THE STRUCTURE OF THE JUDICIAL SYSTEM IN ELECTION DISPUTE AND IN THE ELECTORAL PROCESS

BEING A PAPER PRESENTED AT NJI 2019 ANNUAL REFRESHER COURSE FOR JUDGES AND KADIS FROM 11 – 15TH MARCH, 2019 AT ANDREWS OTUTU OBASEKI AUDITORIUM, NATIONAL JUDICIAL INSTITUTE, MOHAMMED BELLO CENTRE, JABI, ABUJA

BY

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I am immensely grateful to the ***ADMINISTRATOR,*** National Judicial Institute for the opportunity and privilege to present a paper titled ***THE STRUCTURE OF THE JUDICIAL SYSTEM IN ELECTION DISPUTE AND IN THE ELECTORAL PROCESS*** within the theme of this year's workshop which is "***Repositioning the Judiciary for Better Justice Delivery"***

I deem it fit to find meanings to the words "Structure", "Judicial System", "Election Dispute" and "Electoral Process".

"Structure" means "to arrange" as defined on page 1650 of the Black's Law Dictionary, 10th Edition. "Judicial System" otherwise known as Judicature has been defined in said Black's Law Dictionary page … as;

> ***"1. The action of judging or of administering justice through duly constituted Courts.***
> ***2. Judiciary.***
> ***3. A judge's office, function, or authority.***
> ***4. The system by which Courts, trials, and other aspects of administration of justice are organized in a country. Also termed (in sense 4) judicial system."***

"Election Dispute" to my mind relates to all conflicts, disagreements or controversies amongst political parties and candidates in general elections or other elections organized and conducted by an impartial or a constitutional or statutory body which in Nigeria is Independent National Electoral Commission INEC (in Nigeria), in respect of results declared or the return made by the body saddled with responsibilities

of conducting a free and fair election after the Electoral process has been concluded.

The disputes are resolved by the Tribunals and Courts as established by the Constitution and the electoral laws. In a book titled "***The Resolution of Election Disputes Legal Principles that Control Election Challenges" by Barry H. Weinberg,*** The author on page IIXX of the Introduction page had this to say:

> ***"Of course election disputes sometimes are resolved by tribunals other than by Courts. Disputes about the election of candidates to seats in a State House or Senate are resolved by those bodies in some states and by the United State Senate and House of Representatives for contests for those federal offices. But the legal principles that govern the resolution of election disputes are derived from cases that were decided by state courts. Even though these states court decisions will not always be applied in the same way or with the same result in all states, taken together they constitute the body of law that governs the resolution of election disputes."***

And what is "Electoral Process?" the apex courts in the land have on numerous occasions defined and reiterated the meaning. Suffice to refer to the cases of:

1. NATIONAL DEMOCRATIC PARTY (NDP) VS. INEC INDEPENDENT NATIONAL ELECTORAL COMMISSION (2013) 6 NWLR (PART 1350) 392 at 419 per ARIWOOLA JSC who said:

   "There is no doubt that the issue in the instant appeal involves electoral process which is the method by which a person is elected to public office in a democratic society."

2. CHIEF C. O. OJUKWU V CHIEF O. OBASANJO (2004) 1 EPR 626 AT 653 per SALAMI, JCA later PCA who said:-

   "The issue of election goes beyond merely voting, as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return; or declaration of result."

Adjunct to the above is the word "Election" which word has also received judicial consideration and decisions by the apex court in the land in the case of:

1. BRIG GEN. M, B. MARWA & ANOR VS ADMIRAL MURTALA MYAKO & ORS (2012) 6 NWLR (PART 1296) 199 at 357 C-D per ADEKEYE, JSC.
2. CHIEF ALEX OLUSOLA OKE & ANOR VS DR. RAHMAN OLUSEGUN MIMIKO & ORS (2014) 1 NWLR (PART 1388) 332 at 389 H to 389 A per PETER ODILI, JSC who said:-

   "***On this vexed issued, I would want hang for support on the case of Abubakar Yar'Adua (2008) 19 NWLR (Part 1120) 1 at 70 in which "election" was defined thus: Election is a process spanning a period of time and comprises a series of action from registration of voters to polling."***
3. SENATOR ABUBAKAR & ADDIO YAR'ADUA & ORS VS. SENATOR ABDU UMAR YANDOMA & ORS (2015) 4 NWLR (PART 1448) 123 at 177 A – B per M. D. MUHAMMAD JSC who said:-

   "Certainly, as asserted by the appellants, an elections is a long drawn process with distinct stages ending in the declaration of a winner by the returning officer. It entails one's membership of a political party, his indication or desire to be the party's candidate at the election, primaries for the nomination of the party's candidate, presentation of the party's candidate to

INEC, the event of the election, return of the successful candidate at the election after declaration of scores, and ends with the issuance of certificate of return to the successful candidate."

Pursuant to section 153(1) and (2) of the Constitution of the Federal Republic if Nigeria 1999 as amended the independent National Electoral Commission INEC is bestowed with the powers and duties to organize, undertake and supervise all elections to the offices of President, the Governor of a state, and to the membership of the Senate and House of Representatives and the Houses of Assembly of each state of the Federation. This is made clearer in paragraph 15 (a) – (1) of the Third schedule to the CFRN 1999 as amended). In the performance of its duties or responsibilities aforesaid and specifically as provided under section 158(1) of the said CFRN, the Independent National Electoral Commission is not subject to the direction or control of any other authority or person. See also sections 1 and 2 of the Electoral Act 2010 as amended.

Sections 30, 31, 32, 33, 34, 35 and 36 endow INEC with the powers to give NOTICE of General Election or bye Election to the general public and in particular to Political Parties to hold their parties primaries in order to nominate their candidates for the various political offices to contest in the General Elections in accordance with sections 85 and 87 of the Electoral Act 2010 as amended.

In their endeavour to select or nominate candidates for the elections the political parties must comply with the Electoral Act, and sections 177, 182, 221 – 223 of Constitution of the Federal Republic of Nigeria, 1999 as amended. It is also paramount and incumbent on each of the Political Parties to ensure full compliance with the Constitution and Guideline of the Party in the qualifications, nomination and election

of Aspirants in accordance with sections 85 and 87 of the Electoral Act. The procedure must not be compromised by the parties. Political parties are to be bound by their own Constitution and Guidelines see:

1. NDP VS. INEC (2013) 6 NWLR (PART 1350) 392 at 419 E-H TO A –C per ARIWOLA JSC, who said

"There is no doubt that the issue in the instant appeal involves electoral process which is the method by which a person is elected to public office in a democratic society."It is therefore not in dispute that the body that is saddled with the responsibility of organizing, undertaking and supervising all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a State and to the Membership of the Senate' the House of Representatives and the Houses of Assembly of each State of the Federation is the Independent National Electoral Commission (INEC). See section 15(a) Part I of third Schedule to the 1999 Constitution of the Federal Republic of Nigeria.

In effect, in carrying out its constitutional responsibility in organizing and conducting an election, the Commission reserves the prerogative of issuing notice of activities for the election. As in the instant case, the Electoral Act, 2010 (as amended) provides a guideline as follows:

Section 30(1):

"the Commission shall not later than 90 days before the day appointed for holding of an election under this act, publish a notice in each State of the Federation and the Federal Capital Territory -

(a) Stating the date of the election and

(b) Appointing the place at which nominating papers are to be delivered.

(2) ***The notice shall be published in each constituency in respect of which an election is to be held."***

In the instant matter, the election in question was that of 2011 general elections. As clearly admitted in paragraph 4 of the affidavit in support of the originating summons of the appellant, the respondent "is the Commission established by law and. charged with the powers, inter alia, to organize and conduct elections into various elective offices in Nigeria."

2. HON. (MRS) DORATHY MATO VS. HON IORWASE H. HEMBER & ORS (2018) 5 NWLR (PART 1612) 258 at 295 D – H per ONOGHEN, CJN who said:

"A combined reading of these two provisions reveals that it is mandatory for the political parties to hold their congresses for the purpose of selecting their candidates in the headquarters of the Constituency. As was pointed out by learned counsel for appellant in their written address, the Electoral Act and the 2nd respondent's constitution make detailed provisions for the way and manner by which primary elections are to be conducted. This is to ensure a level playing field for all aspirants. Any contravention of the Act and constitution of the party in this regard would be regarded as a ploy to negate the principle of due process of law enshrined therein……"

The truth must be told and that is, that the 1st and 2nd defendants did not respect the provisions of the

Electoral Act and the constitution of the 2nd defendant in the conduct of the primaries. This court has decided in quite a number of cases that political parties must obey their own constitutions as the court will not allow them to act arbitrarily or as they like. See Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (Pt. 1275) 30 at 60, Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 376 at 514 paras. A-E; CPC v. Lado (2011) 14 NWLR (Pt. 1266) 40 at 91 - 92 paras. D-G.

At page 297 D – G of the said report KEKERE – EKUN, JSC said:-

> *"This case, in my view is a clear example of the mischief sought to be tackled by section 87(9) of the Electoral Act, 2010 (as amended). While it is true that the courts will not interfere in the internal affairs of a political party nor its choice of candidate, section 87(9) of the Electoral Act ensures that in making their choice of candidate for elective office political parties do not stray beyond the confines of the Electoral Act or their own electoral guidelines. The section seeks to curb the impunity with which political parties hitherto acted without regard to the democratic norms they profess to practice. As stated by my learned brother in the lead judgment, this court in a plethora of cases has asserted the fact that political parties must obey their own constitutions and guidelines and where necessary (as provided by law) the courts will intervene and wield the big stick to prevent arbitrariness. The only way our*

democratic dispensation can work effectively is where every aspirant for political office, who is qualified to contest an election, is given an even playing field. The failure of internal democracy within our political parties right from the grassroots level eventually leads to instability in the entire political system. The failure of internal democracy is one of the reasons why the courts' dockets are congested with pre-election disputes.

In Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 376 @ 514 D-E, this court per Mahmud Mohammed, JSC (as he then was) admonished:

"My lords, if we want to instill sanity into our human affairs, if we want to entrench unpolluted democracy in our body polity, the naked truth must permeate through the blood, nerve and brain of each and everyone of us. Although credit may not always have its rightful place in politics, we should try to blend the two so as to attain a fair, just and egalitarian society where no one is oppressed. Let us call a spade a spade!"

2. SENATOR AYOGU EZE VS PDP & ORS (2019) 1 NWLR (PART 1652) 1 at 24 B – E per KEKERE – EKUN JSC.
3. JOSEPH HEMEN BOKO VS. HON. B.B. NUNGWA & ORS (2019) 1 NWLR at 423 F – H to 424 A – C per OKORO, JSC.

The role of the Nigerian Judicature is very crucial and pivotal in Electoral Process. The courts have significant roles to play. The first port of call is the resolution of electoral disputes arising from or emanating from elections at National Convention, and congresses by every registered political parties as provided under section 85 of the

Electoral Act 2019 as amended and nomination of candidates of parties for general elections pursuant to section 87 (1) (2) (3) and (4) of the Electoral Act 2010 as amended. If after the primaries elections within each of the political parties and results declared from the primaries conducted, any aggrieved member who feels and he is feats that he has been short changed or that his political party fails to comply with its constitution or guidelines in the primary Election such an aggrieved Aspirant who participated in the party primaries for the choice of its candidates, can approach the court to ventilate his grievance or seek appropriate redress or remedy. A member of the political party who participates in the primaries for choice of its candidates, can also approach the courts designated to challenge the emergence of another Aspirant as candidate of his party where he can show that any of the provisions of the Electoral Act, Constitution and the guidelines of his or her Political Party has not been complied with in the selection or nomination of a candidate by his party.

These are generally referred to as Pre-Election Matters because they pertain to electoral issues arising in electoral process before the conduct of the election(s) into the various elective to be contested by political parties in general election or other election.

Section 87 of the Electoral Act 2010 as amended provides as follows:-

> ***"87(1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.***
>
> ***(2)The procedure for the nomination of candidates by political party for the various elective positions shall be by direct or indirect primaries.***

(3)A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

(4) A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below:

(a) in the case of nomination to the position of Presidential candidate, a party shall-

(i) hold a special Presidential convention in the Federal Capital Territory or any other place within the Federation that is agreed by the National Executive Committee of the party where delegates shall vote for each of the aspirants as the designated centre; and

(ii) the aspirant with the highest number of votes at the end of voting, shall be declared the winner of the Presidential primaries of the political party and the aspirant name shall be forwarded to the Independent National Electoral Commission as the candidate of the party;

(b) in the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates:

(i) hold a special congress in the State Capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party; and

(ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be

forwarded to the Commission as the candidate of the party, for the particular State;

(c) in the case of nomination to the position of a candidate to the Senate, House of Representatives and State House of Assembly, a political party shall, where it intends to sponsor candidates:

i) hold special congresses in the Senatorial District, Federal Constituency and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates; and

ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party;

(d) in the case of the position of a Chairmanship candidate of an Area Council, a political party shall, where it intends to sponsor candidates:

(i) hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date, and

(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party.

5. In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.

(6) Where there is only one aspirant in a political party for any of the elective positions mentioned in paragraph (4) (a), (b),

(c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party.

(7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.

(8) A political appointee at any level shall not be an automatic voting delegate at the Convention or Congress of any political party for the purpose of nomination of candidates for any election, except where such a political appointee is also an officer of a political party.

(9) Notwithstanding the provisions of this Act or rules of a political part an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT for redress.

(10) Nothing in this section shall empower the Courts to stop the holding of primaries or general election or the processes thereof under this Act pending the determination of a suit."

Thus it can be seen that section 87(9) gives limited jurisdiction to the Federal High Court or High Court of a State and the High Court of the Federal Capital Territory jurisdiction to entertain pre- election matters complaining of breach of electoral process at any political party's primaries for the choice of it candidates for elective offices. Two major conditions precedent must exist to give jurisdiction or vires

to the relevant court to entertain or adjudicate over a pre – election matter pursuant to section 87 (9) are:-

1. ***"The Plaintiff or the aggrieved Party member who can approach the Court must have participated in the primaries Election as a member of the Political party concerned.***
2. ***The Primary Election being impugned must have been conducted by National Executive Committee or National Working Committee of the Party or by authorised Election Committee set up by the two bodies mentioned.***

See:-

1. SENATOR AYOGU EZE V PDP & ORS (2019) 1 NWLR (PART 1652) 1 AT 24B – F per KEKERE-EKUN, JSC.
2. BOKO V NUNGWA (2019) 1 NWLR (PART 1654) 395 AT 423 E-H;
3. HON. BASSEY ETIM V AKPAN & ORS (2019) 1 NWLR (PART 1654) 451 AT 469 G.

Sections 31(5) and 87(9) of the Electoral Act 2010 as amended provide opportunities for aggrieved litigants in electoral process to challenge the candidature of an intending candidate in a general election and other elections that INEC may conduct at intervals.

Section 31(5) of the Electoral Act allows any person to challenge the candidacy of a person contesting an election on the platform of any political party for an elective office in a general election or bye-election whereas the only person with locus standi to challenge the nomination of a candidate under section 87 of the Electoral Act is a person who has participated in the Primary Election of a Political Party for

the elective office in issue and it must be a primary election authorised or conducted by the National Working Committee or National Executive Body of the Political Party concerned. In all of these the bottom line is that where there are litigation(s) as stated in the above two scenario, there can be no argument that the two types of litigation are pre-election matters. The Court's position is that a litigant under Sections 31(5) and Section 87(9) of the Electoral Act 2010 as amended can approach the Court to seek redress or vindicate his or her right in the Federal High Court, High Court of a State or Federal Capital Territory High Court against a candidate who emerges as candidate of a Political Party pursuant to Political Party Primaries conducted under Section 87(9) of the Electoral Act 2010. The two types of actions that can be consummated under both Sections of the Electoral Act 2010, are no doubt pre-election matters which ought to have been commenced before the general elections or the envisaged election in which the candidates whose emergence is being challenged under different platform would be elected.

For quite some years pre-election now there have been upsurge and high increase in pre-election matters. The parties there to finds it convenient for mischievous reasons on many occasions to devise all sorts of delay tactics in the prosecution of such cases particularly where the candidate whose nomination is being challenged wins the election. Such a candidate will muster all forms of maneuvering to thwart the pre-election suit against him. That has been the order of the

day in our nascent democracy. The Electoral process has witnessed situations whereby pre-elections are prolonged till the end of tenure of the candidate in pre-election matters.

The Legislative arm of Government therefore saw the need to control the ugly situation and thus passed the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 21) Act 2017 which was signed into law by the President of the Federal Republic of Nigeria on 7th June, 2018. The alteration or the amendment was carried out to further amended Section 285 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Section 285 (8 – 14) of the said Constitution as amended now read:-

> ***"(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre- election matter or on the competence of the petition itself; is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment"; and***
>
> ***"(9) Notwithstanding anything to the contrary in this Constitution; everything pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.***
>
> ***(10) A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.***

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against.

(12) An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from-the date of filing of the appeal.

(13) An election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of tie election.

(14) For the purpose of this section, "pre-election matter" means any suit by-

(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;

(b) an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions. of the Electoral Act or any Act of the National Assembly regulating Elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election and;

(c) a political party challenging the actions, decisions or

activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of the nomination preparation for an election."

This Act may be cited as the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21,) Act, 2017."

The Second window for pre-election matters or litigation before the holding of general elections can be found in sections 85 and 87 of the Electoral Act, 2010 as amended..

Sections 85 and 87(9) of the Electoral Act 2010 as amended provide as follows:-

"Notice of Convention, Congress, etc

85.(1) Every registered political party shall give the Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act."

"87(9) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions."

The law is now firmly rooted or that it is only an Aspirant who participated in the primary of a Political Party to vie for an elective office in general election to such office has the locus standi or capacity to complain or challenge any infringement or breach of sections 85 and 87(1) – (8) of the Electoral Act in the conduct or preparation for Political Primaries to elect Candidates who will take part in general elections. The person complaining and who has locus standi or standing to challenge nomination in the conduct of a Political Party Primary must not only be a member of the Political Party concerned he must have also participated in the said party primaries to enable him challenge the candidate whose name is forwarded to Independent National Electoral Commission by his party.

It will be rather outrageous or even outlandish for a person who belongs to opposing political party to challenge any infractions or non-compliance with Sections 85 and 87 of the Electoral Act as amended. See:-

1. YAR'ADUA V YANDOMA (2015) 4 NWLR (PART 1448) 123 AT 179 A – C per M. D. MUHAMMAD, JSC.
2. M. A. SHINKAFI & ANOR VS. A. A. YARI & ORS (2016) 7 NWLR (PART 1511) 340 AT 375 F - H TO 376 A – C per OKORO, JSC.

   ALHASSAN & ORS V. ISHAKU & ORS (2016) 2 SCM 11 AT 27 F - I TO 28 A – G per RHODES-VIVOUR, JSC.

Another class of Pre Election matter over which the Federal High Court, State High Court and Federal High Court have jurisdiction can be found under Section 31(5) and (6) of the Electoral Act 2010 as amended. Subsections 5 and 6 of Section 31 of the Electoral Act aforesaid provide:-

"Section 31(5) says:

"(5) Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or FCT against such person seeking a declaration that the information contained in the affidavit is false.

(6) If the Court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the Court shall issue an order disqualifying the candidate from contesting the election."

It is eminently clear that Section 31(5) of the Electoral Act allows any person to challenge the candidacy of a person contesting an election on the platform of any political party for an elective office in a general election or bye-election whereas the only person with locus standi to challenge the nomination of a candidate under Section 87(9) of the said Electoral Act must be a member of the political party concerned and must have participated in the primary election of the said party for elective office in issue and it must be a primary election authorized or conducted by the National Working Committee or the National Executive Body of the Political Party.

The Independent National Electoral Commission is always a necessary party to pre-election matters irrespective of which of the three Courts the pre-election matter is instituted having regard to Section 31(5) of the Electoral Act. The reason is that where the candidate whose nomination is challenged is adjudged to have given false information in Form CF001 submitted to the INEC such a candidate would be disqualified from contesting the election. See OBASI UBA EKEGBARA & ANOR V CHIEF DR OKEZIE IKPEAZU &

ORS (2016) 4 NWLR (PART 1503) 411 AT 434 C – H per COOMMASSIE, JSC.

I must quickly add that by the later decisions of the apex Court, the onus is now squarely on the litigant or person who alleges that the information contained in FORM CF001 is false to proof or establish the allegations raised against the candidate. See:-

1. DR SAMSON U. OGAH VS DR O. V. IKPEAZU (2017) 17 NWLR (PART 1594) 299 AT 336 G – H TO 337A per M. D. MUHAMMAD, JSC who said:-

   "I agree with learned senior counsel to both respondents that the appellant having asserted that 1st respondent's tax declaration in Form CF001 is false has the burden of proving what he asserts. Addedly, the reliefs the appellant seeks being declaratory, he succeeds on the strength of his case alone and not on the weakness of the case of the respondents. The appellant has the burden of proof to establish the declaratory reliefs to the satisfaction of the Court. Being declaratory, the reliefs are not granted even on the admission of the respondents. See Dume: (Nig.) Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361 and Senator lyiola Omisore & Anor v. Ogbeni Rauf Adesoji Aregbesola & Ors (2015) LPELR; (2015) 15 NWLR (Pt. 1482) 205.

   To succeed in his claim, therefore, the appellant must, in the final analysis establish that the 1st respondent never paid the tax he declared in Form CF001, exhibit D, to have paid as evidenced by exhibits A, B and C the tax receipts and tax clearance certificate respectively."

2. ENGR. M. Y. MAIHAJA VS ALHAJI IBRAHIM GAIDAM & ORS (2018) 4 NWLR (PART 1610) 454 AT 488H – 489A-D per BAGE,

JSC.

And on page 496F – H per KEKERE-EKUN, JSC who said:-

> ***"The law is settled that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, shall prove that those facts exist. It is also the law that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Where the commission of a crime is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. See sections 131, 132 and 135 (c) of the Evidence Act 2011.***
>
> ***It follows that where there is an allegation made pursuant to section 31(5) of the Electoral Act 2010, (as amended), that any information given by a candidate in the affidavit or any document submitted by that candidate is false, the burden is on the person who makes the assertion to prove that fact."***

3. JOE ODEY AGI, SAN VS PDP & ORS (2017) 17 NWLR (PART 1595) 386 AT 454 B – H TO 455 A – G per OGUNBIYI, JSC.

In the past, there is no time limit for the institution and disposal of a suit or action in pre-election matters. What the apex Court decided in some cases bordering on pre-election matters is that such an action must be instituted before the general election or the bye election and the proceeding could continue up to the last Court in the land even after the election BUT any pre-election matter instituted after the election in which the candidate whose nomination is being impugned has participated; such an action must abate as such an action cannot be regarded as pre-election matter. The aggrieved only option at that stage is to approach the Election Petition Tribunal.

The good news now which is another landmark in pre-election litigation is that it is now made time bound and like election petition matters that are sui generis, pre-election litigation must strictly comply with the provisions of Section 285 of the CFRN 1999 as amended by the Fourth Alteration No. 2 Act, 2017 assented to on 7 June 2018 subsections 9, 10, 11 and 12 thereof which all provide:-

"9. Notwithstanding anything to the contrary in this Constitution; everything pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(10) A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against.

(12) An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from-the date of filing of the appeal.

Thus both the litigants and Courts in pre-election matters have now been given timeline within which the action must commence and adjudicated upon as it is the position in Election matters..

It has been argued in some quarters that an action initiated pursuant to section 31(5) and (6) of the Electoral Act 2010 as amended is not caught by the timeline or time stipulations constitutionally prescribed in Section 285(9 – 12) of the CFRN 1999, as amended in that the Plaintiff envisaged under Section 31(5) of the Electoral Act

aforestated cannot be regarded as an Aspirant defined in Section 285(14) of CFRN 1999 as amended which provides:-

(14) For the purpose of this section, "pre-election matter" means any suit by-

(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;

(b) an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions. of the Electoral Act or any Act of the National Assembly regulating Elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election and;

(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters

and other activities of the Commission in respect of the nomination preparation for an election."

The Court of Appeal has ruled or decided otherwise. Any interpretation that seeks to exclude a litigant under Section 31(5) of the Electoral Act as amended from the purview of the Fourth Alteration No. 21) Act 2017 will undermine the whole essence of the new amendments or alteration contained in Section 285(9 – 12) of CFRN 1999 as amended.

See CA/A/698/2018 – MR ANTHONY ITANYI & ANOR V ALH. ABUBAKAR ATIKU BAGUDU & ORS delivered on 17th day of December 2018 pages 32 – 33 per P. O. IGE, JCA.

The definition of Section 285(14) (a)(b)(c) of the aforesaid Constitution must not be allowed to throw spanner into the wheel of progress in administration of justice to circumvent the laudable objectives and intendment of the amendments to the Constitution aforesaid for the mutual benefits of stakeholders in the three arms of government and the general public.

Perhaps it is necessary to bring to our attention also the influx of cases bordering on pre-election matters are now being filed in Federal High Courts and FCT High Court of Justice, Abuja Nigeria by litigants in respect of pre-election matters which cause of action accrued or happened in various States across the country either vide Section 31(5) and (6) or Section 87(9) of the Electoral Act 2010 as amended notwithstanding that in all States of the Federation there is established a High Court of a State and Federal High Court Divisions to which such action ought to have been instituted and adjudicated upon.

The Federal High Court Abuja, the FCT High Court are thus overworked and burdened with cases that ought to have been instituted in the State where the cause of Pre-Election matter arises. It is an open fact that Federal Capital Territory High Court does not possess territorial jurisdiction over causes or matters that take place in State outside the Federal Capital Territory yet litigants in pre-election matters find it strangely convenient to institute such actions at FCT High Court, Abuja. The said Courts are established by the Constitution and given additional jurisdiction by the Electoral Act for the mutual benefits of litigants or aggrieved persons in pre-election matters in all States of the Federation. The influx of such cases and filing of many of them in Abuja have in no small measure contributed to the ever increasing dockets of such Courts and the Court of Appeal Abuja with regard to interlocutory as well as final appeals to the Court in pre-election matters.

Happily the ultimate Court in the land, the Supreme Court of Nigeria has nipped the ugly trend in the bud in the case of HON. KHAMISU AHMAED MAILANTARKI VS HON. Y. B. TONGO & ORS (2018) 6 NWLR (PART 1614) 69 AT 86 B – H per EKO, JSC who said:-

> ***"My answer, therefore, to the submission of the appellant's senior counsel on this, is that the FCT High Court does not derive any jurisdiction from its rules of practice and procedure to entertain any cause or matter, the dispute in respect of which arose in Gombe State or any other place outside the Federal Capital Territory, Abuja. It is my considered view that the jurisdiction vested in the FCT High***

Court by section 257(1) of the 1999 constitution to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue is only to the extent of the disputes that arise within the territory of the Federal Capital Territory, Abuja. In Rivers State Government & Anor v. Konsult (Swedish Group) (supra), the poignant statement of the law, relevant and very material to our federal structure, is that a court in one State of the federation does not have jurisdiction to hear and determine a matter either exclusively within the jurisdiction of another state or which arose within the territory of another State. No court in any state, including the FCT High Court, has extra territorial jurisdiction.

This court had earlier categorically re-stated the law on this in Dalhatu v. Turaki (supra), where it was stated, with all clarity, that because the 1999 constitution, particularly section 2(2) thereof, declares that Nigeria is a Federation consisting of States and the Federal Capital Territory, Abuja, each State of the Federation is independent of the other and the jurisdiction of each State is limited to matters arising in the State."

At page 90B – D of the Report KEKERE-EKUN, JSC had this to say:-

"In the instant case, the cause of action, which is the primary election of the 2nd respondent, took place in Gombe State. The appeal committee also sat in Gombe State. There is therefore no justification for the institution of the suit

before the High Court of the FCT in Abuja. The filing of the suit before that court is a clear example of "forum shopping" in the hope of securing a favourable outcome. This practice has been seriously deprecated in numerous decisions of this court. The practice does not augur well for the administration of justice. It is also unethical practice on the part of the legal practitioner who filed the suit. I observe that the decision of this court in Jev v. Iyortyom (2014) 14 NWLR (Pt. 1428) 575 at 611-612 was mischievously misconstrued by learned counsel for the appellant. What was decided in that case was that where there is a division of the Federal High Court in a State as well as a State High Court, an aggrieved aspirant can institute his action in either court. This was in recognition of the fact that by conferring jurisdiction on the federal High Court and the High Court of a State or the Federal Capital Territory, the intention of the lawmaker was to give an aspirant the flexibility of ventilating his grievance in any of the courts listed therein depending on which location is most convenient to the parties. This cannot be taken to mean that a suit may be filed in any of the named courts anywhere in the Federation in blatant disregard of the particular court's territorial jurisdiction. That would be an absurd interpretation of the law and would no doubt lead to a miscarriage of justice."

ESTABLISHMENT OF ELECTION PETITIONS TRIBUNAL(S) AND COURTS WITH POWERS AND JURISDICTION TO RESOLVE POST ELECTION DISPUTES.

What constitutes the judicature in Nigeria can be found in Chapter VII of the Constitution of the Federal Republic of Nigeria 1999 as amended and within the template of our Judicature Part III of the aforesaid Chapter of the Constitution provides for the establishment of the Election Tribunals and jurisdiction of Election Tribunals pursuant to Section 285 of the said Constitution. The said Section 285 of our Constitution has witnessed and undergone some amendments or alterations to meets the exigencies and challenges thrown up in litigations for resolution of election disputes between 1999 and 2018 when the Constitution of the Federal Republic of Nigeria and 7th June, 2018 when another series of amendments were effected in Section 285 vide Act No. 8 titled CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (FOURTH ALTERATION, NO. 2 21) ACT, 2017 assented to by the President of the Federal Republic of Nigeria on 7th June 2018. Section 285 of the said Constitution now reads:-

> ***"285(1) There shall be established for the each State of the Federation and the Federal Capital Territory, one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion any court or tribunal, have original jurisdiction to***

hear and determine petitions as to whether-

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

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

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

(3) The composition of the National and State Houses of Assembly Election Tribunal, and the Governorship Election Tribunal, respectively, shall be as set out in the sixth schedule to this Constitution.

(4) The quorum of an election established tribunal under this section shall be the Chairman and one other member.

(5) An election petition shall be filed within 21 days after the date of the declaration of results of the election.

(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.

(7) An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal."

"(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre- election matter or on the competence of the petition itself; is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment.

(9) Notwithstanding anything to the contrary in this Constitution; everything pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(10) A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against.

(12) An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing of the appeal."

As can be seen in subsections 9 and 10 of Section 285 every complaint pertaining or relating to pre-election matters under Sections 31(5) and 87(9) of the Electoral Act 2010 as amended must be instituted not later than "14 days from the date of the occurrence of the event, decision or action complained of in the pre-election suit' and the Court in every pre-election matter must hear and determine the pre-election suit within 180 days computed from the date of the filing of

the suit. An appeal from a decision in pre-election matters must be filed within 14 days from the date of delivery of judgment and an appellate Court has 60 days within which to hear and determine the appeal counting from the date of filing of the appeal.

Two Tribunals are established under subsections 1 and 2 of Section 285 of the Constitution of the Federal Republic of Nigeria 1999 as amended namely:-

1. *National and State Houses of Assembly Election Tribunal for each State of the Federation and the Federal Capital Territory. It may be one or more of such election Tribunals with exclusive original jurisdiction to determine:-*
   (a) whether any person has been validly elected as a member of National Assembly;
   (b) as a member of the House of Assembly.
2. *Establishment in each State of the Federation Governorship Election Tribunal with exclusive jurisdiction to hear and determine whether any person has been validly elected to the office of Governor or Deputy Governor of a State.*

The composition of the aforesaid Tribunals can be found in the Sixth Schedule to the Constitution. The composition for the two categories of Election Tribunals is the same. An Election Petition Tribunal shall be duly constituted if it

consists of a Chairman and two other members. In each case the Chairman must be a Judge of a High Court while the two other members shall be appointed from among Judges of a High Court, Kadis of Sharia Court of Appeal, Judges of Customary Court of Appeal or other members of the Judiciary not below the rank of a Chief Magistrate.

The Constitutional power and duties to appoint the Chairman and members of the said Election Tribunals are vested in the President of the Court of Appeal in consultation with the Chief Judge of a State, the Grand Kadi of the Sharia Court of Appeal of a State or the President of the Customary Court of Appeal of a State as the case may be. The Chairman and members can sit on any of the Election Tribunals.

The President can also move or relocate an Election Tribunal to work in any State and where necessary in case of any security challenges and where the interest of justice demands. See the case of WIKE EZENWO NYESOM V HON. (DR) DAKUKU PETERSIDE & ORS (2016) 1 NWLR (PART 1492) 71 AT 109 B per SANUSI, JSC who said:-

> ***"Looking closely at the provisions of Paragraphs A(1)(3) and B2(3) of Sixth Schedule to the 1999 Constitution makes the position clearer, in that, they give the President of the Court B of Appeal unfettered statutory power to the exclusion of anybody, to constitute election tribunals by appointing their chairmen and members."***

At page 109F-H TO 110 A – B my Lord continues:-

"The question that may be asked is, is consultation with either of the two functionaries by the President of Court of Appeal a pre- condition for constituting, appointing or empanelling the tribunal? I do not think so. In the first place, in the present scenario, the said two functionaries were not available in Rivers State. Is it wise or proper for the President of the Court of Appeal to refuse or neglect to appoint any Judge from Rivers State to serve in any election tribunals? It is noted by me, that in his brief argument, the appellant's senior counsel expressed the view that for proper constitution of the tribunal, the Chief Judge of Rivers State or the President of Customary Court of Appeal ought to have been consulted. I think the learned silk for the appellant missed the point or has misconstrued the provisions of Paragraph 1 (3) of the Sixth Schedule to the 1999 Constitution. As I understand it, the purpose of consultation with the two functionaries was/is not to appoint this particular tribunal whose jurisdiction he is challenging. Rather, the consultation with either of the two functionaries by the President of Court of Appeal was simply to get some eligible Justices/Chief Magistrates who are fit and proper from Rivers State and who are indigenes of that state, to serve in election tribunals anywhere in the country and NOT necessarily in Rivers State. Afterall, it may not even be feasible that Judges (who are indigenes) of Rivers States would be appointed by the President of the Court of Appeal and be deployed to serve in Rivers State, their State of origin to determine election

petitions filed from Rivers State. Even in the absence of the Chief Judge or President of Customary Court of Appeal, for her to consult, that will not prevent the President of Court of Appeal from appointing suitable and competent Justices/Chief Magistrates from that State to serve in tribunals in the country, as it will amount to injustice to exempt or exclude indigenes of Rivers State from participating in ongoing petition hearing exercise which is a national service. It will therefore be absurd if she excluded them."

On page 121 E – F his Lordship said:-

"I have closely studied section 285(2) of the 1999 Constitution and unable to see anywhere in the said provisions where it was stated that election tribunal for each State shall or must sit in the State, to the exclusion of the possibility of it sitting anywhere or somewhere else, especially in a situation where there are compelling or apparent reasons of evidence of serious insecurity which could compel it to relocate to another venue outside the State it was established for."

And lastly on page 123 B – C His Lordship has this to say:-

"As a corollary, it is my view that doctrine of necessity is applicable in this instant case and it was rightly applied by the tribunal and the lower court to justify the resolve by the President of the Court of Appeal, to relocate the tribunal to Abuja to hear and determine the petition instead of in Rivers State, in view of the impending insecurity prevailing there in order to save the lives of the Judges of the tribunal and Supporting staff.

See the case of Lakanmi & Anor v. Attorney Gen rat West (1970) NSCC 143 and the recent case of Oguebie & Anor v. Chukwudile & 2 Others (1979) All NLR 38 at 52-53."

The quorum of an Election Tribunal as stipulated in Section 285(4) of the Constitution of the Federal Republic of Nigeria 1999 as amended shall be Chairman and one other member and I must say that this is sacrosanct and immutable from the commencement of proceedings in an election Petition presented to the Tribunal until the final determination of the Election Petition.

A Tribunal member including a Chairman who does not partake in the hearing of a Motion or evidence of witnesses cannot give Ruling or Judgment in/on the Petition. So also a Chairman who does not take part in such matters cannot read or sign the Ruling or Judgment in an election Petition. See the case of WIKE EZENWO NYESOM V HON. (DR) DAKUKU ADOL PETERSIDE & ORS (2016) 7 NWLR (PART 1512) 452 AT 503 G – H TO 505 A – E per KEKRE-EKUN, JSC who said:-

"It is It is not in dispute that the panel of the tribunal that heard the application dated 30/6/2015 was different from the Panel that sat on 9/912015 when the ruling was delivered. By section 285(3) of the 1999 Constitution, the composition of the Governorship Election Tribunal shall be as set out in the Sixth Schedule to the Constitution. Paragraph 2(1) of the 6th Schedule provides that the Governorship Election Tribunal shall consist of a chairman and two other members, while section 285(4) of the Constitution provides that the quorum of an Election Tribunal established under the section shall be the Chairman and

one other member.

It has been argued on behalf of the 1st and 2nd respondents that the delivery of the ruling by the tribunal headed by Ambursa, J. was in compliance with the directive of the tribunal to deliver the ruling previously adjourned to be dealt with along with the main petition, and that the signature of Ambursa, J was only appended to comply with the constitutional provision regarding quorum. That one of the tribunal members who participated in the hearing of the petition, Hon. Justice Leha, delivered the ruling. It is also contended that the provision of paragraph 25(1) of the 1st Schedule to the Electoral Act was not applicable in the circumstances of this case, as the hearing had not commenced.

Section 294 (1) and (2) of the 1999 Constitution (as amended) provides thus:

> *"(1) Every court established under this Constitution shall deliver its decision in writing not later than Ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.*
>
> *(2) Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing, or may State in writing that he adopts the opinion of any other Justices who delivers a written opinion:*
>
> *Provided that it shall not be necessary for all*

the Justices who heard a cause or matter to be present when judgment is to be delivered and the opinion of a Justice may be pronounced or read by any other Justice whether or not he was present at the hearing."

It is evident from this constitutional provision that the intention of the framers of the Constitution is that where a panel of Justices hears a cause or matter, each of them must express and deliver his opinion in writing. Such written opinion may however be delivered by any other justice of the court on behalf of a Justice who participated in the hearing but is unavoidably absent. The opinion delivered must be the opinion of the Justices who participated in the hearing. Even though the provision of section 294(1) and (2) refers specifically to Justices of the Supreme Court and the Court of Appeal, it is my view that the principle is applicable to any court or tribunal that sits in a panel of two or more members. In the instant case, Pindiga, J as Chairman with, Leha, J and Taiwo, J heard the application. The ruling delivered on 9/9/2015 signed by Ambursa, J as chairman and Leha and Taiwo, JJ as members, reviewed the submissions of learned counsel made at the hearing of the application before dismissing same. There is no doubt that Ambursa, J could not have formed an opinion on the submissions of learned counsel, which he did not hear. In the eyes of the law only Leha, J and Taiwo, J

delivered the ruling.

The signature of Ambursa, J on the ruling was invalid. In the case of Sokoto State Govt v. Kamdex Nig. Ltd. (2007) 7 NWLR (Pt. 1034) 466 a similar situation arose where a Justice of the Court of Appeal who did not participate in the hearing of the appeal wrote and delivered a judgment therein. The judgment so delivered was declared a nullity. See also: Ubwa v. Tiv Traditional Council (2004) 11 NWLR (Pt. 884) 427.

The remaining two members of the tribunal who participated in the hearing of the application and delivered opinion therein could not form a quorum in the absence of the chairman who participated in the hearing. The tribunal was not properly constituted for the delivery of the ruling and therefore lacked the competence to do so. See Madukolu v. Nkemdilim (1962) 2 SCNLR 341.

I therefore agree with learned counsel for the appellant that the ruling delivered on 9/9/2016 was without jurisdiction. It is a nullity. It follows that the appellant's right to fair hearing was breached as there is no resolution of the issues submitted for determination in the said application."

My Lord I. T. MUHAMMED, JSC – now the Hon. Ag. CJN had this to say on page 539 B – E of the Report.

"The genesis of what brought about the improper constitution of the Tribunal when it sat and delivered a ruling on the 9th September, 2015, has been clearly set

out in the lead reasoning. I only re-iterate the position of the law that a judicial officer of whatever jurisdiction who did not participate in court in taking proceedings in respect of the suit/case in question, has no legal right or capacity to express an opinion in determining dispute between parties in that suit/case he did not participate at the hearing level of the suit/case. If he does so, the decision delivered in which such a judicial officer participated is a nullity as the court/tribunal was not properly constituted. See: Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Adeigbe v. Kusimo (1965) All NLR 248 at 263; Sokoto State Govt. v. Kamdex (Nig.) Ltd. (2007) 7 NWLR (Pt.I034) 492 at 497; Ubwa v. Tiv Area Traditional Council (2004) 11 NWLR (Pt.884) at 436."

It is also here relevant to refer to paragraph 27(1) of the Rules of Procedure for Election Petitions contained in the 1st Schedule to the Electoral Act 2010 as amended which provides:-

"27. (1) All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the court who shall have control over the proceedings as a Judge in the Federal High Court."

The above provisions of paragraph 27(1) is glaringly and violently in conflict with Section 285(3) & (4) of the Constitution supra which constitutionally prescribes that the QUORUM of an Election Tribunal shall be the Chairman and one other member. The Sixth Schedule states that a Tribunal shall be constituted by a Chairman and two

other members.

Paragraph 27 is/was an aberration because it is the Constitution or Statute gives ordinates jurisdiction to Election Tribunals or Courts not Rules of Procedure. The said paragraph 27 has been struck down by the Court of Appeal in CA/E/EPT/02/2014 – NGIGE & 1 OR V INEC & ORS Unreported delivered by AGIM, JCA.

Thereafter the Supreme Court of Nigeria emphatically decided that a Chairman of an Election Tribunal cannot constitute the Tribunal and cannot sit alone. See the case of MEGA PROGRESSIVE PEOPLES PARTY VS INEC & ORS (No. 2) (2015) 18 NWLR (PART 1491) 251 AT 270 AT 270 G – H TO 271A per MUNTAKA COOMMASSIE, JSC who said:-

> "***My lords, it is in a nutshell, that the trial court was not properly constituted as regards membership. The relevant law says that tribunal be constituted with chairman and at least one member.***
>
> ***Any other law, Act or Regulations which says otherwise cannot be correct. It is my view without much ado, that the trial tribunal was improperly constituted when it considered and determined the petition brought to it. Whatever decision or decisions it reached is a nullity no matter how beautifully the decision was written. That trial court could have heeded the challenge and complaint of the appellant's counsel and it should have declined jurisdiction. The provisions of the constitution of the Federal Republic of Nigeria, 1999 as amended, by its S. 285(4) no tribunal can be properly constituted with the chairman alone. All other laws or Act which provides that a chairman alone, without any member can***

sit and determine a petition is void for inconsistency."

Again I. T. MUHAMMAD, JSC now Ag. CJN said on page 277 F – H to 278:-

"Now, Election Tribunals are, generally, established under section 285(1) and (2) of the Constitution. The composition of such Tribunals is spelt out in section 285(3) of the Constitution. Section 285(4) provides for the coram of such tribunals. For the avoidance of about, the two subsections read as follows:

> ***285(3) The composition of the National and State Houses of Assembly Election Tribunal and the Governorship Election Tribunal respectively, shall be as set out in the Six Schedule to this Constitution.***
>
> ***(4) The quorum of an election established tribunal under this section shall be the chairman and one other member" (Italics for emphasis)***

The Sixth Schedule of the Constitution referred to in section 285(3) of the Constitution, part B thereof provides:

> ***"2(1) A Governorship Election Tribunal shall consist of a Chairman and two other members.***
>
> ***(2) The Chairman who shall be a Judge of High Court and two other members shall be appointed from among Judges of a High Court, Kadis of Sharia Court of Appeal or members of the Judiciary not below the rank of a Chief Magistrate."***

Thus, the composition and quorum have been stipulated by the Constitution. By the supremacy of the Constitution, the two cannot be altered or removed. They are permanent

features of the Constitution except where same have been amended by the legislature. Any attempt to change, alter or remove anything from the provision as it is in the constitution, will ran foul or contrary to the constitution and would result into non-compliance with the constitution and same would be a nullity."

On page 279D – H TO 280A my Lord continues:-

"Thus, where the tribunal chairman sat alone and considered the consolidated motions alone and delivered his ruling alone, he only succeeded in wasting his precious judicial time, that of the parties and then counsel and any other person or institution that has one thing to do or another in relation to that proceeding. Paragraph 27 of the First Schedule of the Electoral Act has no relevance to the jurisdiction of the tribunal. It is covered by section 285(4) of the Constitution. <u>That is the essence of doctrine of</u> covering the field such that <u>where a main principal or superior law</u> has covered a given field or area; any other subsidiary law may in that area cannot operate side by side with the main/principal superior law. If it is inconsistent, it has to be declared void to the extent of its inconsistency. The supremacy of the constitution must be obeyed and respected."

Now at the end of every election to any elective office at the general election or by election conducted by the Independent National Electoral Commission, the designated Returning Officer of the Commission must announce a winner of the election after the collation of result of the election concerned in accordance with Sections 68 and 69 of the Electoral Act 2010 as amended to signal the conclusion of

the election. The sections provide:-

"Decision of Returning Officer on Ballot Paper

68. The decision of the Returning Officer on any question arising from or relating to -

(a) unmarked ballot paper;

(b) rejected ballot paper; and

(c) declaration of scores of candidates and the return of a candidate, shall be final subject to review by a tribunal or Court in an election petition proceedings under this Act.

Declaration of Result

69. 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 subject to the provisions of sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate Returning Officer."

Any result declared by the appropriate Returning Officer can only be reviewed by a Tribunal or Court in an Election Petition proceedings under the Electoral Act.

Now upon the return of any candidate as winner of any elective offices or the election contested whether at the general election or a bye election conducted by the Independent National Electoral Commission, the return or declaration by INEC that a candidate has

won an election and returned as elected, the result of the election and the return made by INEC enjoys the presumption of regularity subject to review or nullification only by election petition Tribunal or Court established under Section 239(1) and 285(2) of the Constitution.

It is of paramount importance to state that election result declared by a Returning Officer enjoys presumption of regularity. Any person who disputes the correctness or authenticity of the result or return has the onus to rebut the presumption in a Tribunal or Court aforesaid. See:-

1. CHIEF JIM NWOBODO VS CHIEF ONOH & ORS (1984) 1 SC 1 AT 52 – 54 per BELLO, JSC, late CJN of blessed memory.;
2. CHIEF AKIN OMOBORIOWO V CHIEF M. A. AJASIN (1984) 1 SC 206 AT 227 – 228 per BELLO, JSC later CJN of blessed memory who said:-

   "Now as I stated in Nwobodo (supra) there is in law a rebuttable presumption that the result of any election declared by the Returning Officer is correct and authentic by virtue of Sections 115, 148(c) and 149(1) of the Evidence Act and the burden on the person who denies the correctness and authenticity of the return to rebut the presumption."
3. GENERAL MUHAMMADU BUHARI V INEC & ORS (2008) 19 NWLR (PART 1120) 246 AT 344 C – D per NIKI TOBI, JSC of blessed memory).
4. CONGRESS FOR PROGRESSIVE CHANGE VS INEC & ORS (2011) 18 NWLR (PART 1279) 493 AT 544 G – H to 544 A – G to 545 A – G per ADEKEYE, JSC.

Part VIII of the Electoral Act provides for the determination of Election Petition arising from elections it thus provides for proceedings to question an Election, the persons entitled to present

Election Petitions, Grounds of Petition, defects that can invalidate election, nullification of election by Tribunal or Court and effect of non-participation in an election.

Declaration of Result of an election and Return therefrom can only be question in the manner provided by a petition complaining of an undue election or undue return presented to a competent Tribunal or Court as established under the Constitution of the Electoral Act pursuant to Section 133 of the Electoral 2010 as amended.

PARTIES TO ELECTION PETITION AND GROUNDS OF ELECTION PETITION

The above are covered by Sections 137 and 138 of the Electoral Act 2010 as amended which all provide as follows:-

"137(1) An election petition may be presented by one or more of the following persons-

(a) a candidate in an election;

(b) a political party which participated in the election.

(2) A person whose election is complained of is, in this Act, referred to as the respondent.

(3) If the petitioner complains of the conduct of an Electoral Officer, a Presiding or Returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be-

(a) made a respondent; and

(b) deemed to be defending the petition for itself and on behalf its officers or such other persons.

138.(1) An election may be questioned on any of the following grounds, that is to say:

(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;

(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or

(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election."

Thus the locus standi or capacity and right to initiate or commence Election Petition before a Tribunal or Court established under Section 239(1) and (2) of the Constitution of Federal Republic of Nigeria 1999 as amended in respect of Presidential Election and under Section 285(1) and (2) of the same Constitution in respect of the office of Governor of a State is severely circumscribed and statutorily limited to a Candidate in an Election and a Political Party which

participated in the election. The same is true in the case of Election to the National and State Houses of Assembly and election Petitions as to whether any person has been validly elected as a member of National Assembly or House of Assembly of a State.

The Petitioner or Petitioners as the case may be must make the person elected or returned as a Respondent to the Petition. Another indispensable Respondent to an election Petition is the Independent National Electoral Commission. An action will not be properly constituted unless the aforesaid statutory Respondents are made parties and this will rob the Court or the Election Petition Tribunal the necessary vires or jurisdiction to adjudicate on the Petition. See:-

1. APC V PDP (2015) 15 NWLR (PART 1481) 1 AT 61A-H TO 62A-G per NGWUTA, JSC who said:-

   "However, section 137 of the Electoral Act, 2010 as amended made provision for parties to an election petition. The section is hereunder reproduced:

   "S.137(1): An election petition may be presented by one or more of the following persons:

   (a) A candidate in an election.

   (b) A political party which participated in the election.

   (2) A person whose election is complained of is in this Act referred to as the respondent.

   (3) If the petitioner complains of the conduct of an Electoral Officer, a Presiding or Returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be

(a) made a respondent, and

(b) deemed to be defending the petition for itself and on behalf of its officers or such other persons."

The Act, in section 132 (3) prohibits the joinder of electoral officer, returning officer and other staff or agents of the Commission.

The Commission has the duty to answer for the conduct of "its Officers or such other persons. By doctrine of ejusdem generis, those referred to as "such other persons", permanent or temporary staff of the Commission exclude non employees of the Commission. The Commission answers for the conduct of its officers and "such other persons" even if the allegation or complaint against them is of criminal offence. Any person or group of persons outside the Commission's "officers and such other persons" not employed for the proper conduct of the election getting involved in the election process does/do so at his/their own risk. They are on a frolic of their own and the Commission has no duty to answer for their conduct.

In my view, the 4th and 5th respondents are not within the class of the Commission's officers or "such other persons" who may have been employed as permanent staff or ad hoc staff in the Commission. In other words, the 4th and S" respondents at all material times were neither "officers" of the Commission nor were they "such other persons" engaged by the Commission and it therefore follows that they are not necessary or even parties to the petition challenging the result of the June 21st, 2014 election in Ekiti State.

But assuming without conceding that the 4th and 5'h respondents are necessary parties to the petition what is the claim against them?

The issue of relief sought against either or both of them does not arise in view of the fact that in election, the usual relief is an order to declare the petitioner winner or to nullify the election and order a fresh election in the area involved.

It does not make sense to join a party to any proceeding, except a statutory party, where no complaint is made against such party. One may ask what is the complaint against either or both of the 4th and 5th respondents? The two respondents are mentioned in paragraphs 6,7,68,92,95,99 and 101. In paragraphs 6 and 7, the status of the 4th and 5th respondents were stated. In paragraph 68 to 101 the only reference to the 4th and 5th respondents was in the phrase "officers and men of the 4th and 5th respondents". The said officers and men were alleged to have committed series of acts which are criminal in nature. The words "officers and men of the 4th and 5th respondents" evoke memories of the "unknown soldiers" of Dr. Mrs. Ransome Kuti fame. See Dr. Mrs Ransome-Kuti & Ors v. A.-G., Federation & Ors (1985) 2 NWLR (Pt. 6) 211.

The identities of the soldiers who were alleged to have done damage to the property of the plaintiff in the case were not issues at the trial or appeals. The criminality of the acts of the soldiers was not an issue at the trial of the civil matter or appeals arising therefrom. However, in the matter at hand, the soldiers against whom allegations of crime were made were unknown and cannot therefore be said to be servants of the 4th and 5th respondents in order to invoke the fiction that the master had impliedly commanded his servant to do what he did. See Iko v. John Holt &

Co. (1957) 2 FSC 50 page 2064 paras. G-H, page 2091 paras. D-E; (1957) SCNLR 107.

2. ALHAJI ADAMU MAINA WAZIRI & ORS V ALHAJI IBRAHIM GAIDAM & ORS (2016) 11NWLR (PART 1523) 230 AT 263 B – H TO 265 A – E.

At page 265 F – H my Lord PETER-ODILI, JSC had this to say:-

"From the above, I have no difficulty in going along with the submissions of the respective counsel for the respondents that section 137(2) and (3) of the Electoral Act 2010 has no room for the joinder of the 5th respondent who neither won the election nor performed any role as an electoral officer or agent of the 3rd respondent in the election petition challenging the result of such an election and even no relief was claimed against the said 5th respondent and indeed, he had nothing to gain or lose in the petition aforesaid. Also, the jurisdiction of the Election Petition Tribunal is circumscribed and sui generis or unique in nature and so, 51h respondent being outside those expected within the limited provisions of the Electoral Act cannot be brought in as a party under any guise. See Oke & Anor v. Mimiko & Ors (2013) LPELR-20645; (No.2) (2014) 1 NWLR (Pt. 1388) 332; Yusufu v. Obasanjo (2003) 16 NWLR (Pt. 847) 532 at 617; Justice Party v. INEC (2006) All FWLR (Pt. 339) 907 at 940; (2004) 12 NWLR (Pt. 886) 140."

3. ALHAJI JIBRIN ISAH V INEC & ORS (2016) 18 NWLR (PART 1544) 175 AT 223 F – G, 232B-D and 240A-C.
4. HON. H. SERIAKE DICKSON V CHIEF TIMIPRE M. SYLVA & ORS (2017) 10 NWLR (PART 1573) 299 AT 332 – 334 A – C

where KEKERE-EKUN, JSC elaborately consider and interpret Section 133, 137 and 138 of the Electoral Act.

On the need to join the Political Party which sponsors a Candidate the case of HON. JAMES ABIODUN FALEKE V INDEPENDENT NATIONAL ELECTORAL COMMISSION (2016) 18 NWLR (PART 1543) 61 AT 135 D – H TO 136 A – E. My Noble Lord KEKERE-EKUN, JSC said:-

> ***"This is more so, as on the authority of Amaechi v. INEC (supra) and section 221 of the Constitution, it is the political party that contests elections even though through its candidates and there is no provision in our law for independent candidates. I see no reason to interfere with the concurrent findings of the two lower courts in this regard. The fact that a political party is not named as a statutory respondent in section 137(2) of the Electoral Act cannot be a bar to joining a political party as a respondent where its interest is involved and where it would be bound by the result of the action."***

FILING OF REPLY AND RAISING OF POINTS OF LAW OR JURISDICTIONAL ISSUE

Paragraph 12 of 1st Schedule to Electoral Act, 2010 as amended provides modes and procedure for filing of REPLY by a RESPONDENT to an election Petition and facts it should contain. Paragraph 12 sub-paragraph 5 of the 1st Schedule to the said Electoral Act provides:-

> ***"'12(5) A respondent who has an objection to the hearing of the Petition shall file his reply and state the***

objection therein, and the objection shall be heard along with the substantive petition."

This must be read along with paragraph 47(1) of the 1st Schedule to the Electoral Act which says:-

"47(1) No motion shall be moved and all motions shall come up at the pre-hearing session except in extreme circumstances with the leave of Tribunal or Court."

The difference between the two paragraphs is that Paragraph 12(5) is against the moving of motion or application that is capable of putting an end to the Petition where for instance it challenges the competence of a Petition or the jurisdiction of Election Petition or Tribunal or Court. Motions or applications that may be disposed of during pre-hearing session are as prescribed by paragraph 47(1) of 1st Schedule which can be found in paragraph 18(1) and (2) of the aforesaid Schedule.

The rationale behind the provision of paragraph 12(5) on 1st Schedule to Electoral Act 2010 as amended stemmed out of the inordinate delays that bedeviled the hearing and disposal of election petitions under the previous Electoral Act 2002 and 2006 when hearing of election petition took almost 3 – 4 years to dispose off due to unnecessary and avoidable interlocutory applications and arm-twisting tactics of both the Petitioner and the Respondents desperately designed in most cases to slow down the judicial duties and functions of Court and Tribunals. The apex Court in the land was constrained to deprecate the snail speed encountered at election Petition Tribunals in their efforts to resolve election disputes.

The Supreme Court aptly explained and decided upon the urgent need to find solution to delay in adjudication in election matters. See:-

1. MAJOR GENERAL M. BUHARI V OLUSEGUN OBASANJO (2005) 13 NWLR (PART 941) 1 AT 186 per BELGORE, JSC later CJN who said:-

   "The petition perhaps holds record for its number of respondents, witnesses, exhibits and length of time taken to hear and determine it. I think this is due mainly to the Electoral Act, 2002 which is riddled with absurdities and anomalies, and several inconsistencies making it the clumsiest Electoral Act ever in the history of this country. But that was the only statute to work with apart from aid from the Supreme law, the Constitution. The election tribunals were no doubt confronted with very difficult task; they had little room for abridging time or number of patties and witnesses. However it may be mentioned for posterity that the trial took fifteen months with one hundred and thirty-nine witnesses by petitioners, one hundred for 1st and 2nd respondents and one hundred and sixteen for 5th and 6th to 268 respondent."

At page 294 late PAT ACHOLONU, JSC of blessed memory said:-

> ***"We may have to evolve any methodology in framing future Electoral Acts to make trials very short otherwise we risk having the present state of affairs coming up all the time. This would of course necessitate an amendment of the Constitution.***
>
> ***A situation where an election petition lasted more than 2 years for a 4 years presidential term leaves very much to be desired. It is an affront to the rule of law seen from an activist and progressive view point or mind."***

The legislature hearken to the voice of reason from Supreme Court of Nigeria and 2010 Electoral Act as enacted. The constitutional

provisions relating to electoral process and time for dispute resolutions were also amended including the time within which an appeal from Election Tribunals and Courts may be filed and decided by the Appellate Courts i.e. Court of Appeal and Supreme Court. The amendments brought about the introduction of frontloading of pleadings and paragraphs 4 – 18 of 1st Schedule to the Electoral Act to aid smooth and early disposal of election petition.

When the Electoral Act 2010 came in and enlisted for the conduct of 2011 elections, paragraph 12(5) aforesaid engendered a lot of controversies, as a school of thought believed the Tribunal has right to defer Ruling on interlocutory matters inclusive of jurisdiction till when substantive matter will be decided. What that means is just that the Tribunal will consider and rule on such interlocutory application at the beginning of its judgment at the end of trial before considering the substantive matter on the merit. Other School of thought loudly oppose the procedure and vehemently contended that the settled position of the law is that issue of jurisdiction in all ramification must be settled in any proceeding and determined one way or the other. That in any event the said paragraph 12(5) of the 1st Schedule is mere Rule of procedure hence the Election Tribunal and the Court must determine all issues touching the competence of the Petition and jurisdiction of the Tribunal or Court first.

The latter school of thought may be right. See:-

1. A.G. FED. v A.G. Lagos State (2017) 8 NWLR (PART 1566) 20 AT 36 D – E and 55C-G and
2. CHIEF GABRIEL IGBINEDION & ORS v UMOH ASUQUO ANTIA (2018) 15 NWLR (PART 1642) 262 AT 271 F – G per AUGIE, JSC who said:-

"However However, the appellant's issue I raises a jurisdictional issue, which must be resolved quickly because:

"There is nothing as useless as doing efficiently that which should not have been done at all" - Oni v. Cadbury (2016) LPELR-26061 (SC), (2016) 9 NWLR (Pt. 1516) 80 at p. 106, para. H - per Rhodes-Vivour, JSC.

In other words, the issue touching on jurisdiction has to be resolved first because jurisdiction is the life wire or lifeblood of any litigation before a court of law, and if the court has no jurisdiction, the proceedings, ho ever ably and well conducted, will be a nullity - see Ocholi Enojo James, SAN v. INEC (2015) LPELR-24494 (SC), (2015) 12 NWLR (Pt. 1474) 538."

However the Supreme Court interpreted the real import of paragraph 12(5) of the 1st Schedule as a necessary antidote to obviate delay in hearing and determination of election matters. See

1. PDP V INEC & ORS (2012) 7 NWLR (PART 1300) 538 AT 558 D – H TO 559 A-C where MUNTAKA-COOMASSIE, JSC who delivered the leading judgment held thus:-

"Paragraph 12(5) of the 1st Schedule of the electoral Act, 2010 provides as follows:

"A Respondent who has objection to the hearing of the petition shall file his reply and state the objection thereon and the/objection shall be heard along with the substantive petition."

While paragraph, 47(1) of the 1st schedule to the electoral.

No motion shall, be moved and all motion shall come up

at the pre-heating session except in extreme circumstances with Leave of Tribunal or Court"
(Italics mine for emphasis).
With tremendous respect these paragraphs of the 1st Schedule apply to the different situations and proceedings, i.e.

(i) Where a party approaches the Tribunal with objection, by way of motion, such motion shall be moved and determined during pre-hearing session except in extreme circumstances with the leave of the tribunal, that is position under the provisions of paragraph 47(i) of the 1st Schedule and

(ii) Where the objection is embedded or stated in the reply.
Such, objection shall be heard along with the substantive case.
In the instant case or appeal, the respondent adopted the latter procedure by stating the objection in their reply and argued same in their final written address and the appellant also replied in its own written address.
In my view, the provisions of the two paragraphs are clear and unambiguous, and are not subject to any interpretation and I only wish to state that where the law provides two methods or procedures for doing a thing, a party can choose any of the method so provided. The Respondents

in this case elected to raise the objection pursuant to paragraph 12(5) of the 1st Schedule and they are entitled to so elect."

2. MOHAMMED DELE BELGORE SAN & ORS V ABDULFATAH AHMED & ORS (2013) 8 NWLR (PART 1355) 60 AT 92 C H TO 93 A – E per TABAI, JSC who said:-

"On the question of whether paragraph 12(5) of the 151 Schedule to the Electoral Act is authority for the 1st and 2nd respondents' preliminary objection being embodied and argued in their brief and argument, it is necessary to highlight the state of the law before its coming into being.

The 1999 Constitution before its amendment had no stipulation as to the time within which an election petition was to be disposed of. Similarly, the 2006 Electoral Act made pursuant thereto had no limitation as to time within which an election petition was to be D finally determined. The consequence was that election petitions suffered undue delays. It is on record that some election petitions could not be decided until the four year term of the elective office that was contested in the litigation expired. The rules of procedure for challenging the competence of an election petition or any part thereof, were simply identical with paragraph 53 of the 1st Schedule to the current 2010 Electoral Act (as amended). Of relevance are paragraph 53(2) and (5) and they provide:-

"53(2) An application to set aside an election or a proceeding resulting there from for irregularity or for being a nullity shall not be allowed unless made within a reasonable time and when the party making the

application has not taken any fresh step in the proceedings after knowledge of the defeet."

"53(5) An objection challenging the regularity or competence of an election petition shall be heard and determined after the close of pleadings."

As I pointed out, both the 1999 Constitution in its original form and the Electoral Acts, made pursuant thereto contained no provisions limiting the lifespan of an election petition. I have also spoken on the consequential delays. There was thus that patent mischief both in the Constitution and the Electoral Act. In apparent bid to suppress and possibly remedy-the mischief, makers of Constitution caused an amendment through Section 285(6) of the 1999 Constitution which states:-

"An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.

By this amendment time is thus of essence in an Election Petition And for, the purpose of meeting the clear dictates of the Constitution, the Legislature introduced paragraph 12(5) of the 1st Schedule to the Electoral Act. It provides thus:-

"A Respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein and the objection shall be heard along with the substantive petition."

Going by the guiding principles of interpretation of statutes the amendment has to be construed

liberally and beneficially so as to promote the suppression of the mischief clearly sought to be remedied. Thus, the provisions of paragraph 53(2) and (5) of the 1st Schedule notwithstanding full effect must be given to paragraph 12(5) of the First Schedule.

On this question of whether by virtue of the provisions of paragraph 12(5) of the 1st Schedule to the Electoral Act; the respondents rightly raised the objection "to certain paragraphs of the petition at the time they did. I hold that the decision of the Tribunal and affirmed by the Court below is unassailable."

The new amendments to Section 285 of the Constitution of the Federal Republic of Nigeria 1999 as amended has now made similar provision as contained in paragraph 12(5) of the 1st Schedule to Electoral Act 2010 as amended to eliminate unnecessary misconception and hair splitting arguments on the purport of paragraph 12(5). The said amendment now makes it clear that objections touching on the jurisdiction of the Tribunal or Court will be determined along the substantive Petition. This can be found in Section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act 2017 which came into operation on 7th day of June, 2018 which says:-

"285(8) where a Preliminary Objection or any interlocutory issue touching on the jurisdiction of the Tribunal or Court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or Court shall suspend its ruling and deliver

it at the stage of final judgment."

The above provisions of the Constitution now governs proceedings in pre-election matters as well as proceeding in Election Petitions. It will no doubt go a long way to stem the tide of delays and raising of technicalities by parties to stall proceedings in resolution(s) of election Petitions at the Tribunal or Courts. It thus means also that the apex Court decisions in PDP V INEC (supra) and DELE BELGORE, SAN V ABDULFATAH (supra) remain relevant and apposite. They represent the current position of the law.

SECTION 140 OF THE ELECTORAL ACT 2010 AS AMENDED AND ORDERS A TRIBUNAL OR COURT COULD MAKE UPON DETERMINATION OF AN ELECTION PETITION

Section 140 of the Electoral Act 2010 as amended provides:

"140. (1) Subject to subsection (2) of this section, if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or the Court shall nullify the election.

(2) Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election.

(3) If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court, as the

case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act."

What is discernible under section 140(1) is that where an Election Tribunal or Court determines that a candidate returned in an election was not validly elected on any of the grounds contained in section 138 (1) (a) – (d) of the Electoral Act then the Tribunal or Court shall nullify the election.

Where however an election is nullified by a Court or Tribunal on the ground that the candidate who obtained the highest number of votes is/was or not qualified to contest the election or that the election was marries by substantial irregularities or non compliance with the provisions of the Electoral Act 2010 as amended, the candidate with the second highest votes or any other person cannot be declared elected. The Election Tribunal or Court must in such circumstance order a fresh election. See the case of AISHA JUMMAI ALAHASSAN & ANOR VS. MR. DARIUS DICKSON ISHAKU & ORS (2016) 10 NWLR (PART 1520) 230 at 266 E – H per (RHODES – VIVOUR JSC who said:

"Relying on section 140(1) and (2) of the Elector Election Tribunal found that since the 1st respondent was not sponsored by a political party all his votes are wasted vote and that since the 1st appellant was the candidate with the next and highest votes, was the winner of the election. The Court of Appeal had a completely different view when it said:

> ***"It is thus clear that where in an election petition proceeding a court or tribunal comes to a conclusion that the person elected or returned in an election was at the time of the election not qualified to contest the***

election, the option open to the court or tribunal pursuant to section 140(2) of the Electoral Act, 2010 is an order nullifying the election and shall order a fresh election to be conducted into the office in question"

The Court of Appeal is correct. The Court of Appeal is stating the correct interpretation of section 140(2) of the Electoral Act which the Election Tribunal was wrong in the interpretation of the said section. Section 140(2) is not applicable since the 1st respondent was qualified to contest the election."

It is within the jurisdiction of the Election Tribunal to declare a Petitioner as winner of an election if he is able to prove that he scores the majority of valid votes cast at the election. The Tribunal or Court must however ensure that the Petitioner must in addition to the fact that he scores the majority of valid votes also satisfy the constitutional requirements and the Electoral Act. This relief can be granted under section 140 (3) of the Electoral Act. See ALHAJI ATIKU ABUBAKAR, GCON 7 ORS V UMARU MUSA YAR'ADUA & ORS (2008) 19 NWLR (PT. 1120) 1 AT 173 E – G per NIKI TOBI, JSC.

IMPLICATION OF SECTION 141 OF THE ELECTORAL ACT

Section 141 of the Electoral Act 2010 as amended provides

"***An election Tribunal or Court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election."***

The intendment of the above provision of Electoral Act is to prevent a candidate or even an Aspirant within the meaning of section 156 of Electoral Act 2010 from being declared a winner of election of where his name was not forwarded to INEC or where he participates in

the primary of his Political party and wins but his name is not sent to INEC. Where such a person is delisted or excluded from contesting the election. In effect unless the person participates in all stages of the electoral process culminating in the election and return of a winner in the election by Returning Officer, such a person cannot be declared winner of the election by an Election Tribunal or Court.

This is in sharp contrast to what happened in the famous case of ROTIMI AMAECHI VS INEC & ORS (2008) 5 NWLR (PART 1080) 227.

In that case the Appellant contested the Primary Election on the Platform of his party under the 2006 Electoral Act and he won the Primary Election but for reason best known to his party another person's name was sent to INEC to contest the Election even though that person did not win or score the majority of votes at the party primary. The person who contests the governorship election in Appellant's stead was returned in the Governorship Election of Rivers State and was sworn in as a Governor while the Appellant was still busy challenging the right of his party to deny him the right to contest the election having emerged winner at the primary. The matter went up to the apex Court in the land and the Appellant won.

The ultimate Court in the land took the bull by the horn and invoked the doctrine of Ubi jus ibi remedium and declared the Appellant the winner of the election. It was further held that since the votes cast were for PDP and the Appellant was all the time its Gubernatorial candidate in the eyes of law, the Appellant was not substituted in accordance with the law and he was the nominated candidate of his party and as such the winner of the election. The attempt to use utilize S. 308 of the Constitution of 1999 as amended by the person unlawfully fielded to contest the election was rejected.

Section 141 of the Electoral Act 2010 as amended has now displaced the scenario in AMAECHI's case. The section received judicial consideration by the Supreme Court of Nigeria in the following cases:

1. CPC & ANOR VS. HON. E – D OMBUGADU & ANOR (2013) 8 NWLR (PART 1385) 66 at 119 F – H TO 120 A where NGWUTA JSC who read the lead judgment unequivocally held as follows

   "Section 141 of the Electoral Act 2010 (as amended) provides in unmistaken terms:

   > ***"An election tribunal or court shall not under any circumstance declare any person Winner of an election in which such a person has not fully participated in all the stages of the said election."***

   By the above provision, the National Assembly has set aside the decision of this court in Amaechi v. I.N.E.C. (2008) 5 NWLR (Pt. 1080) page 227 at 296. Contrary to the decision of this court in Amaechi's case, the implication of section 141 of the Electoral Act, 2010 (as amended) is that while a candidate at an election must be sponsored by a political party, the candidate who stands to win or lose the election is the candidate and not the political party that sponsored him.

   In other words, parties do not contest, win or lose election directly; they do so by the candidates they sponsored and before a person can be returned as elected by a tribunal or court, that person must have fully participated in all the stages of the election, starting from nomination to the actual voting.

2. ALHAJI JIBRIN ISAH VS. INEC & ORS (2016) 18 NWLR (PART 1544) 175 at 225 B – F per RHODES – VIVOUR, JSC who said:-

"Why can't the appellant benefit from the decision of this court in Amaechi v. INEC (2008) 5 NWLR (Pt.1080) p. 227.

Brief facts as it relates to this case is that Mr. R. Amaechi, the Governor of Rivers State contested POP primaries and won, but did not contest the general elections. This court held that he is the elected Governor notwithstanding the fact that he did not participate in the gubernatorial elections. The reasoning being that only a political party can sponsor a candidate can canvass for votes. It is the party that wins the election. The appellant cannot benefit from this decision for two reasons.

First he did not win the rescheduled primaries conducted on 22/9/11 and so he is not POP's candidate for the rescheduled gubernatorial elections fixed for 31/12/11. Governor Amaechi won the only primaries conducted for the gubernatorial elections in Rivers State.

Secondly, section 141 of 2010 Electoral Act (as amended states that:

"An election tribunal or court shall not under any circumstances declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election."

Section 141 supra has put to rest or set aside the decision in Amaechi s case. The position of the law now is that a person must participate in an election before he can be declared the winner of the election.

My lords in view of the provisions of section 141 of the Electoral Act the appellant cannot be declared the winner of the gubernatorial elections held on

31/12/11 for Governor of Kogi State because he did not participate in the election."

The above was the position of the law pertaining to section 141 of the Electoral Act, 2010 as amended until the tide changed again in September, 2016 in the case of CAPTAIN IDRIS ICHALLA WADA BELLO & ORS (2016) 17 NWLR (PART 1542) 374.

One of the issues that came up for consideration was whether Yahaya Bello who did not participate in all the stages of the election was legally declare winner by INEC and the Election Tribunal having regard to section 141 of the Electoral Act and the two decisions of the Supreme Court earlier cited on the matter.

The Respondents produced a certified true copy of judgment of a the Federal High Court in suit sub NO FHC/ABJ/CS/399/2011 Labour Party vs. INEC & ANOR delivered on 20/7/2011 showing that the Federal High had struck down section 141 of the Electoral Act and there was no appeal against.

On pages 432 G – H to 433 A – E of the decision NGWUTA, JSC had this to say:

As for section 141 of the Electoral Act, I have demonstrated in the resolution of issue one that the section cannot be read to apply to the 1st respondent who was not the petitioner before the tribunal. 'Under the provision, the tribunal or court can only make a declaration which would amount to setting aside the declaration made by INEC in favour of the respondent. A declaration pursuant to the section cannot be made in favour of the respondent. It can only be made in favour of the petitioner who must have succeeded in his challenge to the declaration made by INEC in favour of his appellant.

The respondents have argued that section 141 of the Electoral Act as amended) is no longer extant, having been struck out by a court of competent jurisdiction. Reliance was put on a certified true copy of the judgment of the Federal High Court in the case of The Labour Party v. INEC & Anor (Suit No. FHC/ABJ/CS/399/2011).

I am of the view that if a court of competent jurisdiction, in a proceeding in which the validity vel non of a piece of legislation is in issue, strikes out that piece of legislation, then as long as that order has not been set aside by a court that has jurisdiction to do so that order binds all courts, whether below or above the court that made the order in the hierarchy of courts. There is no indication that the order of the Federal High Court made on 20th July, 2011 has been set aside by a court of competent jurisdiction or at all. This is not a derogation from the fact that judgments of courts below the Supreme Court as well as judgments of courts in foreign jurisdictions have only persuasive value before the Supreme Court of Nigeria.

It means that section 141 of the Electoral Act has ceased from the date the judgment of the Federal High Court, to be part of our law resolve issue four against the appellants."

Thus from that date section 141 of the Electoral Act 2010 as amended became moribund and a dead letter in the Electoral Act, 2010 until 7th of June, 2018 when by the amendment to the CFRN 1999 as amended what appears to be a resuscitation or reintroduction of identical provisions of the dead Section 141 of the Electoral Act 2010 as amended emerged vide new section 285 (13) of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act, 2017 assent to by the president of the Federal Republic of Nigeria on 7/6/18 and it provides:

"285(13) an election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of the election"

By the above constitutional provision it is my view that the cases of OMBUGADU (supra) and ISAH (supra) remain the position of the law to the effect that Election Tribunal or Court shall not declare any person winner of an election unless such person has fully participated in all stages of the election.

I believe it is also relevant to state that a Petitioner cannot challenge the result of an inconclusive election as the election tribunal will be devoid of adjudicate on such person. The right to file a petition will not crystalise until a result has been declared by a Returning Officer and a return made in favour of the winner of the election.

This position can be amply gathered from the provision of section 285 (5) of the aforesaid CFRN 1999 as amended which provides:

"285 (5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections."

See the cases of

(1) CHIEF CHRISTOPHER N. EZEOBI NZEKA & ORS (1989) 1 NWLR (PART 98) 478

(2) HON. JAMES ABIODUN FELEKE VS. INEC & ORS (2016) 18 NWLR (PART 1543) 61 at 119 A – H to 120 B.

FILING FEES

Another condition precedent to enable the Tribunal or Court exercises its jurisdiction is, payment of filing fees as may be assessed by the secretary of the Tribunal or any other Registry Assistant assisting the secretary of the Tribunal or Court. The Petitioner must

pay security for costs, filing fees and other fees for service, certification and publication of the Petition. Where the fees and costs are not paid the election petition shall be deemed not to have been filed unless the Tribunal or Court otherwise orders.

The Respondents too must pay fees for filing for their processes see paragraphs 2, 3, 4 and 9 of the 1st schedule to the Electoral Act. See the case of HON. PRINCE CHINEDU EMEKA vs. CHIEF (MRS) JOY EMODI & ORS (2004) 16 NWLR (PART 900) 433 at 450 G per DONGBAN MENSEM, JCA who said:

> ***"I agree entirely with the submission of the Senior Counsel for the 2nd set of respondents that the payment of filing fee in a suit has the status of a condition upon which the competence of the suit hinges failure to pay such fees is no doubt a fatal defect on the suit."***

However where a Petition or litigant approaches the Registry of Tribunal or Court to file petition or other processes and the Registrar at the Registry assesses the fees to be payable and such fees are paid but it later turns out to be an under payment or under assessment of filing fees, the litigant cannot be held to have failed to pay filing fees and such litigant cannot be denied jurisdiction or hearing on account of underpayment or failure to pay for full filing fees. See:

1. NAOC LIMITED VS. CHIEF GIFT NKWEKE & ORS (2016) 7 NWLR (PART 1512) 588 at 613 H TO 614 A – E per I. T. MUHAMMAD, JSC, now the HON. the Ag. CJN.

And at page 621 VIVIOUR, JSC said:

> ***"In SC.693/2013, an appeal on an identical issue decided by this court on 11/12/15 in my concurring judgment to the leading judgment delivered by my learned brother, I.T. Muhammad, JSC. I said that:***

"... non-payment of filing fees is different from inadequate payment, the latter being the fault of the registry ..."

I must say that non-payment of filing fees is a serious omission by the appellant, which in effect deprives the court of jurisdiction to hear the appeal. See Okolo v. USN Ltd. (2004) 3 NWLR (Pt. 859) p. 87. On the other hand, inadequate payment of filing fees is usually the fault of the registry who made a mistake when it told the appellant the amount to be paid. In cases where the fees paid by the appellant are inadequate it is the singular duty of the presiding Judge to order the erring appellant to pay the correct filing fees instead of striking out the appeal."

2. C. OGWE & ANOR V IGP & ORS (2015) 1 SCM 226 AT 238, 240 per M. D. MUHAMMED, JSC.

STILL ON SECTION 141 OF THE ELECTORAL ACT

Notwithstanding the settled position of the law on this an aggrieved candidate who has filed a pre-election suit pursuant to section 87 of the Electoral Act 2010 as amended and a person who challenges the candidature of a person to vie for any elective offices in the general elections or other election conducted by INEC can still forge ahead with such action and can vindicate his rights up to Supreme Court of Nigeria. The only condition is that the suit or action must have been filed before the conduct of the election in which the candidate challenged is participating or has participated. See:-

1. DR. CHIGBI SAM ELIGWE VS. OKPOKIRI NWANAKA OKPOKIRI & ORS (2014) 12 SCM (PART 2) 222A – B AT 240 - 242 per NGWUTA, JSC.

On page 243 to 244 A – H per MAHMUD MOHAMMED, CJN (RTD) said:

"What Section 141 provides in plain language is simply meant to take care of the position of candidates who for whatever reason have not fully participated in all the stages of election to turn round in an election petition and claim to be returned as duly elected. The Section states:

> ***"141. An Election Tribunal or Court shall not under any circumstance election in which such person has not fully participated in all the stages of the said election."***

The Section is clearly directed at an Election Tribunal or a Court like the Court of APPEAL exercising their first instance jurisdiction in the hearing and determination of election petitions brought by aggrieved candidates at the conclusion of an election. This position is traceable to the provision of Section 133(1) and (2) of the Electoral Act 2010 (as amended) which state-

> ***"133(1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of en undue election or undue return (in this Act referred to as an "election petition") presented to the competent Tribunal or Court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.***
>
> ***(2) In this Section "Tribunal or Court" means***
>
> ***(a) In the case of Presidential Election, the Court of Appeal; and.***
>
> ***(b) In the case of any other election under this Act the election Tribunal established under the Constitution or by this Act."***

Thus, by necessary extension, the word "Court" in Section 141 of the Electoral Act is not referring to any Court in Nigeria other than the Court of Appeal which has been conferred with exclusive jurisdiction under the 1999 constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act, 2010 (as amended) to hear and determine election petitions arising from Presidential Election conducted by the Independent National Electoral Commission under the Constitution and the Electoral Act.

The Section is not directed at regular Courts which have been conferred with jurisdiction to hear and determine candidate's complaints arising from the conduct of primaries by political parties to produce or nominate candidates for the parties to contest election. Therefore the appeal brought by the 1st Respondent to the Court of Appeal Port-Harcourt from the decision of the Federal High Court in a pre-election matter brought under Section 87 (9) of the Electoral Act 2010 (as amended), is certainly properly before the Court of Appeal for hearing and determination in the normal exercise of its Appellate jurisdiction under Section 240 of the 1999 Constitution (as amended) to hear appeals from decisions of the Federal High Court in all cases including decision arising from pre-election matters notwithstanding the provisions of Section 141 of the Electoral Act, 2010 (as amended)."

PRE-HEARING SESSION AND SCHEDULING PARAGRAPH 18 OF 1ST SCHDULE TO THE ELECTORAL ACT 2010 AS AMENDED.

The entire paragraph 18 of the 1st Schedule to the Electoral Act is now part of our adjectival law designed to promote expeditious

hearing of an election petition. It is one of the mechanisms put in the Electoral Act by the legislature to curtail the tide of undue or unnecessary delays in the prosecution of election petition.

Paragraph 18 subparagraphs 1(4) and 5 place an obligation on the petitioner as well as Respondents to apply for the issuance of pre-hearing notice as in form TF008 7 days after the close of pleadings in an election Petition. Paragraph 18(3) of the said paragraph also enjoins the Respondent to bring application for dismissal of a petition where petitioner fails to apply for the issuance of pre Hearing Notice aforesaid.

Where both the petitioner and Respondent fail to bring such application then the Tribunal or Court concerned shall dismiss the Petition as abandoned petition and the Tribunal or Court shall become functus officio to relist such petition or to entertain any application for relisting of the Petition so dismissed.

Paragraph 18(5) of the said 1st Schedule to Electoral Act 2010 renders the Tribunal or Court impotent or *functus* officio to entertain any application in the Petition upon dismissal.

1. ACN V NONNYE & ORS (2017) 7 NWLR (PT. 1300) 568 AT 581.
2. IKECHUKWU V NWOYE (2015) 3 NWLR (PT. 1446) 376 AT 402.

The recent decision of the Apex Court in the land has now put it beyond any peradventure that any breach of paragraph 18(1) of the 1sst Schedule by a Petitioner in Election Petition proceedings, will render such petition as having been abandoned and must be dismissed by the Tribunal or Court siesed of the Petition. See:-

3. SENATOR IYIOLA OMISORE & ANOR VS OGBENI RAUF ADESOJI AREGBESOLA & ORS. Unreported SC. 204/2015

delivered on 27th day of May, 2015 per NWEZE, JSC who delivered the lead judgment on pages 62 – 63.

I must point out that the incidence of paragraph 18(1-5) of the 1st Schedule to the Electoral Act should not be construed as interlocutory application of which Ruling has to be deferred or suspended till the end of trial pursuant to Section 285(8) of the CFRN 1999 as amended or paragraph 12(5) of 1st Schedule to the Electoral Act.

This is because paragraph 18 does not confer jurisdiction on Election Tribunal for it to be competent to entertain election petition. It is Section 285 of CFRN and 133 – 140 that of Electoral Act that confer jurisdiction on the Election Tribunal and the relevant Court.
In other words paragraph 18 is not the law that donates or vests jurisdiction in the Election Tribunal or Court to entertain or to adjudicate on election petition matters. See: MOHAMMED DELE BERGORE & ANOR. VS. ABDUL FATATAH AHMED & ORS. (2013) 8 NWLR (PART 1355) 60 at 91G - H to 92A per TABAI, JSC.

The decision of the Supreme Court in OKEREKE V. YAR' ADUA bordered on effect of the breach of paragraph 3(1) of the ELECTION TRIBUNAL and Court Practice Directions 2007 which is impari material with paragraph 18(1) of 1st Schedule to Electoral Act 2010 as amended is still very much relevant. See: CHIEF E. O. OKEREKE VS. ALHAJI UMARU YAR'ADUA (2009) 4 EPR 46 at 63 where I. T. MUHAMMAD, JSC now the Hon. the Ag. CJN said:-

"Secondly, subparagraph 4 of paragraph 3 as quoted above, makes it mandatory that where neither the Petitioner nor the Respondent files an application for a Pre-hearing session, the

Tribunal or Court is under a duty to dismiss the petition as abandoned and no application for extension of time to take that step shall be filed or entertained. Now, although the stipulation under subparagraph (4) of paragraph 3 of the practice Direction, appears to me to be harsh on the Petitioner by making an order for dismissal of the Petition which forecloses any' chance for him to represent the petition, it still had to be complied with by the Tribunal or Court as such steps are a condition precedent to the hearing of any matter in election to the petition pending before Tribunal or Court."

The punishment for breach of paragraph 18(1) of the said Schedule is to bring the Petition to an abrupt or terminal end by virtue of paragraph 18 (4) thereof. The Tribunal cannot be devoid of jurisdiction or be said to lack it until it pronounces death knell on the abandoned or moribund Petition. Thereafter the jurisdiction of the *Tribunal* becomes terminated because the dismissal under paragraph 18 (4) of 1st Schedule's amounts to final decision. The Tribunal or Court becomes functus officio thereafter.

A breach of paragraph 18(1) constitutes failure or lack of diligent prosecution of the Petition on the part of Petitioner. See the case of MALLAM ABUBAKAR ABUBAKAR & ORS. *VS.* SAIDU USMAN *NASAMU* & ORS (2012) 17 NWLR (PART 1330) 523 at 565 E per TABAI JSC who said:-

"Where a Plaintiff in procedural steps necessary for successful prosecution of the claim or Petition, his act or omission constituting such failure or default does not

affect jurisdiction of the Court. <u>It only constitutes a failure to prosecute the claim and which failure attracts a dismissal."</u>

<u>ELECTORAL OFFENCES</u>

Electoral Offences could be found in Part VIII (Sections 117 – 132 of the Electoral Act) and any person including Electoral Officers/Officials of INEC is liable to various punishments varying from fines to imprisonment for terms of months or years. The offences relate to registration of voters, nomination, disorderly behavior at political meetings, impersonation, dereliction of duty, bribery and conspiracy and offences on Election Day.

Again the Judiciary has vital role to play. Thus where an Election Tribunal and Courts in the course of hearing or trial of election petition discover or found out that offences created under the Electoral Act 2010 as amended has been committed or violated during or after the election, such Tribunals or Courts have an obligation to refer such person to INEC for prosecution. See Section 149 of the Electoral Act which provides:-

> ***"149 The Commission shall consider any recommendation made to it by a Tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition."***

The Courts endowed with jurisdiction to try offenders under the Electoral Act 2010, as amended can be found in Section 150 of the said Electoral Act which provides:-

"150(1) An offence committed under this Act shall be triable in a Magistrate Court or a High Court of a State in which the offence is committed or the Federal Capital Territory, Abuja.

(2) A prosecution under this Act shall be undertaken by Legal Officers of the Commission or any Legal Practitioner appointed by it."

and have always consistently played its role(s) to dispense justice and thus giving hope to the common man and eminent citizens in the quest for justice and administration of same.

VALIDITY OF ELECTION PETITION AND FRONTLOADING

All Election Petitions must comply and conform with Sections 133, 137, 138 and 139 of the Electoral Act 2010 as amended and with paragraph 4 of the 1st Schedule to the Electoral Act 2010 as amended as to the contents of an election Petition to make it competent. The said paragraph 4 states:-

"4.(1) An election petition under this Act shall-

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(d) state clearly the facts of the election petition and the ground or grounds on which the petition is

based and the relief sought by the petitioner

(2)The election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively.

(3)The election petition shall further-

(a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified, as the case may be; and

(b) be signed by the petitioner or all petitioners or by the Solicitor, if any, named at the foot of the election petition.

(4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

(5) (i) The election petition shall be accompanied by -

(a) a list of the witnesses that the petitioner intends to call in proof of the petition;

(b) written statements on oath of the witnesses; and

(c) copies or list of every document to be relied on

at the hearing of the petition.

(ii) A petition which fails to comply with sub-paragraph (1) of this paragraph shall not be accepted for filing by the secretary.

(6) The election petition shall be accompanied by-

(a) a list of the witnesses that the petitioner intends to call in proof of the petition;

(b) written statements on oath of the witnesses; and

(c) copies or list of every document to be relied on at the hearing of the petition."

The Respondent is also under obligation to frontload his processes.

The purpose of frontloading in election petition is to know the case of the Petitioner at the onset the witnesses he intends to call, documents he would require to prove his petition and to eliminate incidences of springing unnecessary surprises on the opponent. Frontloading also saves a lot of time in that all facts are laid bare before the Tribunal or Court seised of the matter, all material facts in the case in order to obviate delay at pre-hearing session under paragraphs 18 & 41 of 1st Schedule to the Electoral Act 2010 as to course of hearing and documentary evidence the parties intend to rely upon. See:-

1. APGA V ALH. U. TANKO AL-MAKURA & ORS (2016) 5 SCM 1 AT 14 – 15 per NWEZE, JSC who said:-

   Indeed, in Ojuiwu v. Yar'Adua and Ors [2009] 6 SCM 126, 155, this court affirmed this rationale of the procedural

device of frontloading thus:

The manifest intention of the totality of the provisions on frontloading in the Election Tribunal and Court Practice Directions is to ensure that only a petition which on its face and in the face of the accompanying written statement on oath discloses a reasonable cause of action that can go for trial. A petition which on the face of it is defective or which on the face of the written statements on oath discloses no reasonable cause of action should be struck out on the application of the respondent.

In contradistinction to this procedural aspect of the prescription on frontloading, it is, clearly, evident that, without linking the frontload documents to his case, a petitioner would, invariably, lose out as Tobi, JSC emphasised in Ojukwu v. Yar'Adua (supra) at page 177.

Although by the operative provisions of the Evidence Act, extrinsic evidence of the contents of documents is inadmissible, Adelaja v Alade [1999] 6 NWLR (Pt 608) 544; Jiaza v Bamgbose [1999] 7 NWLR (Pt 610) 182, that does not obviate the need for the demonstration of the link between the said documents and his allegations in his pleadings. This is more so as in this case which involves mathematical calculations of deductions and additions, Ugochukwu v Cooperative Bank (infra); Onibudo v Akibu (infra); WAB v Savanah Ventures (infra); Obasi Brot7zetsLtd v MBAD Securities Ltd (infra).

In all then, the concept of frontloading, an offshoot of Lord Woolf's Reforms, is a clear vindication of the dominant rationale of pleadings, that is, the avoidance of surprises to the adversary. Hence, the evergreen rule has, always, been that the raison d' etre of pleadings is to notify the adversary of the case he is to meet. The prescription, therefore, is that both parties should present their evidence (subject to the rule that parties are only required to plead facts and not evidence) so that the court would be able to adjudicate on the issue" George v Dominion Hour Mills Ltd [1963] 3 NSCC 54.

It cannot be gainsaid, therefore, that the frontloading device is designed for the smooth administration of justice. In particular, by that practice, prospective Petitioners are discouraged from pursuing wantonly frivolous petitions. It [the frontloading devise] is; thus, at the confluence of civil procedural jurisprudence and the adjectival law of Evidence. As it is often the case, their streams [the provisions on frontloading documents and the evidential dimension relating to the proof of positive assertions] may meet in one proceeding [for example in an election petition].

It is also imperative that witness statement on oath in the language it was prepared or taken must accompany the Petition. Where the witness is an illiterate the witness statement on oath must be accompanied with English language version and the vernacular version of the statement with necessary jurat where the witness does not understand English Language otherwise the Tribunal will lack jurisdiction to listen to witnesses whose witness statement on oath are

not attached. It is a condition precedent. See MARCUS N. GUNDIRI & ANOR VS REAR ADMIRAL M. H. NYAKO & ORS (2014) 2 NWLR (PART 1391) 211 AT 240 – 245 per OGUNBIYI, JSC.

Neither the Petitioner nor the Respondent shall be allowed to lead any evidence oral and documentary unless it is pleaded, listed and frontloaded and contained the witness written statements on oath and list of witnesses to be called accompanying the Petition or Reply of a Respondent or Petitioner. See:-

1. INEC & ORS V INIAMA & ORS (2008) 8 NWLR (PART 1088) 182 AT 201A per OWOADE, JCA.
2. HON. A. U. IGBEKE V SENATOR JOY EMORDI & ORS (2010) 11 NWLR (PART 1204) 1 AT 40 E per ARIWOOLA, JCA (now JSC).
3. ACTION CONGRESS OF NIGERIA VS SULE LAMIDO & ORS (2012) 8 NWLR (PART 1303) 560 AT 580 C – D per MOHAMMED, JSC (later CJN).
4. PDP V EDEM (2016) 12 NWLR (PART 1525) 106.

APPEALS IN ELECTION DISPUTES

Appeal lies from the decision of the Election Petition Tribunals to the Court f Appeal within 21 days from the date of the decision appealed against. See Section 143 of the Electoral Act 2010 as amended and paragraph 6 of the Election Tribunal and Court Practice 2011. Pursuant to Section 246(1) of the Constitution appeal lies as of right to Court of Appeal while Section 246(3) makes decisions.

Court of Appeal in respect of appeals arising from National and State Houses of Assembly Election Petitions final. See:-

1. MADUMERE & ANOR VS OKWARA & ANOR (2013) LPELR – 20752 (SC);

2. ABUBAKAR V NASAMU (No. 2) (2012) 17 NWLR (PART 1330) 407.

Appeals from the decisions of the Court of Appeal on whether any person has been validly elected – President, Vice President, Governor or Deputy Governor lie as of right to the Supreme Court of Nigeria vide Section 233(2)(e) of the Constitution of the Federal Republic of Nigeria, 1999 as amended and paragraph 2 of the Practice Direction (Election Appeals to the Supreme Court) made on 17/10/2011, within 14 days from the decision appealed against. See also Section 285 of the Constitution of Nigeria as amended.