century, when British law was the fundamental basis for law and parliamentary sovereignty had not yet been constituted. It is contended that it gives the unelected judiciary too much jurisdiction and responsibility, which is undemocratic in nature. The Golden Rule also clearly violates the law of the land by constructing a crime after the occurrence of the events, as observed in in **Smith v**

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52 (1836) 2 M8 W 191

Hughes[53] and Elliot v Grey[54]

It encroaches on the separation of powers by assigning judges a legislative role, and judges can bring their own opinions, conscience, and preconceptions to a matter, as seen in the case of ***DPP v Bull*** [55]and **Smith v Hughes.**

3.4.3 Mischief rule of Interpretation

This rule of interpretation requires the Judge to consider some historical facts and background information in relation to the drafting of statutes in order to discover the intention behind making such law by the legislature.

The Mischief rule was properly laid in the case of **Balogun v Salami[56]** where the court in considering the history of the Registration of Titles Act, said that the ban attending to dealings in family land was sale of such land by some members of the family followed by repudiation of the transaction by other members of the family on grounds of absence of the family's consent. The court held that the purpose of the act was to remove the ban. Thus, it then interpreted the provision in the light of this history. The court further held that for the sure and true interpretation of all statutes in general, the following four things are to be considered: What was the common law before the making of the act; What was the mischief and defect for which the common law did not provide; What remedy hath the parliament resolved and appointed to cure the decease of the common law; The true reason of the remedy[57].

This therefore implies that the mischief rule requires a consideration of the state of the law prior to the enactment of the statute sought to be interpreted, the mischief or defect which the old law did not provide for, which made it necessary to enact the statute sought to be interpreted, and the

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53 (1871) LR 6 QB 597.

54 (1959) 3 WLR 1318.

55 [1994] 3 All ER 149 is a case heard at the Court of Appeal of England and Wales, which involved the prosecution of a tattooist for the act of tattooing a minor. The case is cited as authority for the proposition that the offense of assault, as defined in the Offences Against the Person Act 1861, can be committed without actual physical contact.

56 (2014) LPELR-23677(CA).

57 5 Major Rules of Interpretation of Statutes by Edeh Samuel Chukwuemeka ACMC

remedy provided by the parliament in the current law to cure the defect or mischief in the previous law[58].

3.4.4 Purposive Approach

This approach has emerged in more recent times. It encompasses the golden rule, the mischief rule and even some time the literal rule of interpretation. It is encouraging liberal construction of statutes.

Liberal construction means an interpretation that applies in writing in light of the situation presented that tends to effectuate the spirit and purpose of the writing[59]. It is legal concept instructing parties interpreting a statute to give an expansive meaning to terms and provisions within the statute. The goal of liberal construction is to give full effect in implementing a statute's requirements.

Here the court is not just looking to see what the gap was in the old law, it is making a decision as to what they felt Parliament meant to achieve.

Lord Denning in the Court of Appeal stated in **Magor and St. Mellons Rural District Council v Newport Corporation**[60], "***we sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment by opening it up to destructive analysis".***

This attitude was criticised on appeal by the House of Lords. **Lord Simmons** called this approach *'a* ***naked usurpation of the legislative function under the thin disguise of interpretation'. He went on to say that 'if a gap is disclosed, the remedy lies in an amending Act'.***

Advantage

One advantage of the purposive approach is that it enables judges to give effect to Parliament's true intentions. By considering the context in which an Act was passed, judges can interpret

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58 ibid

59 www.lawinsider.com

60 [1952] Ch 499

legislation in a manner that aligns more closely with what Parliament intended. This was exemplified in R v Registrar General ex parte Smith, where a serial killer sought access to information about his birth mother after discovering he had been adopted. While the literal rule would have granted him access, the judge utilized the purposive rule and determined that reuniting a dangerous individual with a vulnerable elderly woman did not align with Parliament's intent. Therefore, this outcome reflected their intentions.
Another benefit of this approach is its practicality and consistency across Europe, as it is employed by other European countries and used by the European Court of Justice. Given that EU law involves various languages and nations, adhering strictly to literal translations would be impractical. Lord Denning supported this view in Bulmer v Bollinger (an EU case), stating "no longer must they examine words meticulously; they must look to the purpose or intent of an Act."
A further advantage is its ability to produce fair outcomes consistent with justice principles on an individual basis. For instance, Jones v Tower Boot Company involved racial abuse against a young black worker by colleagues at work. According to the literal rule under Race Relations Act 1976, employers were not liable since colleagues' actions were outside "the course of their employment."However, utilizing purposive interpretation led judges to hold employers responsible for preventing racism as per Parliament's intention - resulting in just outcomes.
Finally, adopting such interpretations allows for technological advances and societal changes over time while still abiding by legal precedents set forth earlier on cases like R (Quintaville) v Secretary of State where cloned embryos became possible only recently but required adaptation within existing laws instead of creating entirely new ones from scratch if applying strict textual meaning alone without any consideration given towards contextual factors influencing legislative decision-making processes behind them - thus providing greater flexibility overall when interpreting laws today than ever before!

Disadvantages

One drawback of the purposive approach is that it grants unelected judges the power to create law, resulting in a significant amount of judicial creativity as they determine what the law should be rather than what has been explicitly stated. This curtails Parliamentary sovereignty. In R v Registrar General ex parte Smith, it was noted that "if Parliament had intended for there to be exceptional circumstances where adopted individuals could not access information about their birth parents, then they would have included such provisions in the Adoption Act 1976."As per our constitution, it is not within judges' purview to modify legislation. Such an approach runs counter to democratic principles and violates separation of powers theory.
Lord Simonds characterized the use of purposive interpretation as tantamount to judges fabricating laws - a responsibility outside their job description. The democratic solution entails having judges rule on cases based on precisely what Parliament has enacted; if lawmakers are unhappy with any decision rendered, they can introduce amending Acts (as occurred after Fisher v Bell's absurd outcome under literal interpretation necessitated amendments to Restriction of Offensive Weapons Act 1959). However, under purposive interpretation, judges disregard statutory language.
Furthermore, since every judge may arrive at different conclusions regarding Parliamentary intent when passing an Act of Parliament using this method may result in inconsistent and inequitable interpretations thereof. For instance Jones v Tower Boot Company might have yielded another verdict if heard by other justices or denied R v Registrar General ex parte Smith access his birth

records altogether. Therefore this leads to legal uncertainty.
Finally identifying legislative intent through Pepper v Hart can pose difficulties for judges because statements made by individual ministers during parliamentary sessions may not reflect Parliament's collective intent; thus one reasonable argument suggests that only analyzing an Act itself provides clarity into parliamentary intention..

3.5 Theories of Statutory Interpretation

Given the range of interpretive tools, which ones should be use? Which tool should we start with?

The answers to these questions may depend on theory of statutory interpretation. Let us take a look at the three most basic approaches to statutory interpretation and construction: textualism, intentionalism, and purposivism.[61]

3.5.1 Textualism

The initial approach is referred to as "textualism"or "plain meaning textualism."The fundamental concept of this method is straightforward: the legal implications of a statute must align with its linguistic significance. Therefore, when a judge construes a statute, they should ascertain what the language of the statute implies. This interpretation can then be transformed into an authoritative construction of the statute and utilized in specific scenarios and cases.
There are various possible options for determining the "linguistic significance"of a statute. However, the least credible option is the "literal interpretation"of words. The issue with literal interpretation is that it doesn't consider context, which results in most statutes being inherently ambiguous without context's consideration. For instance, context is essential to determine if a law that regulates "banks"pertains to financial institutions or river banks. Plain meaning textualism considers context by focusing on comprehending what statutory text means through examining both the entire law and its overall objective/purpose it aims to serve. While upholding control over statutory wording, these words must be contextualized comprehensively.

3.5.2 Intentionalism

A second approach to statutory interpretation focuses on the intentions of the lawmakers. In the case of a federal statute, that relevant body is Congress and hence intentionalists aim for a construction of the statute that accords with congressional intent.

Intentions are mental states, but the the legislators who draft and then enact statutes can have many

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61 "Legal Theory Blog: Legal Theory Lexicon: Theories of Statutory Interpretation and Construction" <https://lsolum.typepad.com/legaltheory/2018/12/legal-theory-lexicon-theories-of-statutory-interpretation-and-construction.html> accessed 24 September 2023

different mental states that a relevant to statutory interpretation and construction. One kind of intention can be called the "communicative intention" of the legislature. Communicative intentions specify the content that the legislature intended readers of the statute to grasp. If the drafters of the statute used words in their usual and ordinary senses, we would expect that the communicative intentions of the legislators would be very similar to the plain meaning of the statutory text.

But there is another kind of legislative intent that might be relevant to statutory interpretation and construction. Legislators may intend for a statute to produce certain effects, to effectuate certain purposes, to achieve certain goals, or to be applied in certain ways. These subjective intentions may be reflected in the legislative history of a statute and could then be used to guide the process of statutory construction-determining the legal effect that courts will give the statutory text.

Whereas plain meaning textualism focuses on the meaning of the text itself, this second kind of intentionalism prioritizes legislative history-in cases in which the legislative history provides clear evidence of what effects, purposes, goals, or applications were intended by the legislature. As I am using the word "intentionalism," it refers to the view of statutory interpretation that prioritizes the will of the legislature as expressed in the legislative history of the statute.

3.5.3 **Purposivism**

One way of using the phrase "statutory purpose" could refer to the subjective intentions of the legislature, but the phrase can be used in another way to refer to the "objective purpose of a statute"--the purpose that a reasonable or idea legislature would have had if it had passed the statute. Anyone who is familiar with the ways in which actual legislatures word will realize that the actual purposes of real-world legislators may be different from the idealized purposes of reasonable legislators. Real-world legislators may pass legislation with the aim of favoring a

politically powerful special interest group, whereas an ideal legislature will always have a purpose that advances the public good.

Purposivism, refers to the approach to statutory construction that maintains that the legal effect of a statute should be determined by the objective purpose of the statute. That is, statutes should interpreted to have their reasonable meaning even if that meaning diverges from the plain meaning of the text or the subjective intentions of the actual lawmakers.

The relationship between "intentionalism" and "purposivism" is tricky. Some theorists run these two approaches together, and others use the terminology in different ways. For the purposes of this Lexicon entry, intentionalism is a subjective approach that emphasizes legislative history as guide to the will of the legislature whereas purposivism is an objective approach that focuses on an inquiry into the purposes that an ideal legislature would have had if it had enacted the statute to achieve the public good.

3.5.4 **Other Approaches to Statutory Interpretation and Construction**

The three simple approaches to statutory interpretation and construction outline above just touch the surface of the theoretical landscape. One of the most important contemporary theorists of statutory interpretation is **Professor William Eskridge,** who is an advocate of the approach that he calls "**dynamic statutory interpretation."** The dynamic approach, as defined by Eskridge, requires judges to interpret statutes "in light of their present societal, political, and legal context." **Judge Richard Posner** has developed an approach to statutory interpretation that reflects his general approach to jurisprudence, which he calls "**pragmatism."** And there are many other contemporary approaches to the theory of statutory interpretation and construction

3.6 Basic Presumptions in the Interpretation of Status

In the process of interpreting statutes, courts adhere to certain fundamental presumptions. These include rebuttable presumptions that are upheld by the courts. Typically, unless otherwise expressed, it is assumed that statutes do not intend to produce certain outcomes. The following are some examples of basic presumptions utilized in this context.

Presumption against change in existing law: The courts in the interpretation of statutes would always presume that there is no intention to change the existing law. The court would only hold otherwise if the new law expressly states that there is a change in the existing law or if it is impossible to read the new law without accepting a change in existing law. In **Day v. Brownrigg**[62], the court favoured the position that the existing law had not been changed.

Presumption against repeal: Closely related to the above presumption is the presumption against repeal. The courts are usually of the position that existing laws have not been repealed simply because a new law on the matter has been enacted. It is usually necessary that the new law expressly repeals the old law or the two are so inconsistent that the new law cannot be in force unless the old law is taken to be repealed.

Presumption against alteration of existing law: In interpreting statutes, the courts presume that there is no intention to alter the existing law. The court will only hold otherwise if the new law expressly states that there is an alteration in the existing law or if it is impossible to construe the new law without accepting a modification in existing law. In **Day v. Brownrigg**[63] . the court favored the position that no alteration had been made to the current legislation.

Presumption against abrogation: Closely related to the above presumption is the presumption against abrogation. The courts generally assume that pre-existing laws have not been repealed merely because a new statute on a particular subject has been enacted. It typically requires express repeal of old legislation by new legislation or when both are so inconsistent with each other that it cannot be enforced unless previous laws are deemed repealed.

Presumption against strict criminal liability: A common principle adopted under common law jurisdictions is better for nine criminals to escape punishment than for one innocent person wrongly

[62] [1774] 98 Eng. Rep. 718 (K.B.).
[63] [1774] 98 Eng. Rep. 718 (K.B.).

convicted. Therefore, there exists a presumption against strict criminal liability wherein an individual cannot be held guilty of any offense unless they intended to commit such acts; thus proving not just their actions but also their mental state as culpable factors leading up to conviction. However, if statutory provisions prescribe offenses as being strictly criminally liable, then this rebuttal becomes applicable as seen in **R v Efana**[64] and **Police v. Yahaya**[65]**.**

Presumption against deprivation of property: Any statute encroaching upon vested rights undergoes very stringent interpretation criteria while dealing with property rights since there exists a natural presumption towards non-deprivation except where explicitly and unambiguously stated by relevant legal provisions; even then, compensation must be paid accordingly without expanding beyond what was initially provided for within said legal framework - see **Garba v Federal Civil Service Commission**[66] and **Ohuka v The State**[67]**.**

Presumption against ousting jurisdictional powers: Courts usually maintain presumptions regarding ouster clauses attempting to exclude its jurisdictional reach over certain cases/subjects matter - given these situations occur infrequently; whenever such exclusionary language appears within legislative frameworks, it must do so expressly and clearly before any application can proceed further (as noted by Nnaemeka-Agu JSC in **Nwosu v Imo State Environmental Sanitation Authority**[68]**).**

Other presumptions

Other presumptions which are followed by the courts include presumption against retrospectivity of laws, presumption against irregularity of law, presumption against impossibility as the law shall not ask anyone to do what is impossible, presumption against injustice, presumption against absurdity, etc.

3.7 Intrinsic guides

[64] [2015] EWCA Crim 405.
[65] [1961] NMLR 463.
[66] (2014) LPELR-22796(CA)
[67] (2004) 10 NWLR (Pt.880), 72.
[68] (1990) 2 NWLR (Pt. 130) 525

Intrinsic guidelines pertain to the components of a statute that can assist courts in interpreting its provisions. These include preambles, headings and titles, marginal notes, and explanatory notes.

Preamble: Statutes typically contain preambles which provide insight into the purpose behind their enactment. For example, the preamble in the 1999 constitution was examined by the court in **Okeke v. Attorney-General of Anambra State** as part of Decree number 13 of 1984 to enhance understanding.

Headings and Titles: Heading and Titles may be used to interpret a statute if the main body of the statute is ambiguous.

The Supreme Court stated in **U.T.C.(Nig.) Ltd. v. Pamotei** that titles and headings should only be used in the interpretation of statutes when the body of the statute is ambiguous. The long title often provides the reason for the statute and this is often instrumental in the interpretation of the statute.

Marginal Notes: Technically speaking, marginal notes are not an integral component of a statute, much like headings. Nevertheless, they can serve as helpful tools in the interpretation of statutes, such as evidenced by **Oloyo v. Alegbe**[69]. When the provisions within a statute are unambiguous and unequivocal, one may disregard the marginal notes since they do not carry any legal weight or binding force.

Explanatory notes: Explanatory notes are usually inserted after the law has been passed and they are more common in modern statutes. They do not form part of the statute, but may serve as pointers to the intention of the legislature while passing the statute.

[69] (1979) 3-4 SC 71.

CHAPTER FOUR

An evaluation of the application of statutory interpretation rules to section 134(2)(b)

4.1 Introduction

It is common knowledge that Nigeria held its general elections for the presidential seat on 25th February 2023. Collation of results began on Sunday, the 26th day of February 2023 and continued until the early hours of Wednesday, 1st March 2023 when the Independent National Electoral Commission (INEC) declared and returned the candidate of All Progressive Congress (APC) as elected.

However, during state-by-state announcement of results by State Collation Officers for Presidential Election (SCOPE), SCOPE for Abuja disclosed that APC garnered a total vote count of 90,902 while LP had a tally of 281,717 votes followed by NNPP with just 13,247 votes and PDP with only 74,199 votes respectively.

The Labour Party emerged victorious in Federal Capital Territory's election after beating All Progressives Congress in all six area councils in FCT except two where APC won. This outcome resulted in no other political party besides Labour Party securing up to a quarter (25%) valid votes casted within Federal Capital Territory - Abuja region.

The declaration generated controversies surrounding whether or not it was valid to declare APC candidate as winner since he did not obtain up to 25% of the total votes cast in FCT. Some contended that Constitution does not require one-quarter validation before becoming president-elect whereas others disagreed.

Despite these debates which ensued thereafter INEC agreed with latter arguments and declared APC as legitimate winner since they obtained majority vote counts across over twenty-five states within the Federation whilst failing to do so within FCT region.

What, then, is the exact intendment of section 134 of the Constitution of the Federal Republic of

Nigeria 1999 (as amended)?

4.2 Analyzing the Section Based on Canons of Statutory Interpretation

Multiple techniques of statutory interpretation are scrutinized to examine the provisions delineated in section 134(2)(b):

Literary Rule

A literal reading of the words of the law as stated below simply means that a candidate who is to be declared winner of a presidential election, must acquire a one -quarter of the total number of votes from two-third of all the states in Nigeria. In this instance FCT is to be regarded as a state.

For purposes of clarity, S.134(2)(a)(b) provides as follows:

> *A candidate for an election to the office of President shall be deemed to have been duly elected where there being more than two candidates for the election-*
>
> (a) *he has the highest number of votes cast at the election; and*
>
> (b) *he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.*

By the above provision, a candidate for an election to the office of President shall be deemed duly elected where he has the highest number of votes cast at the election. He has at least one-quarter of the votes cast at the election of each of at least two- thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

Section 299 of the CFRN states the provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation, and accordingly.

However from a different perspective, a first glance at section 134 will give one the impression that having 25% in FCT and 25% in 2/3 of the 36 states is compulsory, especially considering the court's position on how it would construe "and" while interpreting provisions of the law. Although

the court has stated that "and" is to be construed conjunctively, it has also made it clear that were interpreting the word "and" conjunctively will not serve the purpose of the legislation, the court may construe the word disjunctively. However, reading the first paragraph of Section 299 will make one think otherwise.

A careful consideration of Section 299 of the CFRN throws light on the status of the Federal Capital Territory Abuja as one of the states of the Federation rather than as a separate and superior entity different from the other 36 states of the Federation.

Section 299 clearly states that the provisions of the Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. It may be drawn that the intention of the Constitution is clearly for the FCT to be treated as one of the states of the Federation in law, an additional state of the country.

Also, considering the court's position on the Status of the FCT in the case of ***OKOYODE* v. *FCDA***[70] and other similar cases on the issue, one might have that eureka feeling at that moment. In *OKOYODE v FCDA (supra),* the court held thus:

> "I am of the considered view that the natural meaning to be given to Section 299 of the Constitution of the Federal Republic of Nigeria, 1999 is that the Federal Capital Territory should be a separate administrative unit distinct from the Government of the Federal Republic of Nigeria. I further add that every institution created for the Federal Capital Territory only carries the appellation Federal. In the real sense, they are state agencies because they are institutions meant for the Federal Capital Territory."

See also the cases of *BAKARI v OGUNDIPE*[71] [72] and *IBORI v. OGBORU,*™ where the court was of the same opinion on the status of the FCT.

From this angle, the FCT should be seen as one of the federation states. Therefore, a presidential

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70 (2005) LPELR-41123(CA)

71 (2021) 5 NWLR (Pt. 1768) 1

72 (2005) 6 NWLR (Pt. 920) 102

candidate will need one-quarter of the votes from at least two-thirds of 37 states.

Nevertheless, upon reading all the subsections and paragraphs of Section 299 and remembering the *ejusdem generis* rule, one may return to the confuse fact that 25% is mandatory in FCT, and the submission above may not be final. Section 299(a)(b)(c) of the CFRN states as follows:

> *The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly -*
>
> *(a) all the legislative powers, the executive powers, and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;*
>
> (b) *all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and*
>
> (c) *the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section.*

The Constitution, after the introductory paragraph of Section 299, has gone ahead to state the situations and when the FCT should be regarded as a state in the succeeding paragraphs (a), (b) and (c) of section 299. The law is clear that the express mention of a thing is to the exclusion of others not mentioned and specific provision supercides a general provision. Toeing this lane, Section 299 was not to be applied to section 134 as the situations expressly mentioned under

Section 299 do not include the situation during a presidential election.

Moreso, taking a closer look at the facts of the case of *OKOYODE v FCDA* (supra), one will notice that the pronouncement of the court was about the provisions in the subsections of section 299 as expressly mentioned in the sections. The issue we might have before the supreme court from this election is unique.

The closest the court has come to interpreting section 134(2) of the CFRN was in the case of *OBASANJO v BUHARI.*

However, in that case, this was not the issue in question. Hence, the court merely reproduced section 134(2) of the CFRN when it said:

> *This provision appears clear to me. Where a candidate wins the highest number of votes cast in at least two-thirds of the 36 States in the Federation and the Federal Capital Territory, Abuja, he is deemed to be elected ...*

It is gratifying that the non-separate and non-superior status of FCT was confirmed in the case of ***Ibori v Ogboru*,**[73] [74] where it was held that: *"..**the Federal Capital Territory is to be treated like a State, it is not superior or inferior to any State of the Federation".***

Therefore, in interpreting section 134 of the Constitution, the Supreme Court may go with the proposed argument that posits Abuja as a state and upheld the Tribunal position. This will be easier for the country, and Nigeria will not have to spend another huge amount on a rerun election. Or it means the candidate should win 25% in FCT alongside 25% in two-thirds of the 36 states of the Federation.

Is this rule under consideration enough to resolve the dispute regarding the status of FCT as a

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73 (2005) 2 NWLR (pt. 910)241

74 (2005) 6 NWLR part 920 page 102

unique and independent entity? The canons of judicial interpretation, specifically the literal rule, dictate that words must be construed in their plain, ordinary, and natural sense when they are precise and unambiguous. Is it possible to assert that the aforementioned section is unambiguous? While most legal experts contend that it is so, they have been unable to arrive at a consistent interpretation of the said provision.

The stipulation for a 25% dispersion across no less than two-thirds of the States, encompassing the FCT, is undeniably vague, imprecise and equivocal.

In *FRN v. NGANJIWA*[75], the supreme court inter alia held that

> *"where the words are clear and unambiguous a literal interpretation will be applied, thus according to word their plain and grammatical meaning; where there is ambiguity in any section, a holistic interpretation would be resorted to in order to arrive at the intention of the framers".*

Flowing from the above points, the literal rule cannot be a convenient part in the interpretation of the said section, as each sides of the divides appear to be correct and have the backing of the law. However, it is the position of the supreme court that will be overriding since it is the apex body saddled with the responsibility of interpreting the Constitution of the Federal Republic of Nigeria. Hence, this essay recommends, if possible, that the supreme court clears the ambiguity once and for all.

The Golden Rule utilised

It may be imperative to apply the Golden Rule of interpretation when deciphering the meaning behind the provision. This fundamental principle dictates that we interpret particular clause in a manner that upholds principles such as fairness and justice. Where the application of the original meaning of the words used in the statute would create absurdity, inconsistency or ambiguity, the

[75] (2022) LPELR - 58066(SC)

courts may choose to apply the secondary meaning of the words used. The assumption is that lawmakers do not intend anything that is absurd[76].

In **Re Sigsworth**77, a heinous act was committed when a son took the life of his own mother. Unfortunately, she had not made any provisions for distributing her estate after her passing. As per the law on intestacy which governs such situations, the perpetrator in question was deemed to be her sole issue and thus stood to inherit all assets within her estate. However, applying an interpretation that strictly adheres to the literal meaning of this rule would have resulted in an outcome that is morally repugnant. Therefore, invoking the Golden Rule principle instead allowed for a more just decision whereby no entitlement was granted to said individual.
In **R. v. Eze**[78], the court construed "or" as "and" to make sense of the definition of an indictable offence. This interpretation was adopted by the Supreme Court in **Ejor v. Inspector-General of Police**[79] and given legislative endorsement through a subsequent amendment of the section.

By abiding by the Golden Rule, it can be inferred that the architects of this legislation did not intend to impose a specific mandate on one-quarter of votes cast within the FCT. This perspective may stem from subjective common sense. To construe otherwise would appear illogical and impractical as it would suggest that any successful candidate must obtain at least a quarter of the total votes cast within FCT.

When considering these factors, interpreting the 25% voting provision from Abuja implies providing equal representation rights for its inhabitants in federal government affairs. Such an interpretation ensures adequate representation for their voices and concerns during policy-making processes.
Adopting principles aligned with Golden Rule while interpreting constitutional provisions guarantees consistency with values such as equality, fairness, and justice.
Although compelling as it may sound, this reasoning is subject to judicial discretion. The Supreme Court holds power to deviate from the election tribunals' positions; thus its position becomes the law.

Mischief Rule utilised

In applying this rule, it is important for the court to consider the state of affairs before the law was made and the ill in the society which the law was made be correct. The court is then to interpret the law in line with such. It is known as the mischief rule because the court is to interpret the law in such a way that it applies to the mischief it was made to correct. In finding the intention of the

[76] Smith v. Parker, 5 U.S. 89 (1803).
[77] [1935] 1 Ch 98
[78] (1950)19NLR110
[79] (1963) JELR 33688 (SC)

legislature, the court may consult the preamble of the statute and other extrinsic sources.

What mischief is S134 met to correct? The following extract[80] [81] will be insightful:

> *... These ideas formed the basis of the modern presidency. The powers of the President would not be ceremonial, but instead, extend beyond the scope established by the Prime Minister's Office in earlier constitutions. The political climate of the 1970s, post-civil war, emphasised unity above all else. Those who framed the constitution believed in a powerful President, one able to bring together the various strands of our identity into one cohesive and progressive nation. The person would need to have national popularity, beyond areas that were densely populated. They settled on a solution: anyone elected President would have to win an absolute majority but also gain at least a quarter of the votes in two-thirds of the states of the federation..'*[22]

When we take a tour into history before this law came into existence, we would find that the reasoning of the drafters at that point is to ensure an accumulation of votes across majority of the total states in the federation by a candidate who is to be declared winner of the presidential election. It is basically to establish the fact that the winner of the election did not just win a region but has been able to draw votes from even the minority in a region.

By adhering to Mischief rule, it can be deduced that the drafters of this law did not intend to impose a special requirement on one-quarter of votes cast within FCT. This stance was also mirrored in Section 34A(1)(c)(ii) of the Electoral Decree which is impari materia, except that it excluded "And the FCT, Abuja."In the previous law, no particular segment of the country received

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[81]Forri Banu " The Mathematics of presidential Election" <https://www.stears.co/article/the-necessary-math-of-presidential-politics/> access Sep.29, 2023.

preferential treatment during elections. The Constitution's focus is therefore on electoral spread or a substantial spread of votes earned by candidates.

it is submitted that the drafters would have never intended to give the FCT a priority over the other states in the federation but rather their intentions would have been to classify the FCT as the same as the other states as provides in Section 299 of the 1999 constitution. This is the position while we await supreme court clarification of the position of the law.

Utilise the purposive approach.

The purposive approach is an approach to statutory and constitutional interpretation under which common law Courts interpret an enactment in the light of the purpose for which it was enacted. Under this approach, it is trite that in the interpretation of statutes, a Court must not give an interpretation that would defeat the intention and purpose of the law makers, and it should adopt a holistic approach and interpret the provisions dealing with a subject matter together to get the true intention of the law makers[82].

Also, inclusive in the principles governing construction of statutes in this respect, is the need for Courts to adopt a purposive and creative approach. Courts must interpret statutes by implication to give effect to the true intention of the law makers[83] It is essential that in interpreting the words of a statute, the Court must consider the object of the statute[84] The Court must guide itself with the essence of a provision in giving meaning to words of that provision. Once an interpretation meets the purpose of the provision of an enactment, then it is fine, and it is irrelevant that other possible interpretations of the provision exist[85].

To successfully apply the purposive Approach on the section under contention - Section 134(2)(b), the following question must be answered. What is the objective of the constitution?

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[82] Abia State University, Uturu Vs Otosi (2011) 1 NWLR (Pt 1229) 605, Ayodele Vs State (2011) 6 NWLR (Pt 1243) 309, National Union of Road Transport Workers Vs Road Transport Employers Association of Nigeria (2012) 10 NWLR (Pt 1307) 170, Attorney General, Federation Vs Attorney General, Lagos State (2013) 16 NWLR (Pt 1380) 249.
[83] Abdulraheem vs Olufeagba (2006) 17 NWLR (P 1008) 280 at 355, Peoples Progressive Alliance vs Saraki (2007) 17 NWLR (Pt 1064) 453.
[84] Elabanjo vs Dawodu (2006) 15 NWLR (Pt 1001) 76 at 138H.
[85] Rivers State Government vs Specialist Konsult (2005) 7 NWLR (Pt 923) 145.

It has been held, that the objective (*raison d' etre*) of the constitution is form by the constitution moving spirit within it.

In **Thankur v. Union of India**[86], the court held that, ***" The life and the moving spirit of the constitution is capture in preamble... When a constitution is interpreted, the cardinal rule is to look to the preamble to the constitution as a guiding star and the Directive Principle of the State policy as the book of interpretation, and that while the preamble embodies the hope and aspiration of the people, the Directive Principle set out the proximal ground in the governance of the country"***

The community reading of preamble of the 1999 Constitution and Fundamental Objective And Directive principle of State policy[87], clearly shows that the the objective base of the Constitution is Freedom, Equity and Justice.

The next rational question to answer is, *A***mong the available interpretation of section 134(2)(b) which of the divide best reflects the Objective of the constitution?. The answer may not be far fetch. The issue under reference has been before the Supreme Court, in 2003 in the case of *Buhari Vs Obasanjo***[88] *th*e apex court in the land, prophesied and held that if there's any issue on the provision of Section 134(2), they'll toe the part that accords with common sense. They further undertook that the court is bound to adopt a construction which is just, reasonable and sensible. For the sake of emphasis, the operative words are *"just, reasonable and sensible."*

A calm perusal of the statement of the Supreme court justices above reveals that if there is ambiguity whatsoever in the provisions of section 134(2). the Court is bound to adopt a construction which is just, reasonable and sensible.

This then goes the question: is it just, reasonable and sensible to argue that a candidate who, for instance, won 36 States of the Federation and also polled the highest number of votes cast at an election but failed to score 25% of the votes cast in FCT, Abuja cannot be deemed the winner of the election?

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[86] (2008)6 SCC 1.
[87] S.17(1) 1999 Constitution of the Federal Republic of Nigeria
[88](2003) All NLR 168,

The answer should be in the negative. That part is certainly not just, reasonable and sensible.

CHAPTER FIVE

Summary of findings, conclusion and recommendation

5.1 Introduction

The final chapter of the Study serves as a conclusion, providing a comprehensive summary of the research conducted and its key findings. Building on these findings, an insightful recommendation is presented for future consideration. Additionally, with sincere humility, the chapter suggests areas that could be explored further in subsequent studies. As this conclusive landing is reached, it marks the end of a well-executed study that has contributed valuable insights to the field.

5.2 Summary of Findings

The study critically x-ray Section 134(2)(b) of the Constitution in the light of interpretation of statutes. Amidst controversial views by many legal giants, the following findings are revealed:

1. That Section 134 especially subsection 2(b) is not unambiguous as claimed by many opinionist

2. That Section 134(2)(b) is beyond the mere understanding or interpretation of a common man.

3. That the construction of the said Section is tantamount to making a new law.

4. That the listing of the states that make up the Federal Republic of Nigeria in Section 3, Part II of the 1999 Constitution, excluding Abuja is a contributing factor to the vagueness of the said Section.

5.3 Recommendation

Flowing from the above the following recommendation is instructive:

1. That there should be a legislative amendment of Section 134 of the 1999 Constitution to clear

all form of ambiguity.

2. That the requirement for any political office especially that of the president should be well spelt out to the understanding of a common man.

3. That the requirement for any democratic elected office should be couched in a way as to ensure that the literal rule will apply in interpreting it.

4. That Abuja should be added to the list of states listed in Section 3, Part II of the 1999 Constitution through constitutional amendment.

5.4 Contribution to Knowledge

This study has advanced knowledge by:

1. Analyzing the interpretation of statutes in relation to Section 134 of the 1999 Constitution and contributing to existing literature.
2. Revealing the ambiguity present in Section 134(2)(b).
3. Highlighting the necessity for legal professionals to call for an amendment of Section 134 of the constitution.

5.5 Suggested Areas for Further Studies

The subsequent research areas are proposed as follows:

1. The exhaustive theory regarding the interpretation of statutes.
2. The correlation between construing a Constitution (grundnorm) and other statutory instruments.
3. The legal distinctions between a Constitution and statutory instruments pertaining to their interpretation.
4. A comprehensive examination of the theories governing the interpretation of Statutes.

5.6 Conclusion

Conclusively, each nation possesses its own legal system with the purpose of providing justice to all citizens. The court's objective is to interpret the law in a manner that ensures every person receives equitable treatment. To achieve this goal, canons of interpretation were developed which serve as guidelines for determining the true intention of lawmakers.The unambiguity, lucidity, and precision of statutory language cannot always be guaranteed. Therefore, it is imperative for courts to establish a distinct and explicit definition of the words or phrases utilized in Section 134 of the

1999 Constitution. If resolving constitutional ambiguity proves too subjective for interpretation, constitutional amendment becomes paramount in ensuring that justice prevails in a democratic society, like Nigeria.