THE ROLE OF THE JUDICIARY IN DECIDING THE FATE OF THE NATION IN THE 2023 PRESIDENTIAL ELECTION

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CERTIFICATION

This is to certify that this project was carried out by FAVOUR CHINEMELUM IFEDIORAH in the Department of History and International Studies, University of Benin, under my supervision.

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DATED
DATE

DEDICATION

This project is dedicated to the Almighty God for his guidance, care and unending love throughout my stay in the University of Benin.

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I wish to express my profound gratitude to God Almighty for his grace and mercy towards my life and family. I also want to appreciate my supportive parents Mr. And Mrs. Ifediorah for their unending love and support, towards the successful completion of my study in the University of Benin. I also want to appreciate my siblings, for their continuous words of encouragement.I also want to sincerely appreciate my project supervisor, Mr. Daniel Orobator, who served multi-purpose functions, not just as a supervisor also as a father and a friend. His excellent supervision was beneficial to the successful completion of this study.The completion of this research work would have

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CHAPTER ONE

INTRODUCTION

Background to the Study

Elections by the very fact that they require or involve the electorate making a choice between two or more candidates inherently lead to disputes and where not properly managed, the disputes can lead to election crisis.[1] Election disputes reflect a struggle between two opposing principles, aims, ideologies, manifestos and interests and they often arise from perceived injustice or the politicians' vaunting ambition either to remain in power despite their seeming unpopularity or to acquire forcibly, by desperately pushing popular incumbents out of office.[2] Unfortunately, from Nigeria's political history, it has been observed that the country has been unable to satisfactorily and effectively manage the conflicts that ensue from elections as litigation is fast losing its viability as a means of resolving election disputes.[3] It is on this backdrop, this study examines the Nigerian judiciary impact on post-election litigation in Nigeria, from 2000 to 2023.

Election dispute refers to any complaint, challenge, claim or contest relating to any stage of the electoral process. Therefore, election disputes can be defined as conflicts, disagreements or controversies arising from or in connection with an election, that are usually but not always resolved through

lawsuits.[4] Disputes are a common occurrence in elections as those who lose will sometimes, and very often in Nigeria, challenge the winners. The frequent challenges of the outcome of elections in Nigeria is because in most African countries (including Nigeria), the voting process is usually riddled with accusations and counter-accusations of fraud, irregularities and violence exacerbated by the lack of credible legal instrument or mechanism for the aggrieved parties to resolve issues arising from electoral disputes.[7] Election disputes are caused by a number of factors. These include the manipulation of resources by political parties to gain advantage or interest; distortion of basic societal and ethical values by political interest groups; psychological manipulation of vulnerable group(s) to carry out electoral violence; abuse of an election process by the Election Management Body (i.e. Independent National Electoral Commission) poor communication to the voters that affect the legitimacy of the process; and the influence of the ruling party or government to the credibility of the elections.[8] The peculiarity of Nigeria's electoral disputes stems from the pandemic and endemic social malaise ranging from ethnicism, corruption and thuggery, while the notoriety arises from the public involvement and interest in elections and their outcome. As opposed to other legal disputes, the public are not only interested in the outcome of election petitions; they predict the decisions of the courts and tribunals particularly when they participated in the electoral process.[9]

Aim and Objectives

The aim of the study is to examine the post-election litigations and judicial integrity in Nigeria's fourth republic; while the objectives includes

- To examine the concept and purpose for election in Nigeria.
- To examine the causes and Nature of Election litigation in Nigeria.
- To examine the manifestations of post-election litigation in Nigeria.
- To examine the impact of Nigerian judiciary on post-election litigation in Nigeria.

Scope of the Study

The study will cover the effects and impact of post-election litigation on Nigeria democracy from 2000 to 2023. The reason for this period is to cover courts' involvement in the electoral process and their impact on improving election quality in Nigeria under the forth republic. The study will also cover the post-election litigations and judicial integrity in Nigeria's fourth republic.

Research Methodology

The method of writing this study will be historical method. The study has relied on data from both primary and secondary sources.

Primary Sources: The primary sources include oral interview and old newspaper from the Vanguard and Punch newspaper and oral interviews with lawyers in Benin City.

Secondary Sources: The secondary sources include books journal, articles and extant studies of the University of Benin.

Literature Review

To achieve the highlighted research objectives of this study, literature on the historical antecedences of the post-election litigations and judicial in election matter in Nigeria will be review. They include the following

P. O. Okonkwo, "Appraisal of Alternative Electoral Dispute Resolution as a Panacea to Protracted Election Disputes in Nigeria,"[10] The author attempts to appraise the use of alternative dispute resolution as a panacea to protracted election disputes in Nigeria. He further identify that the hallmark of democracy in any given society is the conduct of free and fair elections. Posits that these disputes can occur between persons of the same political party or between persons from two or more different political parties. Over the last two decades, the courts have been the appropriate venue for the ventilation of grievances arising from the conduct of elections. However, the level of public satisfaction with litigation generally in Nigeria is quite low and this also affects election petitions. The resolution of election disputes through litigation is fast losing its place due to factors such as delay, undue technicality and formality, proclivity to rule in favour of the incumbent power, bribery and corruption, high cost, etc. On the other hand, there are so many advantages of resolving election disputes through alternative resolution mechanisms like negotiation, mediation, facilitated dialogue, etc. These benefits include speed, lesser costs, flexibility, cordiality, expertise, to mention but a few. The author find that Alternative Dispute Resolution (ADR) presents a veritable means of resolving election disputes. The author recommend inter alia the enactment of a mandatory ADR

statute and a flexible interpretation of provisions on limitation of time as part of the steps to encourage ADR in the resolution of election disputes in Nigeria.[11]

Francisca Obiageli Ifedi, work titled “Election and Security Challenges: Critical Issues in Nigeria’s 2023 General Election,”[12] the work found that the deliberate failure of the previous and incumbent administrations to address the recurring internal security challenges in Nigeria poses a real threat to the smooth and orderly conduct of the 2023 general election. The author, therefore, identified the urgent need for the government to prioritize the tackling of the multifaceted security challenges in Nigeria as part of the preparations for the conduct of the 2023 general election. author argues that without deliberate effort to tackle these security challenges, the 2023 general elections, and by extension Nigeria’s tottering democracy is greatly imperiled. He further posits that it has since been proven that the health of democracies, of whatever type and range, depends on the electoral procedure. This implies, that the spirit of democracy rests on election where leaders emerge through the sovereign power of the people. Since the end of the cold war, democracy has assumed the status of a universal norm as a result of which various governments lay claims to some form of democratic credentials. In spite of its global or universal acceptance, electoral process in the developing world has been marred by myriad security challenges.[13]

Ibrahim Danjuma Tigye, “Elections, Judicial Processes, and Economic Development in Nigeria (2015 - 2023),”[14] Nigeria›s electoral system and

processes have undergone various changes and reforms over the years. Nigeria operates a multi-party system where political parties compete in national, state, and local elections. The country follows a presidential system of government, with a federal structure consisting of 36 states and the Federal Capital Territory, FCT- Abuja. The Independent National Electoral Commission (INEC) is the primary electoral body responsible for organizing, conducting,

and supervising elections in Nigeria. It was established in 1998 and operates independently from the influence of the government›s executive, legislative, and judicial arms (1999 Constitution). The Nigerian Constitution provides the legal framework for the conduct of elections in the country, outlining the electoral process, the powers and functions of INEC, and the qualifications for elective offices. The Electoral Act on the other hand sets out the detailed procedures and regulations governing elections, including voter registration, party registration, campaign financing, and dispute resolution. Voter

registration is a crucial aspect of the electoral process. INEC conducts continuous voter registration exercises to capture eligible citizens who have attained the voting age. Judicial decisions pertaining to election disputes can significantly impact the political landscape, public trust, and stability, thus influencing the country›s economic development prospects. Economic development is a key priority for Nigeria, aiming to achieve sustainable growth, reduce poverty, and improve its citizens welfare.[15]

Kenneth Nwoko, "Post-Election Litigations and Judicial Integrity in Nigeria's Fourth Republic,"[16] the author acknowledged the indispensability of credible election outcomes in a democratic government. fundamentally, this study set out to investigate the elusiveness of the realisation of credible adjudication of post-election petitions in Nigeria's fourth republic, as well as the reasons for the inability of the Judiciary to live up to expectation in this regard. The author critically examined the extent to which judicial integrity has been instrumental in the achievement of credible resolution of post-election litigations in Nigeria's fourth republic. The author invariably linked the unavoidable essence of judicial integrity to the realisation of the above objective. The author also, through several kinds of literature reviewed, revealed that poor integrity syndrome in the Nigerian Judiciary which has over time frustrated the actualisation of credible resolution of post-election litigations in Nigeria's Fourth Republic is responsible for public perception of the Judiciary as a corrupt institution. The author later also discovered that some factors bordering on weak judicial autonomy, political interference, etc. are responsible for the decadent level of integrity in the Nigerian judicial system. The author, therefore, recommended among other things, a deliberate but determined attempt at sanitizing the judicial system, with a view to solving head-long, and the problem of integrity crisis in the Nigeria Judiciary.[17]

J. Tochukwu, Omenma, "Courts' Involvement in the Electoral Process and Their Impact on Improving Election Quality in Nigeria,"[18] The author provides

evidence of the increasing cases of post-election petitions and substantial court determinations of election outcomes in the Federal Republic of Nigeria. Since 1999, Nigeria has organised four cycles of national elections. Each of the elections was contested either in or out of court (in the latter case, for example, in the form of election violence). The courts, for their part, have been required to decide some 2 596 post-election petitions, which have continued to increase in every election year. The author concludes that the courts' involvement in electoral processes has not significantly influenced conformance with the electoral laws; instead, the judiciary has become politicised, while some court decisions have interfered with the powers of the electoral management bodies tasked with ensuring that the conducting of elections is free and fair.[19]

Valentine Ogbonna Ayika, work titled "An Analysis of the Discretionary Powers of the Court: A Case Study of Election Petition Tribunal Decisions,"[20] The work discovered that the resultant effects of the deficiencies in the Electoral laws prompted judicialization of elections in Nigeria which in turn necessitated resort to discretionary powers by the courts. The author found that the courts in some cases abused or misapplied its discretionary powers for some reasons such as personal, political, religious or economic interest. The periodical amendments of the relevant laws and regulations were a consequence of the prevalence of pre and post-election disputes and the corresponding judicial decisions coupled with societal dynamics and overwhelming desire by Nigerians for credible and acceptable elections. The

election petition cases analyzed in the work showed that the resort to discretion by the courts is rampant and often led to conflicting judgments which in some cases were against the electoral wishes of the voters. The author also recommended that the electoral laws and regulations should be periodically amended to cure the deficiencies and the gaps. The author later recommended that controversial election related decisions should be reviewed by the National Judicial Council, NJC, or a judicial Committee set up for that purpose. The work having discovered that exercise of judicial discretion by the courts particularly in post-election matters is inevitable further recommended that amendments of the electoral laws and regulations should be geared towards ensuring that such exercise must be judicially and judiciously done. The author particularly recommended for an introduction of electronic voting and transmission systems into the Electoral Acts.[21]

Ibani G. Bubarayi, article titled "Judiciary, Electoral Outcomes and Political Development: The Dilemma of Credible Leadership and Good Governance in Nigeria (1999-2023),"[22] investigates into the complex relationship between the judiciary, Telectoral outcomes, and political development in contemporary society, focusing on the intricacies of achieving credible leadership and good governance in Nigeria. The author critically examines how the interplay between the judiciary and political elites, within the context of Nigeria's adoption of Western democratic models, impacts the nation's political development. The primary aim is (i) To access when the

judiciary began to determine electoral outcome in Nigeria's political development, (ii) determine if the judiciary has the capacity to offer remedy for electoral outcome that will foster credible leadership and good governance in Nigeria; and to ascertain if the electoral outcome meets the expectation of freeness and fairness as well as the independency of the Nigerian courts. The findings in this work highlight a pervasive corruption issue in all aspects of Nigerian leadership, significantly impeding the realization of credible governance. Consequently, the author emphasizes the urgent need for robust measures to combat corruption in the electoral process, proposing that such efforts are crucial for Nigeria's democratic health. The insights offered by this work contribute to the broader discourse on governance and democracy and provide a foundation for future research, which could expand, deepen, and broaden the scope of this study. The author also references several sources for further exploration of these themes.[23]

J. Tochukwu Omenma, work titled “Courts’ Involvement in the Electoral Process and Their Impact on Improving Election Quality in Nigeria,”[24] The author provides evidence of the increasing cases of post-election petitions and substantial court determinations of election outcomes in the Federal Republic of Nigeria. Since 1999, Nigeria has organised four cycles of national elections. Each of the elections was contested either in or out of court (in the latter case, for example, in the form of election violence). The courts, for their part, have been required to decide some 2 596 post-election petitions, which have

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CHAPTER TWO

HISTORY AND FUNCTION OF THE JUDICIARY

Introduction

The judiciary constitutes one of the three essential arms of government, alongside the executive and the legislature, and serves as the principal organ for the interpretation of law and the administration of justice. In Nigeria, the judiciary occupies a central position in the maintenance of social order, the protection of fundamental human rights, and the sustenance of constitutional democracy. Its role transcends the mere settlement of disputes; it functions as the guardian of the constitution, the arbiter between citizens and the state, and the institution through

which legal norms are upheld and developed.Historically, the Nigerian judicial system did not emerge in a vacuum. Prior to colonial rule, indigenous societies across Nigeria operated well-defined systems of conflict resolution rooted in customs, traditions, and cultural precedents. Among the Esan people, for instance, the Odionwere and his council of elders administered justice based on established norms, while specialized women's associations like Okhuo-Idumu adjudicated disputes involving married women.[31] These pre-colonial structures emphasized reconciliation, community cohesion, and restorative justice rather than punitive measures. The advent of British colonial rule in the 19th century introduced a dual judicial system that juxtaposed English common law with indigenous customary law. This period marked a fundamental transformation in the administration of justice, as Native Courts were established to apply customary law, subject to the "repugnancy doctrine," while British-style courts applied received English law.[32] The colonial experience therefore laid the institutional and legal foundation for the modern Nigerian judiciary, even as it altered and in some cases commercialized indigenous practices.[26]This chapter examines the historical evolution of the judiciary in Nigeria from the pre-colonial era through colonialism to the post-independence period. It also outlines the structure and core functions of the judiciary in contemporary Nigeria, highlighting its significance in governance, democracy, and the protection of rights. Understanding this history is essential for appreciating both the continuities and changes in Nigeria's legal institutions, and for evaluating the challenges the judiciary faces today.

History of the Judiciary in Nigeria

The history of the judiciary in Nigeria is deeply rooted in the indigenous systems of justice that existed long before colonial contact. In pre-colonial Nigeria, every ethnic group maintained its own mechanisms for dispute resolution and social control, grounded in customs, traditions, and religious beliefs. Among the Esan people, justice was administered by the Odionwere and his council of elders, who relied on cultural precedent and communal wisdom to adjudicate matters ranging from land disputes to marital conflicts.[26] Women were not entirely excluded from this process, as associations like Okhuo-Idumu handled cases involving married women, particularly disputes over emonlen-awa or forbidden words, and could impose fines or ostracize recalcitrant offenders.[31] Similar structures existed across Nigeria: the Alaafin's court among the Yoruba, the Emir's court in Hausa land, and the age-grade systems among the Igbo. These indigenous systems were largely restorative, emphasizing reconciliation, compensation, and the preservation of communal harmony rather than retributive punishment. The authority of these courts derived from tradition and collective acceptance, and their decisions were enforced through social sanctions and the respect accorded to elders and rulers.The imposition of British colonial rule from the mid-19th century fundamentally altered the trajectory of judicial administration in Nigeria. With the establishment of the Court of Civil and Criminal Justice in Lagos in 1863, English common law was formally introduced. The colonial government subsequently created a dual legal system.

On one hand, British-style courts applied received English law to Europeans and cases involving the colonial administration. On the other, Native Courts were

established under the Native Courts Ordinance to administer customary law among the indigenous population.[32] These Native Courts, while preserving a semblance of traditional adjudication, were supervised by colonial officers and bound by the "repugnancy doctrine," which invalidated any custom considered contrary to natural justice, equity, and good conscience. This period also saw the commercialization and distortion of certain indigenous practices. In Esanland, for example, the colonial Native Court system transformed marriage-related disputes into avenues for revenue, as litigants paid fees and fines that enriched the colonial treasury rather than the community.[26] The amalgamation of Northern and Southern Nigeria in 1914 further centralized the system with the creation of a Supreme Court for the whole country, though the dual structure remained. Thus, colonialism laid the institutional framework of the modern judiciary but subordinated indigenous law and weakened traditional authorities.Following independence in 1960, Nigeria inherited this hybrid judicial structure and adapted it to the needs of a sovereign state. The Independence Constitution established the Supreme Court of Nigeria as the final court of appeal, replacing the Judicial Committee of the Privy Council. However, the judiciary's development was repeatedly interrupted by military interventions between 1966 and 1999. Under military rule, constitutions were suspended or modified by decrees, special tribunals were set up to try political opponents, and ouster clauses were used to limit judicial review of executive actions.

Despite these setbacks, the judiciary retained a measure of institutional continuity and occasionally asserted its independence, as seen in cases that challenged

the legality of military decrees. The return to civil rule in 1999 with the Constitution of the Federal Republic of Nigeria reaffirmed the judiciary as an independent arm of government. The structure now includes the Supreme Court, Court of Appeal, Federal High Court, State High Courts, National Industrial Court, and Sharia and Customary Courts of Appeal, reflecting both Nigeria's colonial legal heritage and its diverse customary and religious traditions. From the councils of elders in Esan villages to the constitutional courts in Abuja, the history of the Nigerian judiciary reveals a continuous struggle to balance indigenous norms, colonial legacies, and the demands of modern constitutional democracy.

Structure of the Nigerian Judiciary

The structure of the Nigerian judiciary reflects the country's federal system of government, its colonial legal heritage, and its diverse cultural and religious traditions. It is established by the 1999 Constitution of the Federal Republic of Nigeria, which provides for a hierarchy of courts arranged from the lowest to the highest, with clearly defined jurisdictions. At the base of this structure are the courts of first instance that citizens encounter most directly. These include Magistrate Courts and District Courts in the Southern and Northern states respectively, which handle minor civil and criminal matters. Customary Courts and Area Courts also operate at this level, adjudicating disputes based on the customary laws of the people within their jurisdiction. In Esanland and other parts of Edo State, these courts represent a modern adaptation of the pre-colonial system where the Odionwere and elders settled disputes using cultural precedent.[26] While their powers are limited by statute, they remain

important for grassroots access to justice, especially in matters of personal law, land, and family disputes.Above the courts of first instance are the superior courts of record, beginning with the High Courts. Each state of the federation has a High Court, and there is also a Federal High Court with exclusive jurisdiction over matters involving the federal government, revenue, taxation, customs, banking, and intellectual property. The National Industrial Court of Nigeria stands on the same level and handles labor, employment, and industrial relations disputes. A unique feature of the Nigerian judicial structure is the recognition of Nigeria's legal pluralism through the establishment of specialized appellate courts. The Sharia Court of Appeal and the Customary Court of Appeal exist at the state level to review decisions from Area Courts and Customary Courts respectively. They ensure that Islamic personal law and customary law are applied correctly, provided such laws are not repugnant to natural justice, equity, and good conscience.[32]

This arrangement preserves aspects of the indigenous legal systems that existed before colonialism, when traditional rulers and councils exercised judicial authority, though now within a constitutional framework.The appellate structure continues with the Court of Appeal, which serves as the intermediate appellate court for the entire federation. It has judicial divisions in various parts of the country and hears appeals from the High Courts, Federal High Court, National Industrial Court, Sharia Courts of Appeal, and Customary Courts of Appeal. The Court of Appeal plays a critical role in harmonizing conflicting decisions from lower courts and in shaping Nigerian jurisprudence through its interpretations of the constitution and statutes. Importantly,

it has original jurisdiction in presidential and governorship election petitions, making it central to Nigeria's democratic process. The existence of this court ensures that litigants do not have to approach the apex court for every grievance, thereby reducing congestion and allowing for more efficient justice delivery.

At the pinnacle of the judicial hierarchy is the Supreme Court of Nigeria. Established under Section 230 of the 1999 Constitution, it is the final court of appeal in the country. Its decisions bind all other courts, and it has both appellate and original jurisdiction. The Supreme Court hears appeals from the Court of Appeal and, in certain constitutional matters, exercises original jurisdiction in disputes between the federation and states or between states. The Chief Justice of Nigeria presides over the court, supported by other Justices appointed by the President on the recommendation of the National Judicial Council and confirmed by the Senate. Through landmark judgments, the Supreme Court safeguards the constitution, protects fundamental rights, and resolves conflicts between the diverse legal traditions operating in Nigeria. Thus, from the Customary Courts that echo the authority of the Odionwere in Esan villages to the Supreme Court in Abuja, the structure of the Nigerian judiciary represents a deliberate blend of tradition, colonial inheritance, and modern constitutionalism designed to serve a multi-ethnic federal state.

Functions of the Judiciary

As a history student, understanding the functions of the judiciary requires looking at both its constitutional role today and how those roles evolved from

Nigeria's past legal traditions. The judiciary is not just a colonial import; many of its functions mirror the purposes traditional justice systems served in pre-colonial societies, though now formalized under the 1999 Constitution.

1. Interpretation of Laws

The primary function of the judiciary is to interpret and apply the law. Courts give meaning to statutes, the constitution, and executive orders when disputes arise over their scope or application. This function existed even in indigenous systems. Among the Esan, the Odionwere and his council interpreted unwritten customs and precedents to decide cases, ensuring that communal norms were applied consistently.[26] Under colonial rule, Native Courts interpreted customary law but were constrained by the repugnancy doctrine imposed by the British.[32] Today, the Supreme Court and Court of Appeal interpret the constitution, creating binding precedents that guide all lower courts and clarify ambiguities in legislation.

2. Adjudication and Dispute Resolution

Courts exist to settle disputes between individuals, between individuals and the state, and between different levels of government. In pre-colonial Esan society, women's associations like Okhuo-Idumu adjudicated conflicts involving married women, imposing fines or ostracism on offenders.[31] The colonial Native Courts took over much of this role but introduced fees and formal procedures that commercialized justice.[26] In modern Nigeria, Magistrate Courts, High Courts, and Customary Courts handle civil and criminal cases, while election tribunals resolve political disputes. The

aim remains the same: to provide a peaceful mechanism for conflict resolution and prevent resort to self-help.

3. Judicial Review and Checks on Power

A critical function developed after independence is judicial review. The judiciary examines actions of the executive and legislature to ensure they comply with the constitution. This function was absent in pre-colonial and colonial systems, where rulers and colonial officers had near-absolute power. Military rule between 1966 and 1999 often used ouster clauses to block judicial review, weakening this role. Since 1999, however, courts have struck down unconstitutional laws and executive actions, reinforcing democracy. The power of judicial review makes the judiciary the guardian of the constitution and a check against tyranny.

4. Protection of Fundamental Rights

The judiciary enforces Chapter IV of the 1999 Constitution, which guarantees rights such as life, dignity, fair hearing, and freedom of expression. Historically, traditional systems offered limited rights protections, especially for women who faced subjugation under patriarchal customs and widowhood rites.[29] Native Courts under colonialism also offered little protection, as colonial interests often overrode individual rights. Post-independence, the courts have become the main avenue for citizens to seek redress when their rights are violated by the state or powerful individuals. Through writs and enforcement procedures, the judiciary ensures that constitutional rights are not just paper guarantees.

5. Development of Law and Safeguarding Custom

Through the doctrine of stare decisis, decisions of superior courts develop Nigerian law and ensure uniformity. At the same time, the judiciary safeguards customary law and Islamic law by applying them in Customary Courts and Sharia Courts of Appeal, provided they are not repugnant to natural justice, equity, and good conscience.[32] This dual role allows the legal system to evolve while retaining links to Nigeria's indigenous past. In Esanland, this means that customs around marriage, inheritance, and chieftaincy can still be litigated, though the courts now moderate exploitative practices that previously oppressed women.[29]In sum, the functions of the Nigerian judiciary blend inherited English legal principles with Nigeria's own historical experience. From the elders' council to the Supreme Court, the core purpose has been to interpret norms, resolve disputes, and maintain order — but constitutional democracy has added the crucial tasks of checking power and protecting rights.

Conclusion

This chapter has been able to examine the history, structure, and functions of the judiciary in Nigeria from a historical perspective, tracing its evolution from indigenous systems to the modern constitutional framework. It has shown that prior to colonial rule, societies such as the Esan had well-established mechanisms for dispute resolution where the Odionwere, council of elders, and women's associations like Okhuo-Idumu administered justice based on custom, precedent, and communal values.[31] These pre-colonial systems emphasized reconciliation and social cohesion,

though they were not without limitations, particularly in relation to gender and the treatment of women.[29] The chapter further highlighted how British colonialism introduced a dual judicial structure through the establishment of English-style courts alongside Native Courts, fundamentally altering indigenous practices. While this preserved a form of customary adjudication, the repugnancy doctrine and the commercialization of justice under Native Courts distorted traditional norms, as seen in the handling of marriage disputes in Esanland.[26]

In addition, the chapter has outlined the contemporary structure of the Nigerian judiciary as provided by the 1999 Constitution, from Customary and Magistrate Courts at the grassroots to the Supreme Court at the apex. This structure reflects Nigeria's federal character, legal pluralism, and colonial heritage, accommodating common law, customary law, and Islamic law within one system. The functions of the judiciary were also discussed, including interpretation of laws, adjudication, judicial review, protection of fundamental rights, and the development of law. These roles demonstrate continuity with the past, because traditional authorities also interpreted norms and settled disputes, but constitutional democracy has expanded the judiciary's mandate to include checking governmental power and safeguarding individual rights. Overall, the history and function of the Nigerian judiciary reveal a complex blend of indigenous tradition, colonial imposition, and post-independence adaptation. The institution remains central to the maintenance of order, the promotion of justice, and the survival of constitutional democracy in Nigeria.

CHAPTER THREE

CASES OF MISUSE OF JUDICIAL DISCRETIONARY POWERS

Introduction

Understanding Judicial DiscretionJudicial discretion is the latitude granted to judges to make decisions within the bounds of the law where statutes or precedents do not mandate a single outcome. It allows flexibility, equity, and adaptation to the peculiar facts of each case. In pre-colonial Nigeria, elders and traditional rulers exercised a form of discretion when applying unwritten customs. Among the Esan, the

Odionwere weighed the gravity of an offence, the status of the parties, and community interest before imposing sanctions.[31] This discretion was not absolute; abuse could lead to loss of legitimacy and communal backlash. The colonial state formalized discretion through the Native Courts system but also created conditions for its misuse. Presiding officers were given wide powers to determine what customs were "repugnant to natural justice, equity, and good conscience."[32] This chapter examines how that discretion has been misused from the colonial period to contemporary Nigeria, using specific cases and patterns to show the consequences for justice and public confidence.3.2 Colonial Era: Discretion as an Instrument of Control and Extraction

Commercialization of Justice in Native Courts

Under colonial rule, Native Courts in Esanland and elsewhere were empowered to adjudicate matters of marriage, debt, land, and petty crime. However, judicial officers used their discretionary powers to impose arbitrary fines and court fees, transforming justice into a revenue-generating enterprise. Erhagbe and Ehiabhi documented how marriage disputes were prolonged deliberately, with adjournments and penalties that enriched the court and the colonial treasury rather than resolving conflicts.[26] Discretion over sentencing and costs was exercised not to achieve equity but to exploit litigants. This misuse alienated communities from the formal courts and entrenched the view of colonial justice as oppressive.

The Repugnancy Doctrine and Cultural Suppression

Colonial judges had discretion to reject any custom they deemed repugnant. While intended to check harmful practices, this power was often used to undermine indigenous institutions that challenged colonial authority. In Esanland, decisions that favoured women's associations like Okhuo-Idumu were overturned when they conflicted with colonial economic interests.[31] Discretion thus became a tool for cultural erasure and political control, rather than principled legal reasoning.3.3 Military Rule: Ouster Clauses and the Subversion of Discretion

Suspension of Judicial Review

Between 1966 and 1999, successive military regimes curtailed judicial discretion through decrees with ouster clauses that barred courts from questioning executive actions. Yet even where discretion remained, some judges used it to legitimize the regime. Bail was routinely denied in cases involving journalists, activists, and political opponents, despite constitutional provisions for presumption of innocence. Sentencing discretion was applied harshly in tribunals like the Special Military Tribunals, where death penalties were handed down for economic sabotage based on minimal evidence.

The Case of Ken Saro-Wiwa and the Ogoni Nine, 1995

The trial before the Ogoni Civil Disturbances Special Tribunal illustrates discretion misused. The tribunal refused adjournments for the defense, admitted questionable evidence, and imposed the death sentence. Though technically a tribunal, it was staffed by judicial officers who failed to exercise discretion to ensure fair

hearing. The case damaged the judiciary's image and showed how discretion collapses under political pressure.3.4 Fourth Republic: Modern Forms of Misuse

Abuse of Ex Parte Injunctions

Since 1999, one recurring misuse of discretion has been the grant of ex parte injunctions to halt elections, investigations, or appointments. Because ex parte orders are granted on the application of one party without notice, judges have wide discretion. This has been used by litigants to forum-shop for sympathetic courts. Conflicting injunctions from courts of coordinate jurisdiction in political cases have created legal chaos and undermined electoral credibility. The discretion to grant interim relief, meant to preserve the res, has instead been used to freeze democratic processes.

Sentencing Disparities and Bail

Discretion in bail and sentencing continues to produce unequal outcomes. High-profile corruption cases have seen accused persons granted bail in liberal terms, while petty offenders languish in prison for years awaiting trial. The absence of clear sentencing guidelines means two judges can impose vastly different penalties for the same offence, leading to accusations of bias, class prejudice, and corruption.

Conflicting Judgments and Forum Shopping

The judiciary's hierarchical structure assumes that lower courts follow precedents from higher courts. However, misuse of discretion occurs when judges ignore binding precedents or entertain matters already decided elsewhere. In gubernatorial election

cases, multiple High Courts have issued contradictory orders, forcing the Court of Appeal to intervene. This practice wastes judicial time and suggests discretion is being exercised for ulterior motives.3.5 Factors Enabling Misuse of Discretion

Weak Accountability Mechanisms

Although the National Judicial Council can discipline judges, proceedings are opaque and sanctions are rarely made public. This reduces deterrence. In pre-colonial Esan society, abusive elders could be removed by collective community action.[31] The modern system lacks that immediate social check.

Poor Conditions of Service and Corruption

Inadequate funding, poor remuneration, and case backlogs create incentives for corruption. When discretion determines who gets bail, who gets an injunction, or how long a case lasts, it becomes monetizable. The colonial commercialization of justice noted by Erhagbe and Ehiabhi[26] has a modern echo in allegations of "cash for judgment."

Executive and Political Interference

Appointment processes, elevation to higher bench, and intimidation all influence how discretion is used. Judges who fear transfer or denial of promotion may tailor decisions to please the executive, especially in political cases.3.6 Consequences of Misused DiscretionMisuse of discretion erodes public confidence, the judiciary's most important asset. When citizens believe justice is for sale or politically

manipulated, they resort to self-help, mob action, and disregard for court orders. It also weakens democracy, as electoral disputes and human rights cases are not resolved impartially. Historically, the colonial Native Court's abuse of discretion drove people back to traditional arbitration or to violent resistance.[26] The same risk exists today.3.7 Toward Reform: Checking Judicial Discretion

Sentencing and Bail Guidelines

Adopting clear guidelines, as practiced in other common law jurisdictions, would reduce arbitrary outcomes while preserving necessary flexibility. The Chief Justice of Nigeria has issued practice directions to limit ex parte injunctions in political cases. Strict enforcement and sanctions for forum shopping are needed. Disciplinary processes should be transparent, and judicial appointments should be merit-based. Publishing judgments and reasoned rulings for discretionary decisions would enable public scrutiny.

Learning from History

Pre-colonial checks on elders, including community review and women's oversight through groups like Okhuo-Idumu,[31] suggest that accountability works best when it is communal and transparent. Modern reform should incorporate peer review, civil society monitoring, and robust appeal systems.

Conclusion

This chapter has shown that judicial discretion, though vital, has been misused from the colonial Native Courts to the present. In Esanland, colonial officers used discretion to commercialize marriage disputes and suppress customs.[26] Under military rule, discretion was bent to serve authoritarian ends. In the Fourth Republic, it manifests in conflicting injunctions, bail disparities, and political judgments. These cases reveal a pattern: where discretion lacks accountability, justice suffers. Reform must therefore balance the need for flexibility with the need for consistency, transparency, and ethical restraint, if the judiciary is to remain the last hope of the common man.

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CHAPTER FOUR

AN APPRAISAL OF JUDIDCIAL PROCESS ON POST-ELECTION MATTER IN NIGERIA

Introduction

In recent years, the courts in Nigeria have increasingly become involved in determining the outcome of electoral disputes. However, the jury is still out on whether the involvement of the courts in the electoral process support or erode the will of the voters.[1] This study x-rays the role of the courts over the years since independence in resolving disputes in electoral process.

The First Republic: The 1959 Election and Post-Election Dispute

The history of elections in Nigeria can be traced back to the colonial period, precisely in 1922, when the Clifford's Constitution1 for the first time introduced the elective principle into the political system. This was sustained and improved upon by successive colonial regimes.[2] It was not until 1959 that the out-going colonial administration inaugurated a special electoral body named the Electoral Commission of Nigeria (ECN) to conduct the 1959 elections, the first direct

elections in the country. Thus, Nigeria's political independence was ushered in by the December 12, 1959 general elections.

At that time, twenty-six political parties were registered to contest the elections. Yet, a tri-regional party system reflecting the dominant ethnic groups in each region generally emerged by default. The three dominant political parties were the Northern Peoples Congress (NPC) led by Sir Ahmadu Bello with its base and sphere of influence in Northern Nigeria, the Action Group (AG) led by Chief Obafemi Awolowo was dominant in Western Nigeria, and the National Council of Nigeria and Cameroons (NCNC) led by Dr. Nnamdi Azikwe was the leading political party in Eastern Nigeria.[3]

By 1960, when Nigeria became independent of Britain, the Tafawa Balewa administration enacted the Nigeria Electoral (Transitional Provisions) Act of 19614 which was the first Electoral law drafted by the Indigenous Nigerian legislature. The Act was replaced by a more comprehensive Electoral Act in 19625, the first most definitive Electoral framework in post-independent Nigeria. It also set up a new electoral body, the Federal Electoral Commission (FEC), which managed the immediate post-independence federal and regional elections of 1964 and 1965 respectively.[4]

These elections were however widely believed to have been flagrantly rigged by the ruling NPC government headed by Prime Minister Tafawa Balewa. The results of the elections were rejected by the opposition parties, and consequently

led to widespread violence including killings, arson, looting and destruction of properties, especially in the Western Region of the country.[5]

The 1964 and 1965 Elections and Post-Election Dispute

From a multiparty structure which marked the 1959 pre-independence elections, Nigeria witnessed the emergence of a two-party system in the 1964 and 1965 elections. In their quest to appropriate power at the centre and dominate federal politics, the three dominant political parties in the 1959 elections sought alliances with the minority parties to form the two grand parties that contested the first post-independence elections of 1964 and 1965, namely the Nigerian National Alliance (NNA) led by the NPC and NNDP, and the United Progressive Grand Alliance (UPGA), led by the NCNC and AG.[6] On the whole, the abuse of the electoral process and the intensity of the electoral violence which characterised the elections created a constitutional crisis and undermined the legitimacy of the new civilian government. This inevitably provided the pretext for the first coup d'état that aborted democracy on 15th January 1966, and brought the military into the political administration of the country. The constitution was suspended, and all existing political institutions including the Federal Electoral Commission, were dissolved to mark the end of the first democratic dispensation, or the first republic as some choose to call it.[7]

The 1964 federal elections were scheduled to hold in October/November 1964. Before the election, violence broke in the then Western Region which necessitated the re-scheduling of the election to the end of December 1964. As the

election approached, electoral officers were terrorized into absconding from their offices, once they had received the nomination papers of the governing party candidates, leaving opposition candidates with no opportunity of filing their nomination papers. So fragrantly was the election procedure abused that at the close of nomination, some 88 out of a total of 174 Northern People's Congress (NPC) candidates into the Northern Region Parliament, had their candidature unopposed, and as such were declared elected unopposed. In the west, about 30 percent of the Nigerian National Democratic Party (NNDP) candidates were supposed to have been returned unopposed.[8] The situation in the east was not much different.

Despite these irregularities, the chairman of the federal electoral commission went ahead and announced the results of the election which showed that the NPC had won all but eight of the 174 constituencies in the north; the NNDP had won the majority of the seats in the west, and the NCNC a majority of the mid-west constituencies. With these results, Sir Abubakar Tafawa Balewa called on the President to request that he be reappointed to head a new government of the Federation. The President refused to accede to the request of the Prime Minister, thereby creating a constitutional stalemate. It should be noted that no election petition was filed by the aggrieved parties to challenge the alleged irregularities in this election, despite the hue and cry of rigging.[9]

As a result of the stalemate, the judiciary stepped in. After over a week of negotiations, the President, on the intervention of the Chief Justice of the Federation, Sir Adetokunbo Ademola, and the Chief Justice of the Eastern Region, Sir Louis Mbanefo, relented and agreed to invite the Prime Minister to form a "broad-based government." From the above scenario, the judiciary would appear to have been critically weakened by the intervention of the Chief Justice of the Federation, and the Chief Justice of Eastern Region, during the stalemate. Their action, even though extra-judicial showed that they were unprepared to differentiate their social roles as pillars of the law, from their roles as ethnic leaders, and party political figures.[10]

By intervening in the way they did, they foreclosed the chances of any of the key political leaders resorting to the law courts as a means of resolving the constitutional crisis. The result was that the judiciary blurred with the political, and the judiciary could no longer be looked upon as an instrument of affecting adherence to rules. The other election, the Western Region parliamentary elections of 1965 were generally marked with all sorts of malpractices, aggravated by violence. The methods of electoral fraud employed were the familiar ones, but the scale was overwhelmingly much more severe. The judiciary was not spared in the process. The native or customary courts ceased to operate as havens of judicial impartiality. They, in reality belonged to the political, rather than the judicial arm of the administration. Appointments to their benches were part of the political

patronage at the dispensation of the ruling politicians. Some of the judges themselves were personally involved in politics.[11]

Confidence in the ability of the courts to decide political issues impartially, was consequently undermined, to the point that there was a general disinclination to take political complaints to them. To go to court in such matters was felt to be a vain effort, since by past experience, a decision in favour of the government was considered a foregone conclusion. Convinced that they would get no justice from the courts for the rape of their right to choose who should govern them, the people naturally resorted to violence as the only remedy open to them in the circumstance. The result was that the candidates of the United Progressive Grand Alliance (UPGA) which "lost" the 1965 parliamentary elections in the Western Region did not, again, file any election petitions.[12]

They simply refused to accept the results of the election or to acknowledge the legitimacy of the government formed as a result of it. Instead, they and their millions of supporters took to the streets of Western Nigeria threatening, burning, or maiming any member of the government party they could corner in the bush or on the street. It was code named "operation wetie", meaning "wet him" (with petrol) which was a battle cry, often followed by the setting of the victim ablaze, after "wetting him" with petrol. Unpopular customary court presidents were slaughtered like rams. As a result of these, the military struck on the night of January 15th 1966, resulting in the end of the first republic.[13]

The Second Republic

The second republic covers the period between 1979 and 1983. Two general elections took place during this period, that is, the 1979 and 1983 general elections, which were conducted by the federal electoral commission (FEDECO).

The 1979 Election and Post-Election Dispute

After the 1979 general elections, the case of Obafemi Awolowo v. Shehu Shagari6 arose almost entirely because of the manner in which the Electoral Act 1977, as subsequently amended, was couched in respect of the election into the office of the president. Section 34(2) of the 1977 Act provided that: in the case of an election into the office of the president, a candidate shall be declared to have been duly elected to such office if:- (a) he has the highest number of votes cast at the election, and (b) he has not less than one quarter of all the votes cast at the election in each of at least two-thirds of all the states within the federation.[14]

Those who drafted the constitution well knew that there were nineteen states in the country, but the implication of the interpretation of the said Section 34(2) was obviously lost on them. Nothing would have been simpler than just saying "not less than one quarter of all the votes cast in 13 states." Instead they, in a most cavalier manner wrote: "not less than one quarter of all the votes cast in each of at least two-thirds of all the states within the federation".[15] Mayhem. The Federal Electoral Commission (FEDECO), at the conclusion of the election, held that Alhaji Shehu Shagari of the National Party of Nigeria (NPN) had fulfilled conditions (a) and (b) set down in Section 34(2) above, having scored the highest number of votes cast, of the five Presidential candidates at the

elections, and had more than one quarter of all the votes cast in twelve states. In the thirteenth state, however, he had less than one quarter of all the votes cast, but more than one-quarter of one-third of the votes, twelve states. In the thirteenth state, however, he had less than one quarter of all the votes cast, but more than one-quarter of one-third of the votes.[16]

Chief Obafemi Awolowo who came second in the election, was not satisfied with the outcome of the election and as such filed a petition on the following grounds: 1. That Alhaji Shehu Shagari was at the time of the election not duly elected by a majority of lawful votes cast at the election as he did not satisfy the provisions of section 34(a) sub section 1(i) (ii) of the Electoral Decree 1977. 2. That although the said Alhaji Shehu Shagari received 5,688,857 votes at the said election, he had less than ¼ of the votes cast at the election in each of at least 2/3 of all the states in the federation, and 3. That the election of the said Alhaji Shehu Shagari was invalid by reason of non-compliance with the provisions of the Electoral Decree, 1977, which include the provisions of section 34(a) (i) (ii) of the said decree.[17]

The fulcrum of this petition bordered on the interpretation of Section 34(2) of the Electoral Decree of 1977 which provides for the requirements for a person to be declared a winner of presidential election in Nigeria, when there are two or more candidates, the winning candidate must score the highest number of votes and in addition he must score not less than ¼ of votes cast at the election in each of at least 2/3 of all the states. As at 1979, there were 19 states in Nigeria and by

simple mathematical calculation, 2/3 of 19 is 12.666. By the results of the election, Alhaji Shehu Shagari scored 25% in 12 states of the federation, and got 19.14% in Kano State. It was based on this result that the petitioner contended that the election should be nullified on the ground that the 1st respondent did not meet the requirement of the law.[18] The Election Tribunal sitting in Lagos dismissed the petition and on further appeal to the Supreme Court, the apex court in interpreting section 34(a) (i) (ii) held that Alhaji Shehu Shagari indeed met the requirements of the Electoral Act.

This decision was however widely believed to be political, as the Supreme Court was always suspected to be not only a court of law, but a court of policy. There was then the urgency to return the military to the barracks, and the court was believed to have done all it could to avoid another general election which would have extended the military rule, and maybe even truncated the entire transition programme, as was later experienced in 1993, when the military cited pending and conflicting court cases, and orders, as one of the reasons it stepped in and annulled the election, to save the judiciary from itself. Though this was total "hogwash", as the Americans would say, but the then "reluctant" military government gleefully latched on to it as an excuse to annul the election and end the transition programme.[19] The rest is now history.

The 1983 Election and Post-Election Dispute

The second presidential election in Nigeria was held on 6th day of August, 1983. The result was a victory for the incumbent Shehu Shagari who won 47.5% of the vote cast. The said elections were followed by avalanche of election petitions. The large number of petitions filed was evidence that many of the defeated candidates, together with their supporters, did not accept the election results as announced. As the verdicts began to be pronounced, the general public often expressed shock and dismay. Allegations of corruption in high places were freely made.[20] Tension. Violence loomed.

This result was however challenged by Alhaji Waziri Ibrahim at the Tribunal. The grounds of the petition were that the conduct of the election was marred by malpractice, corrupt practices, and failure to comply substantially with the provisions of the Electoral Act 1982. It was also alleged that the result sheets were altered, amended and obliterated in at least 15 states. The Election Petition Tribunal dismissed the petition, and the Supreme Court also dismissed the Appeal. The gubernatorial, senatorial, house of representatives, and state houses of assembly election did not also fare better. Allegations of rigging were also widely made. In Odumegwu-Ojukwu v. Edwin Onwudiwe, a senatorial election, one of the two justices who dissented, Aniagolu JSC made the following pertinent remark:

> This case was in my view, one in which by fraud in the election, the rightful winner was made the loser and the loser declared the winner. The respondent, Dr. Edwin Onwudiwe,
> clearly did not win. This court should say so emphatically, and say so unmistakably.[21]

The Third Republic

During the third republic, Decree 50 of 1991, dealing with elections, was promulgated. The most revolutionary change that was introduced by the decree was the composition of the membership of the tribunals. Non-lawyers or untrained judicial personnel were included as members. After the work of the various tribunals had been completed, there was a general feeling of satisfaction throughout the country. True, there were complaints, in a few cases, of alleged miscarriage of justice, and some allegations were made here and there.[22] At the end of it all, there was less tension and the political atmosphere was calm and peaceful. That was for the local government, governorship, national assembly, and state houses of assembly elections. But they were not rally the big price. That was to come. When the ultimate election in the 3rd republic, being also the third Presidential Election in Nigeria, was held, as its climax, on 12th June, 1993, Chief Moshood Abiola of the SDP was widely presumed to have won the election. However, this election was subsequently annulled by the then military Head of State, General Ibrahim Babangida, on spurious grounds.[23]

As said earlier, General Ibrahim Babangida disingenuously blamed the judiciary for doing so. He referred to court cases and conflicting decisions. But what he forgot to deny was the allegation that he engineered it all, through Abimbola Davies and the Association for Better Nigeria led by Francis Arthur Nzeribe.[24] This seemed to justify the actions of Sir Adetokumbo Ademola, Sir Louis Mbanefo in 1964 in brokering a political solution instead of encouraging

election litigation. It also probably justified the judicial activism of the Supreme Court in Awolowo v. Shagari, in its 2/3 of a state bizarre interpretation, just to ensure that the transition programme of 1979 was not truncated by judicial wrangling, as became the fate of the 1993 election, which ran into a judicial quagmire and was eventually annulled. The resultant crisis of the annulment and truncation of the transition programme, forced General Ibrahim Babangida to step aside and appoint an interim national government headed by Ernest Sonekan, which was later declared illegal and a nullity by the courts, and a new military administration, following a coup, led by General Sani Abacha quickly followed.[25]

The Fourth Republic

Nigeria's fourth republic commenced on 29th May, 1999. On that day, Nigeria's military relinquished political power after dominating the country's post-independence experience. General elections were conducted in 1999, 2003, 2007, 2011, 2015, 2019 and 2023.

The 1999 Election and Post-Election Dispute

The 4th Presidential Election in Nigeria was held on 27 April 1999 with Olusegun Obasanjo emerging as the winner of the election. Chief Olu Falae who came second in the election filed a petition challenging the return of General Olusegun Obasanjo as the President- Elect of the Federal Republic of Nigeria. The petition was premised on the following grounds: 1. That Olusegun Obasanjo being a member of a secret society, the Ogboni was not qualified for election to the office of President. 2. That Olusegun Obasanjo has been adjudged guilty of

treason/ treasonable felony by a tribunal 3. That Olusegun Obasanjo being a public officer by virtue of being a member of the National Council of States was not qualified to contest the election. 4. That Olusegun Obasanjo was disqualified from being elected to the office of the President for non-compliance with the Decree N0.6, and the INEC Guidelines.[26]

The Supreme Court in the said case of Falae v. Obasanjo,11 however resolved all the above issues against the Petitioner. On the alleged membership of a secret cult, the court held that no evidence was led to prove the allegation. On the allegation of conviction, the Respondent's Counsel had argued that the pardon granted to the 1st Respondent wiped out whatever forfeiture or disabilities suffered by the 1st Respondent. However, the issue that was canvassed strenuously by both Counsel centred on pardon and full pardon. The Appellant Counsel had urged the court to hold that what was granted to the 1st Respondent was just pardon and not full pardon.[27] The Court in resolving the issue held thus:

> "In my view, under the Nigeria Law, pardon and full pardon has no distinction. A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence. The effect of pardon is to make the offender a new man, Novus Homo, to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned.[28]

With regard to issue as to whether the 1st Respondent was a public officer, the court held that the 1st Respondent was not a public officer under the Decree. The court finally resolved the alleged act of campaigning on the Election Day when it

held thus: “I am of the view that though PDP or Senator Anietie Okon contravened Section 14 of the Decree, that cannot be visited on the 1st Respondent. There was no evidence whatsoever that he authorized the offending publication nor that he ratified it.”[29]

The 2003 Presidential Election and Post-Election Dispute

The fifth Presidential Election in Nigeria was held on 19th April, 2003. The incumbent, Olusegun Obasanjo was re-elected. However, General Muhammadu Buhari filed a petition challenging his victory at the Court of Appeal. He prayed the court to invalidate the whole election on the grounds of non-compliance with the provisions of the Electoral Act 2002. He further alleged that at the time of the election, Chief Olusegun Obasanjo was not qualified to contest the election.

Upon the service of the petition on the Respondents, the 1st Respondent filed a Notice of Preliminary Objection praying the court to strike out the petition for being incompetent. The crux of this application was that the Petitioner failed to join PDP as one of the Respondents and as a party which sponsored, campaigned and funded the election of the candidate whose victory was being challenged.[30] The Court of Appeal refused this application, and heard and dismissed the petition on its merits. The further filed to the Supreme Court, which was also dismissed.

The 2007 Presidential Election and Post-Election Dispute

The 6th Presidential Election held in Nigeria was on 21st April, 2007. Umaru Musa Yar’Adua was declared the winner of the election. Dissatisfied with this result, General Muhammadu Buhari filed a petition challenging the victory of

Umaru Musa Yar ‘Adua. The Supreme Court resolved all the issues raised against the appellant, and further held that the appellant had failed to prove that non compliance with the Electoral Act had substantially affected the election.[31]

The 2011 Presidential Election Petition and Post-Election Dispute

The 7th Presidential Election held in Nigeria was on 16th day of April, 2011. Dr. Goodluck Jonathan was declared the winner of this election. Aggrieved by the result of the election, the CPC and its Presidential Candidate, General Muhammadu Buhari, filed a petition challenging the victory of Dr. Goodluck Jonathan of the PDP. The main thrust/ground of this petition was the alleged non-compliance with the Electoral Act and

provision of section 134 (2) of the 1999 Constitution with regards to scoring the highest number of votes and mandatory ¼ of the votes cast at the election in each of at least 2/3 of all states of the federation including FCT. The petition was dismissed by the Court of Appeal, and on appeal, the Supreme Court also dismissed it for lacking in merit.[32]

The 2015 Presidential Election and Post-Election Dispute

The 8th Presidential Election held in Nigeria was held on 28th and 29th March, 2015. Mohammadu Buhari was declared the winner of this election. In 2015, Dr. Goodluck Jonathan did not approach the Presidential Election Petition Tribunal even though it was constituted by the President of the Court of Appeal.[33]

The 2019 Presidential Election Petition and Post-Election Dispute

The 9th Presidential Election in Nigeria was held on 23rd February, 2019. The incumbent President, Muhammadu Buhari was declared the winner of this election. Aggrieved by the above results, the PDP candidate, Alhaji Atiku Abubakar filed a petition at the Court of Appeal. Alhaji Atiku Abuabakar, the PDP Presidential Candidate maintained that Muhammadu Buhari does not possess the educational qualification to contest the election to the office of the President of the Federal Republic of Nigeria as

provided under section 131(d) of the 1999 Constitution and section 31(1) of the Electoral Act 2010.[34] The second aspect of his claim was that the 2nd Respondent swore to an affidavit containing false information of fundamental nature that is stating that his certificates were with the Army. It was further contended that the schools the 2nd Respondent claimed he attended were at the material time nonexistent. It was also the case of the Petitioner that the certificate enlisted in the CV of the 2nd Respondent was not attached, and that the 2nd Respondent Muhammadu Buhari does not possess the said certificates, contending that it was compulsory for the certificates to be attached.[35]

In summary the Supreme Court held as follows: 1. Section 318 of the 1999 Constitution of Nigeria provides that educational qualification up to Secondary School level suffices as qualification without actual possession of the certificate. 2. A person needs not obtain a certificate, mere attendance in a school up to secondary school certificate level is what is required. 3. Person who possesses a secondary school certificate or Grade 2 Teachers Certificate or its equivalent, the

City and Guild Certificate is qualified to contest for the election into the office of the President Federal Republic of Nigeria.[36]

The 2023 Presidential Election Petition and Post-Election Dispute

The 10th Presidential Election in Nigeria was held on 25th February, 2023. Chief Bola Ahmed Tinubu was declared elected. He was alleged to have scored a total of 8,794,726 votes, the highest of all the candidates, thus meeting the first constitutional requirement to be declared the winner. He was also alleged to have scored over 25 per cent of the votes cast in 30 states, more than the 25 states constitutionally required.

Atiku Abubakar of the PDP was said to have come second in the election having polled a total of 6,984,520 votes in the election. Peter Obi of the Labour Party was said to have came third in the election with a total of 6,101,533 votes while Rabiu Kwankwaso of the NNPP came fourth with 1,496,687 votes. Only the top four candidates won the presidential election in at least one state. Each of Messrs Tinubu, Atiku and Obi won in 12 states while Mr. Rabiu Kwankwaso won only in Kano.[37]

Bola Ahmed Tinubu was declared the winner of this election with less that 36.61% of the votes cast, which was by no means a majority of the votes cast in the election. He therefore even by the INEC declared result, had no mandate to rule, as the majority voted against him or voted for other candidates. A run-off election ought to have been held on that point alone. But the drafters of the Electoral Act did not foresee such a scenario as they were already used to the two

big parties of PDP and APC dividing the votes into two, which always gave the winner more that 50% of the votes. They did not foresee a

third force in the Obidient movement, which swept the political landscape and won over the youths who desired change.[38]

Aggrieved by the above results, the PDP and LP candidates, Alhaji Atiku Abubakar and Peter Obi filed petitions at the Court of Appeal. But both petitions fell flat because according to the Court of Appeal, the legal teams of the petitioners gave a perfunctory performance which was long on noise in the social media, but short on substance in court. The court held that did not provide sufficient evidence to prove their allegations of irregularities, vote allocation and reduction, result mutilation, forgery and general electoral malpractices.[39] Alhaji Atiku Abuabakar, the PDP Presidential Candidate at the Supreme Court sought to adduce additional evidence of forgery of certificate by Bola Ahmed Tinubu, and conviction for drug offences, but the motion was dismissed as having come too late in the day, after the end of pleadings and trial. The Supreme Court also dismissed both petitions as lacking in merit.[40]

The Problem of Delay

Due to the influx of aggrieved candidates into the courts for reprieve greatly increased, leading to the devotion of the better part of the tenure which the election ushered in to the resolution of election disputes. During the period under review, some of the disputes were resolved in a reasonably short space of time.

However, some others spanned over three years. The petition of Dingyadi v. Wamakko20 for instance lasted for three years and eight months.[41]

The case of Dr. Chris Ngige v. Peter Obi21 also become a reference point in the analysis of the problems and challenges of electoral dispute resolution. Peter Obi the then governorship candidate of the All Progressive Grand Alliance (APGA) filed his case on the 16th day of May, 2003 challenging the declaration of Dr. Chris Ngige as the winner of the election. The tribunal took more than two years to hear all the witnesses and delivered judgement on the 12th day of August, 2005.[42] The appeal was heard on the 23rd day of January, 2006 and judgment was delivered on the 15th day of March, 2006. The petitioner waited for 35 months to receive justice out of a mandate of 4 years. The south-west has also had its share of delayed resolution of electoral disputes in Fayemi v. Oni22 and Aregbesola v. Oyinlola23 for Ekiti and Osun States respectively.[43]

The Electoral Act, therefore made a far reaching innovation by specifying the time limit for concluding electoral disputes and appeals arising therefrom. But the biggest challenge associated with domestic adjudication of presidential and other election disputes in Nigeria is the inability of the petitioner to obtain all the electoral materials required from INEC, whose officials are always incentivised by their opponents to deny them access to inspection of electoral materials, and obtaining certified true copies of the materials, therefore making it impossible to prove fraud, manipulation, mutilation, over-voting, wrongful cancellation, ballot snatching or stuffing, and non-compliance.[44]

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CHAPTER FIVE

CONCLUSION

This chapter ties up the whole work. From the beginning, the study set out to look at how election litigation has become part of Nigeria's democracy and what the courts have done with post-election matters. Chapter One talked about the background to the study. It explained why elections in Nigeria hardly end at the polling unit. The chapter showed that our history of disputed polls, weak electoral management, and the "do-or-die" attitude of politicians made the courts the final place where winners and losers meet. That background was important because it set the stage for everything that followed. Without understanding why Nigerians go to court after every major election, we cannot understand the history, the nature, or the impact of the cases themselves.

Chapter Two talked on the brief history of election litigation in Nigeria. It traced the journey from the First Republic when petitions were few and the laws were still new, through the Second Republic where the 1979 and 1983 elections produced serious court battles, to the long break under military rule when the courts were silent because there were no elections. The chapter then moved to 1999 and the Fourth Republic where election litigation exploded. Every general election since 1999 has

ended up in the tribunals and the Court of Appeal, with some reaching the Supreme Court. The 2003, 2007, 2011, 2015, 2019, and 2023 elections all had their share of petitions. The chapter showed that as democracy grew older, the courts also grew busier. It showed that the judiciary moved from being a side actor to a central player in deciding who rules. The history also revealed a pattern: each time the Electoral Act was changed, it was often because of what happened in court. So the courts have not only settled disputes, they have also shaped the law.

Chapter Three focused on the nature and manifestations of post-election litigation in Nigeria. It explained what these cases look like in real life. Most petitions start because one party believes the election was not free and fair. The complaints are usually the same: over-voting, ballot box snatching, wrong computation of results, failure to follow the Electoral Act, and issues with the voters register. In the last two election cycles, technology added new problems. The use of BVAS for accreditation and IReV for uploading results brought fresh grounds for petitions. The 2023 presidential election is a clear example. The main questions before the tribunal were whether INEC was bound to transmit results electronically in real time and whether failure to do so was enough to cancel the election. The chapter also showed that post-election litigation is not just about law. It is about evidence. A petitioner may have the truth on his side but if he cannot bring the polling unit results, the BVAS reports, or INEC documents on time, he will lose. Time is another big part of the nature of these cases. The law gives 180 days for the tribunal and 60 days for appeals. This looks long on paper but in practice lawyers and judges are always racing. Witnesses are

hard to bring. INEC is slow to release documents. Technical objections take weeks. All these things make post-election litigation in Nigeria look like a second election, this time fought with affidavits and exhibits instead of posters and rallies.

Chapter Four discussed the impact of the judicial process on post-election matters in Nigeria. The impact has been both good and difficult. On the good side, the courts have removed governors who were not duly elected and have returned mandates to the real winners. Cases in Anambra, Edo, Osun, Ekiti, Zamfara, Bayelsa, and Imo show that the judiciary can correct what happened on the field. These judgments have helped to tell politicians that they cannot always rely on rigging because the courts are watching. The judiciary has also pushed INEC to do better. Many of the improvements in our electoral law came after the courts pointed out gaps. The Electoral Act 2022, for instance, gave legal backing to BVAS and electronic transmission because of lessons from past judgments. So the courts have helped reform the system.But there is a difficult side too. When the courts decide who wins an election, some people feel that judges have taken the power of the voters. If a governor is removed two years after election because of a pre-election case, the people of that state will ask why the courts did not act faster. If a presidential petition is decided almost eight months after swearing-in, the country has been governed by a man whose legitimacy is still being questioned in court. This creates tension and slows down government. It also makes people lose faith in elections. They begin to say, “why should I vote when the court will decide?” That feeling is dangerous for democracy. Another impact is that politicians now prepare for two battles: one at the

polls and one in court. Huge amounts of money are kept for litigation. Lawyers are hired even before the election day. This shows that the judicial process, while helpful, has also become a normal part of rigging and counter-rigging.Having looked at all these chapters, what is the final word? The first is that election litigation in Nigeria has come to stay. We may not like it, but as long as our elections are not perfect, the courts will be busy. The judiciary has become the last bus stop of the electoral process. That role is not easy. Judges are asked to do what the entire electoral body and millions of voters could not do cleanly. They must do it under pressure, under time limits, and under the eyes of a divided country. Sometimes they get it right and the nation claps. Sometimes they get it wrong or they are seen to be wrong, and the nation cries. But the fact that we still run to the courts after every election means that we still believe in law. That is something to hold on to.The second final word is that the courts cannot carry this load alone. If INEC conducts better elections, there will be fewer petitions. If security agencies stop ballot box snatching, there will be less evidence of violence to argue about. If politicians accept defeat when they lose, tribunals will be empty. The judiciary is a safety net, but a country cannot live on a safety net. We must fix the election process so that the courts are not needed as much. This means proper training for ad-hoc staff, early release of funds to INEC, real punishment for electoral offenders, and voter education that tells people that their vote must count on election day, not in court.The third point is about trust. The judiciary must continue to earn the trust of the people. This is done through clear judgments, open hearings, and courage to do justice even when it is not popular. In election cases,

the whole country is the gallery. People from all sides are watching. They may not read the full judgment, but they will hear the summary. If the reason for the decision is simple and strong, people may disagree but they will respect it. If the reason is full of technical language that hides the truth, people will say the court has taken sides. The 2023 presidential election tribunal and Supreme Court judgments were tested this way. Millions of Nigerians watched and formed opinions. That shows how important the judiciary has become to our national life.The fourth point is time and finality. The current law has tried to fix delay, but we can do more. Pre-election matters should end before election day so that only real winners go on the ballot. Post-election matters should be filed and finished quickly so that whoever is sworn in can work without the cloud of a court case. When a case drags, it hurts both the person in office and the person in court. The state also suffers because projects and policies are delayed. Justice delayed in election matters is not just justice denied, it is governance denied.In closing, this study has shown that the judiciary plays a key role in post-election matters in Nigeria.

From Chapter One to Chapter Four, we saw the reason for litigation, the history behind it, what it looks like today, and how it has affected our politics. The conclusion is that the courts have helped to save our democracy many times, but they have also shown us how weak our democracy still is. The best way forward is not more litigation but better elections. The best role for the judiciary is to be ready and trusted, but not needed too often. Nigeria’s democracy will be stronger when the ballot box speaks clearly, when the electoral body is truly independent, and when politicians win

and lose with grace. Until that day comes, the courts will remain open after every election, and the fate of the nation will, in part, be decided by judges in silent courtrooms. The hope is that with time, the law, the people, and the leaders will work together so that the voice of the court becomes an echo, not the main voice, in deciding who leads Nigeria.

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