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ISSUES IN ELECTION PETITION ADJUDICATION IN NIGERIA'S FOURTH REPUBLIC: A SOCIOLOGICAL CRITIQUE OF THE ROLE OF THE JUDICIARY

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ABSTRACT: *The Nigerian judiciary has often come under severe criticisms for its handling – or mishandling – of election petition cases. In particular, judges have been accused of deliberate tardiness leading to unnecessary delays, conspiracy to frustrate litigants, corruption (including allegedly selling judgments to the highest bidder), undue politicization of the cases and downright travesty of justice, etc. This paper attempts to identify, dissect and interrogate the salient issues, challenges and controversies that are associated with and often punctuate election petition adjudication, even prior to but especially since 1999. The paper contends that individually and severally the issues constitute a huge impediment to the quest for justice by aggrieved persons and for democratic growth and consolidation. The paper cites numerous instances and episodes, including views, commentaries and perspectives of scholars and experts on the issues, as well as recommends steps to be taken by individuals, groups, institutions and government toward addressing the problems.*

KEYWORDS: Election, Election Petition, Judiciary, Controversies

INTRODUCTION

In the Fourth Republic, just as in the other civilian interregnums before it, there was hardly any state in Nigeria where one election or the other was not annulled and bye-elections held. Since the 1999 elections, courts at various levels have throughout the country voided the victory of a couple of governors, scores of senators (including a sitting Senate President) and numerous federal and state legislators as well as local government chairmen and councilors.

The issue is captured rather dramatically by Emewu (2010:121), thus: "*if there have been 2,000 electoral contests since 1999, there have been at least 4,000 disputes arising there from. In some cases, one election has up to 4 petitions from cheated/defeated opponents*." He further laments that whatever electoral results declared becomes disputed and subsequently gets resolved or is further muddled up in court after long adjudication. Accordingly, he derisively dismisses Nigeria's Fourth Republic as "court-dependent democracy", a brand of democracy where elections are rarely decided at the polls, but in the courtroom.

Election disputes are highly sensitive and controversial so much that the process of disposing them seems as if the judiciary itself is on trial. Indeed, according to Okoye (2009), the debate on the role and place of the judiciary in electoral disputes revolves around the question of whether "they should give voice to the choices of the people without bowing and being slavish to the technicalities of the law and the constitution." Conversely is whether the judiciary is properly positioned to substitute its own will and decisions as the decisions of the Nigerian people without being accused of engaging in judicial tyranny.

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Indeed, of recent the Nigerian judiciary has come under severe attack for their handling (or mishandling) of election petitions. A substantial number of Nigerians have questioned the role of the judiciary as a true arbiter in electoral matters.

However, the main focus of the paper are the many pitfalls and controversies associated with election petition – particularly the role of judges - which individually and collectively have made it such an agonizing, frustrating and often fruitless exercise for both petitioners and the democratic enterprise. Ironically, election petition is aimed to open a window of justice to the former and uphold and strengthen the latter.

THEORETICAL FRAMEWORK

As noted by the Marxists, the state is an instrument in the hands of the ruling class. Thus, its capture becomes inevitable. Hellman, Jones and Kaufman (2000) defined state capture as "shaping the formation of the basic rules of the game (i.e., laws, rules, decrees, and regulations) through illicit and non-transparent private payment to public officials." This illicit payment and other favours have been described as rent seeking by some scholars (Onuoha, 2009). However, the capture theory is silent on one fundamental issue: the identity of those behind the capture of power. The missing link is provided by the Marxists.

Essentially, the Marxists contention is anchored on the dialectical-materialist thesis of Karl Marx, which places premium on economic conditions of society as the base upon which other superstructures of society, including the political and legal systems, rest (Ake, 1981:1). The Marxists see society as plagued with tensions, divisions and struggles. To them conflict is not just an occasionally disruptive force, it is a constant feature of all human societies. Indeed, for Marx, struggle rather than peaceful growth is the engine process of progress; revolutions are locomotives of history. Also, to Marx, societies are divided into classes with unequal resources. Classes are determined by the position they occupy within a definite system of social production (e.g., slavery, feudalism, capitalism, etc). One class, by virtue of its control of the means of production, is able to appropriate the products of labour to itself and to the detriment of the other classes.

Nigeria is a class society. A dominant, privileged group dominates both the economy and the polity (and by extension the legal system). The fierce struggle to win and control state power and use same for the personal economic advantage of politicians lie at the root of all electoral frauds and malpractices in Nigeria (Oddih, 2007). It is equally the *casus beli* of the legal tussles that follow most elections.

This is brilliantly enunciated by Kawu (2008:64):

> *...the court is one of the main pillars of a class society, and when the chips are down, they would retreat into the mode which aids the survival of their class project (Daily Trust, December 18, 2008. pp.64).*

Put differently, the Marxist orientation applies here because it basically contends that those who hold the levers of power and dominate other superstructures of society (including the judiciary) are likely to "capture" or procure favourable judgments and rulings for themselves or their group.

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Election Petitions: Meaning and Framework In Nigeria

Election petition simply refers to the procedure challenging the results of an election (Wikipedia, 2011, retrieved on December 5, 2013). Elections are expected to meet international standards of being free, fair and credible, but are sometimes not, hence the outcomes are contested in court and elsewhere.

When a petition is lodged against an election return, there are four possible outcomes:

i. The election is declared void – the result is quashed and a writ is issued for a new election

ii. The election is held to have been undue – the original return is quashed, and another candidate is declared to have been elected.

iii. The election is upheld – and the original winner is found to have been duly elected.

iv. The petition is withdrawn

Election petition is a fundamental feature and requirement of democratic practice the world over. It has also been enshrined and entrenched in national constitutions, international conventions, agreements, etc. For instance, United Nations Protocol A/SP1/12/01 on Democracy and Good Governance provides for "responsibility of states to ensure that complaints relating to the electoral process are determined promptly within the time frame of the electoral process." Similarly, the ECOWAS Protocol on Democracy and Good Governance has made provisions on conduct of free and fair elections to include dispute resolution. Article 7 deals specifically with election dispute resolution by member states. It provides that adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of the elections and announcement of results.

In Nigeria, the constitution and the National Assembly recognize the fact that disputes may arise before, during and after elections and such disputes must be resolved within the confines of the law and due process. The constitution has created and empowered different levels of courts to adjudicate on matters involving electoral disputes. Prior to elections, Section 32 of the Electoral Act, 2006 gives the High Court of a state or the Federal High Court the jurisdiction and the power to disqualify any candidate from contesting the election if it determines that any of the information contained in the Affidavit sworn to by a candidate indicating that he/she has fulfilled all the constitutional requirements for election into the office he or she is contesting is false.

Section 144 of the Electoral Act, 2006 gives a candidate in an election and a political party which participated in the election the right to present an election petition. In this wise, an election may be questioned on any of the following grounds:

a. That a person whose election is questioned was, at the time of the election, not qualified to contest the election;

b. That the election was invalid by reason of corrupt practices or non compliance with the provision of this Act;

c. That the respondent was not duly elected by majority of lawful votes cast at the election;

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d. That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

According to Malu (2005:145) there are three sources of rules/institutions for the settlement of electoral/ party disputes in Nigeria, namely the constitutions of the political parties, the country's constitution, and the Electoral Act.

For the purposes of election petitions, only a candidate in an election and a political party which participated in the election can file an election petition. This means that if a registered political party did not field a candidate for a particular election, it cannot challenge the results of that election. It also means that no matter the level of interest of groups and individuals in a particular candidate or election, they cannot file a petition before any of the tribunals since they were not candidates in the election and did not participate in the election.

The Case Against the Judiciary in Election Petition Adjudication

Iriekpen (2010:23) aptly sums things up, thus:

> *Analysts (have) said many of the judgments delivered by the tribunals and Court of Appeal were below expectation, thereby denying a lot of petitioners and appellants justice…in some cases, some of the judges handed vague judgments… some petitioners were denied justice on technical grounds rather than on the merit of the case.*

There were instances where petitions were struck out on frivolous grounds, flimsiest of excuses and sometimes very ridiculous reasons. Ugochukwu (2004:61) cites two classic cases. The first was Waku V. Joshua Adagba who slugged it out for Benue South Senatorial District at the 2003 Polls. The petition was struck out because, according to the tribunal, the person who contested the election was Chief J.K.N. Waku, while the person who filed the petition was Senator J. K. N. Waku. "Chief" and "Senator" turned out to make the difference while the real complaint of the petitioner was ignored. The second case was the petition filed by Great Ogboru, candidate of the AD in the 2003 gubernatorial election against the return of incumbent Governor James Ibori. The case was thrown out based on the argument that instead of suing the Independent National Electoral Commission (INEC), the petitioner sued the Independent Electoral Commission (IEC). What made the difference was the "National" that was missing.

A similar drama played itself out during the Second Republic. Section 142 (2) of the 1982 Electoral Act provided that "a petition filed before the High Court in respect of any election shall be disposed of by the court not later than 30 days from the date of such election and any petition not disposed of shall be time barred and such petitions shall be null and void."

Based on this provision, the court ruled in some cases that did not meet the time limit requirement, that the petitions were time barred. The logic and rationalities of such judgments were too technical and legalistic. For instance, in Unongo V. Aku, the petitioner, the gubernatorial candidate of the NPP in the 1983 election in Benue State, challenged the re-election of Mr. Aper Aku. The election panel dismissed the petition on the grounds that the petition was filed on a wrong form and that Mr. Aku being an incumbent governor of a state enjoyed immunity, hence could not be sued. The petitioner appealed to the Court of Appeal, which held among other things, that the judgment of the lower court was wrong. It however refused to order a re-trial on the grounds that it was time barred as 30 days required for determination of election petitions had expired. On appeal, the Supreme Court ordered a retrial.

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Even in the present, Fourth Republic, dispensation similar problems still abound. For instance, the Court of Appeal Makurdi division ruled that hearing of any election appeal from tribunals must abate 60 days after judgment has been delivered by the election tribunal. Delivering judgment in an appeal filed by Sa`idu Galadima, a candidate of Congress for Progressive Change (CPC) for election into Nasarawa State House of Assembly in Toto/Gadabuke Constituency, the court held that the statutory time within which the appeal could be heard and disposed of had expired. The tribunal delivered its judgment on 28th June 2011, in which the petition was dismissed. Being dissatisfied with the decision of the tribunal, the appellant filed their appeal on 15th July 2011. As conceded even by the presiding judge of the Court of Appeal, "unfortunately, the appeal could not be heard until 10th October 2011 through no fault of the parties as the panel to hear the appeal was not constituted by the appointing authority." Yet, the Appeal Court struck out the matter for being abated, on the ground that the appeal having waited and nothing done until the 60 days were over, the court became "functus-officio" and had no more jurisdiction to entertain the appeal.

The tribunals and courts have also not performed to expectations of Nigerians in the area of speedy dispensation of justice. The snail speed in the disposal of petitions nibbled at and subverted the true intent of the mandate of the people. It also allows riggers and those with dubious mandate to hang on to power. Incidentally Section 138(2) provides that "notwithstanding the contrary decisions of the election tribunal or the court, a candidate returned or elected shall remain in office pending the expiration of the 21 days within which an appeal may be brought." In essence, this means that an incumbent will continue to occupy an office – even where a court has voided his or her victory – while an appeal petition subsists. As argued by Haruna (2008), *"with few exceptions, experience, at least in Nigeria, has shown that once someone has grabbed power, it is difficult, if not impossible, for the courts to take it away."*

There have actually been numerous instances where the courts dislodged incumbents, but this often come after a protracted litigation (during which the declared winner remained in office), sometimes running up to or even more than two years in a 4-year mandate.

The case of Ngige V. Obi (NWLR, Part 999, pp1-241) is a reference point and a metaphor for the analysis of the problems and challenges of electoral dispute resolution. Peter Obi, the then gubernatorial candidate of APGA filed his petition against the declaration of Chris Ngige of the PDP on the 16th day of May, 2003. In all, 425 witnesses testified before the tribunal. The Election Petition Tribunal took more than two years to hear all the witnesses and delivered judgment on the 12th day of August, 2005. The record of proceedings began from page 1 Vol. 1 of the record to page 8, 287, volume 8. The judgment of the Tribunal started at page 6,568 and was concluded at 7,270, i.e., a total of 702 pages. The Appeal came up for hearing on the 23rd day of January, 2006 and judgment was delivered on the 15th day of March, 2006. The petitioner waited for 35 months to receive justice!

The situation is even worse in respect of the Presidential Petition filed by Muhammadu Buhari against the declaration of Umaru Yar'Adua in the 2007 elections: the main petition and appeal thereof took 42 months to be decided. A Supreme Court judge, Justice Pats Acholonu laments that:

> *A situation where an election petition lasted more than two years for a 4-year presidential term leaves very much to be desired. It is an affront to the rule of law… (Buhari V. Obasanjo (2005) 13 NWLR (part 941) 1)*

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In the same vein, a constitutional lawyer and prominent election observer concurs:

> *An electoral dispute resolution mechanism that is slow and technically inclined and does not deliver substantial justice adds to the pains of the people and slows down the entrenchment of democracy. It also corrupts the electoral process and leads people towards alternative and unconstitutional means of resolving electoral disputes (Okoye, 2009: 131).*

Elsewhere, particularly in the advanced democracies, delay in disposing election disputes is not condoned. For instance, the resolution of the issues arising from 2002 elections in the United States of America took just one month, as the U.S. Supreme Court resolved all the issues pending before it from the Florida District Court. A good example in Nigeria of speedy determination of election petition is the case of Obafemi Awolowo V. Shehu Shagari, which was commenced on the 10th of August, 1979 and was finally determined by the Supreme Court of Nigeria on the 26th of September, 1979, i.e., a period of less than two months (Okoye, 2009).

Until recently there was no time limit on election petition, and inauguration of candidates comes up after disposal of petition. According to Ojo (2010), politicians, especially beneficiaries, use all sorts of subterfuges in the statute books to frustrate the judicial process. They hire the best of election petition lawyers who use legal technicalities to delay the court process. In order to cure the mischief of protracted litigation on election petitions, the Office of the President of Court of Appeal in 2007 issued a "Practice Directions" which stipulates timelines for the filing and other briefs as well as the witnesses that the parties in a suit can call. Also, amendment to the 1999 Constitution (effected in 2010) has pegged the filing of petitions to 21 days after election results are declared. The petition shall be heard within 180 days and determined at the lower tribunal, while any appeal arising there from shall be disposed of within 60 days. The numbers of the judges at the tribunal are also reduced from five to three.

Critics have also argued that some judges have subverted the democratic process by giving ex-parte motions, frivolous injunctions and orders capable of undermining the democratic enterprise as well as peace and stability of the society. A legal luminary and former Chief Justice of Botswana, Akinola Aguda noted that:

> *It is of course a matter of common knowledge that the manner in which some judges …dealt with election was one of the causes of the demise of the Second Republic (in Iriekpen, 2010:23).*

Perhaps the collapse of the aborted Third Republic too was facilitated, if not precipitated, by a flurry of contrived, controversial and contradictory court injunctions, many of them granted ex-parte (without hearing from the other side). Two days to the conduct of the June 12, 1993 presidential election, an amorphous, unregistered organization, the Association for Better Nigeria, sought and got an injunction. Justice Bassey Ita Ikpeme of the Abuja High Court actually sat at 9pm, and restrained the National Electoral Commission from conducting the election, notwithstanding that the Electoral Act ousted the jurisdiction of the Court in that regard. Few days later, Justice M. D. Saleh of the same Abuja High Court, controversially declared the election null and void. Within days, courts of concurrent jurisdiction (the same status) in Lagos and Benin issued counter rulings, directing the electoral body to release the results of the polls. A kind of judicial anarchy ensued, which was latched on by the military junta of Ibrahim Babangida to annul the election.

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In fact, the phenomenon of indiscriminate granting of ex-parte and other injunctions has continued almost unabated even in the Fourth Republic, prompting a former Chief Justice of Nigeria, Legbo Kutigi to threaten offending judges with punitive sanctions (The Guardian, December 12, 2007).

Some Nigerian judges handling election matters have also been accused or indicted of crass and undisguised partisanship and giving rulings and judgments that, at least to the non-legal mind, border on the ridiculous and the absurd. For instance, according to Okoye (2010) one of the most curious judgments in the Fourth Republic is that of the Sokoto State gubernatorial election (Dingyadi V. Wamakko (2008) 17 NWLR (Part 116) at 395). In that case, the Court of Appeal found as fact and held that an issue of multiple nominations touches on the qualification of a candidate to contest an election under the Electoral Act. It is therefore shocking and a mystery that Aliyu Wamakko, who was found unfit to contest for the election as at the close of nominations in 2007, could be eligible for a run-off of the same elections years later. The ripples of that unique judgment reverberated for years and became the bone of contention in arguably the most acrimonious and embarrassing scandal to have broken out within the leadership of the Nigerian judiciary.

As recounted by Adamu (2011), it all began with the unsolicited promotion to the Supreme Court of the President of the Court of Appeal (PCA), Justice Isa Ayo Salami by the then Chief Justice of Nigeria (C.J.N), Ityogher Katsina-Alu on February 7, 2011. The next day Salami went to court to challenge the elevation and leveled allegations of corruption and abuse of office against the C.J.N in respect of the Sokoto State gubernatorial Election Petition Tribunal. The PCA claimed that the CJN had requested him to compromise and disband the tribunal. Salami said he refused to do either; and the CJN subsequently went on to have the judgment of the Court of Appeal arrested (prevented from being delivered). The CJN then raised a Supreme Court panel, which eventually quashed the original petition (notwithstanding that such petitions ought to ordinarily terminate at the Court of Appeal). Following Salami's accusations, the National Judiciary Council (NJC) – the disciplinary organ of members of the bench – asked the CJN to respond. He too went to court to swear to an affidavit denying everything, arguing that he only wanted to stop the proceedings because the judgment had leaked. The following day the NJC queried the PCA.

Thereafter two committees were set up in quick succession to look into the differences between the two jurists. The Justice Babalakin panel found no case of misconduct against Salami and held that the CJN had no power or business to interfere with the proceedings of any court. But the Justice Umaru Abdullahi "fact-finding" committee absolved the CJN of blame, declaring that the action of the CJN in the Sokoto matter was "in good faith", though he lacked constitutional power to so interfere. The Justice Ibrahim Auta panel was then given the task of scrutinizing the report of the Abdullahi panel and make appropriate recommendations. It submitted its report on August 10, 2011; and though it cleared Salami, it said he lied on oath and must apologize to the CJN and the NJC. On August 15, 2011 Salami sued the NJC, asking the court to stop it from meeting, considering and implementing the recommendations of the panel. But on August 18, 2011, notwithstanding the subsisting case in court, the NJC met - allegedly without quorum – and considered the report and suspended Salami. In addition, it recommended to the President to retire the PCA from service. President Goodluck Jonathan promptly acted and appointed an Acting PCA.

Many analysts were quick to attribute politics to the entire saga. Their views as represented by a prominent newspaper columnist, Mohammed Haruna are thus:

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> *Salami's sack was a culmination of what has clearly been a proxy war between the ruling PDP and the leading opposition party, the ACN; a war which began when the Court of Appeal replaced most of the PDP governors in the South West that came to power in the2007 elections…(The Nation, December 17, 2011).*

Another classic example of controversial, nay inconsistent, ruling by the courts relates to the case of Rotimi Amaechi in Rivers state (Amaechi V. INEC (2008) 5NWLR (part 1080) 227 at 453). In that case, the Supreme Court affirmed the primacy of political parties in the conduct and contest of elections and stated that: "it is the political parties that the electorates do vote for at elections time." However, it went ahead to declare the candidate (Rotimi Amaechi) who did not campaign during the elections, whose name was not on the ballot and who nobody voted for as the duly elected governor of Rivers State!

Yet another example was the case of Atiku Abubakar, where as pointed out by Jega (2008), six out of seven Supreme Court justices disagreed that Atiku was substantially excluded from the 2007 polls. But INEC had excluded Atiku from the election until the same Supreme Court ordered it to include him with only three days to the election!

By far the most shocking of the court judgments was the majority decisions in the matter of Buhari V. Yar'Adua.

> *…for the first time in Nigeria's electoral history, the electoral commission conducted elections without proper voters register as stipulated in the Electoral Act. Second, the ballot papers used in the elections had no serial numbers as stipulated by law. Third, in far too many cases, results were announced even before the polls had closed. Four, in many cases, results were unsigned and undated. Five, there were no provisions for secret balloting, which is a universal and basic requirement of freedom of choice. Six, electoral violence characterized by ballot snatching and voter intimidation among others were widespread, especially in the South-South and South East. Seven, the electoral commission did not provide indelible ink for thumb printing the ballot papers as stipulated by the law…(Haruna, 2008:60)*

Four justices of the Supreme Court, including C.J.N. Kutigi disregarded all the above facts (and many others) and declared that Yar'Adua was validly elected. Miffed by the judgment, the Nation Newspaper, in an Editorial (December 10, 2008) was convinced that politics rather than law influenced that verdict, as the four justices may have considered the social, political and financial implications of cancelling the election and ordering a new one. "Thus, the lead Justices may have sacrificed Justice on the altar of political stability like it has always been the case since independence." The Editorial then avers:

> *This, without doubt is gratuitous disservice to the cause of Justice. It is a brazen contradiction of the legal maxim: "Fiat Justita ruat caclum," meaning "Let Justice be done though the heavens fall." (The Nation, December 10, 2008).*

Okoye (2009:54) also carpets the courts on what he calls "nebulous interpretation of what constitutes substantial compliance." In the case of Buhari V. Yar'Adua arising from the 2007

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elections, the Supreme Court held that the non-serialization and non-binding of ballot papers did not substantially affect the results of the elections. In the dissenting judgment, the Honourable Justice Oguntade held that "an invalid ballot paper cannot produce a valid vote." He submits that, "it is my respectful opinion that once the atmosphere of an election has been fouled through irregularities, the mathematical computation of votes becomes an irrelevant factor."

Another contentious issue is that of petitioners in an election being compelled to meet the standard of proof required i.e. proof that is "beyond reasonable doubt'. According to Umaru (in Haruna, 2008), it is almost impossible to meet such standard in any allegation of election rigging.

The issue of proof beyond reasonable doubt in election petitions has generated a lot of controversies among legal practitioners, jurists, public analysts, journalists and politicians. The two perspectives on the issue are: those that believe that election petitions are purely civil matters and the burden of proof should not be higher than the balance of probability obtainable in all other civil matters; then there are those who have argued that where an allegation of crime is involved, the proof must be beyond reasonable doubt (Egbewole, 2010).

Nigerian judges handling election petitions have been accused of over-playing the "beyond the reasonable doubt" card and rule against petitioners.

> *…Electoral malpractice can never be proved so long as there are judges who will love to beat about the legal bush with so much self-serving magisterial authority, who can even allow themselves the luxury of lamenting for, and even pitying, the fate of litigants before them – but then go ahead and negate the spirit of law and principle of natural justice…(Adamu, 2008).*

Over the years the Nigerian judiciary has had its image tarnished and integrity besmirched as a result of the misdeeds and unsavoury activities of some judges handling election disputes. A typical example is the now dismissed Justice Wilson Egbo-Egbo who on July 22, 2003 issued an ex-parte order voiding the governorship of Chris Ngige of Anambra State for purportedly resigning at a local shrine. The following day Egbo-Egbo gave a "clarifying order," virtually affirming the earlier one. However, two days later he backtracked.

A commentator, Mobolaji Aluko, described Egbo-Egbo's conduct as *"judicial rascality"* and *"bench distemper"* (Newswatch, August 4, 2003).

There has been a rising wave in corruption in the judiciary, particularly in respect of election matters. As argued by a leading legal luminary and serial ruling party counsel, Afe Babalola:

> *Our bitter experience is that election petitions have inflicted injuries and damage on the electorate, the judiciary as well as the political class (News Watch, August 4, 2003).*

This sentiment was echoed by Kayode Eso, a retitred Supreme Court Justice:

> *…what is happening in the various election petition tribunals today is mind-shattering, because many of the judges are not just millionaires but billionaires (News Watch, August 4, 2003)*

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Ishola Williams, a retired Army General and leading anti-corruption campaigner, agrees:

> *Judges are using the tribunal to make money. All those who had gone through election tribunals are millionaires today (News Watch, August 4, 2003).*

Elsewhere, Williams quipped that *"election tribunals are becoming gold mines for Nigerian judges…they are using the tribunals to make money."*

In a similar vein, according to *Wikileaks,* the whistle blower website, former Speaker of the House of Representatives, Dimeji Bankole, reportedly told a U. S. official that he (Bankole) had proof that the Justices of the Supreme Court were bought with cash, allegedly supplied by former Delta State governor, James Ibori (Sunday Trust, September 11, 2011:6). Also, a former PDP senator, Iyiola Omisore, alleged in an advertorial placed in several newspapers that 5 billion naira was used to influence the Court of Appeal judgment that voided Osun State Governor Oyinlola`s election. Based on the allegation, the 5-man panel on Osun State Governorship Election Petition were all queried. However, they were subsequently cleared of any wrongdoing by the National Judicial Council. Furthermore, Adamu (2010) reported a former C.J.N, Legbo Kutigi, as saying that an unnamed retired judge was caught acting as a go-between, carrying bribes and giving orders and directives to election petition tribunals on behalf of bribing patrons. This concurs with the assertion by Iredia (2011) who reported a retired Supreme Court Judge, Justice Chukwudifu Oputa telling a public gathering that in Nigeria there are lawyers who "after charging their normal and usual fees, charge an extra for the judge (Sunday Trust, May 29, 2011, p.29). Babalola puts the matter even more succinctly:

> *Today things have changed… nowadays, politicians would text the outcome of judgment to their party men even before the judgment is delivered and prepare their supporters ahead of time for celebration (Sunday Trust, May 29, 2011, p.29).*

Babalola should know: he was twice the lead counsel to former President Obasanjo. Indeed, a survey on corruption conducted by the Economic and Financial Crimes Commission (E.F.C.C.) and the National Bureau of Statistics in collaboration with the U.N. Office on Drugs and Crime (UNODOC) disclosed that the Nigerian judiciary was being destroyed by corruption. The report revealed that *"Nigerian courts of law receive the biggest bribe from citizens among all institutions in which corruption is rampant."* (This Day, December, 12, 2011).

However, the judiciary, particularly through the N.J.C, has from time to time moved against bad eggs in its fold and punished them accordingly.

Yet another ugly trend is that of conflicting judgments delivered by particularly the different divisions of the Court of Appeal. According to former Chief Justice Dahiru Musdapher, *"such judicial contradictions have a tendency to lead not only to confusion in judicial precedence but could cause untold hardship to litigants in their quest for justice."* (Daily Trust, December 20, 2011). For instance, in the cases involving the governors of Kebbi (who was a son in-law to President Yar`Adua) and Sokoto States which were substantially similar in facts and circumstances, the same Court of Appeal – on the same day and at the same venue – delivered different judgments that contradicted each other. While it held that in the Kebbi case the issue of nomination was a pre-election matter in respect of which it had no jurisdiction, hence upheld the election of the governor; it however, nullified the election of the Sokoto governor on the grounds that the court had jurisdiction to entertain pre-election issue of nomination. Also, in

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the case involving the governor of Enugu State, while delivering judgment in the consolidated petition of candidates of four political parties, the Court of Appeal, in a unanimous decision held that late arrival of election materials and non-availability of result sheets were not substantial enough to be the basis on which an election should be cancelled. Meanwhile, in Calabar and Port Harcourt, the same Court of Appeal nullified the elections of Liyel Imoke and Timipre Sylva as governors of Cross River and Bayelsa States respectively on the strength of the argument that election materials were not delivered on time and the result sheets were withheld. Similarly, the judgment delivered in the petition by Usman Abubakar Maishanu against David Mark over the contest for Benue South Senatorial seat appears to clearly contradict the same Court of Appeal ruling in the case filed by APGA candidate in Imo State where he challenged the power of Returning Officer to cancel the result of an election already held (it should be noted that Mark was then an incumbent President of the Senate). Such conflicting judgments not only confuse counsels and litigants but the general public as well, further leading to uncertainty in the ability of the judiciary to do justice unequivocally. It also tends to portray the judicial process as a game of chance, where a judgment is given based on luck and not according to well established judicial precedents and principles of law.

CONCLUSION

Elections and democracy are organically, if intricately linked; elections are central to democracy, though not all elections are democratic. It is obvious, as revealed by the paper, that the Nigerian judiciary has been fully involved in mediating election disputes, and in the process it has sometimes found itself enmeshed in politics. And as observed by Adamu (2008), when the law mixes with politics, what is, is made to become what not to be: *"The letters of the rule of law will then be subjected to nuances of capricious interpretations, derived from whimsical viewpoints of the same law."* But then, as pointed out by Suleiman (2011), the judiciary and politics have a strong symbiotic relationship all over the world, hence it is difficult to separate politics from the judiciary.

While it is extremely difficult, if not downright impossible, to prove with empirical evidence that judges play or succumb to politics in their adjudication of election matters, it is quite tempting, if not irresistible, to infer that some judicial pronouncements strongly reeked of the foul stench of politics (Kari, 2014).

RECOMMENDATIONS

The greatest and most effective and enduring panacea to all the hiccups, controversies and problems associated with election petitions is not to have the petitions in the first place! Therefore, the main challenge lies in organizing and conducting elections that are free, fair, transparent, credible and acceptable to all, hence requiring no intervention of the courts to decide their outcome. This is a Sisephean task that demands a holistic approach – all the stakeholders have a role to play. To this end, the electoral body should be adequately funded, provided for and equipped with necessary financial and technical needs. The political class must put its act together, in particular, eschew the politics of bitterness and rancor and desist from do-or die politics notorious and common to this clime. Generally, Nigerian politicians need to nurture, imbibe and evince the correct democratic values, especially as pertained to civility, fair- play and good sportsmanship. At the same time, the populace, particularly the

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electorates, need to be up-and-doing – there should be increased public awareness and mass participation in the democratic process as well as vigilance, particularly on matters of election.

The judiciary occupies a central place in democratic consolidation, growth and development. The judiciary should therefore endeavour to insulate itself and resist all attempts to drag its personnel into the murky waters of partisan politics. Generally, the judiciary needs to improve its abysmally low image and rating with the public. This it may do by purging itself of bad eggs among its personnel, and by being efficient, credible, independent, impartial, honest and virile. The main pre-occupation of the judiciary is to dispense justice. In the discharge of their functions, judges must always reckon with the imperative of engendering justice. In addition, the judiciary should as a matter of urgency and discretionary policy seriously consider taking the following steps:

1. Matters should be decided on their merits and not on technicalities
2. Judges must not on the basis of pre-hearing conference alone dismiss a petition without considering the petition on its own merit.
3. Judges should be liberal in their application of stringent procedural laws
4. Even where interlocutory appeals are pending or on-going, judges should continue with substantive cases.

Very importantly too, the problem of conflicting judgments, particularly at the Court of Appeal is of utmost concern, hence should be looked into by all the relevant individuals and institutions, including the Body of Benchers, the Nigeria Bar Association and the Nigeria Judiciary Council. As observed by Musdapher, CJN, "this (the conflicting judgments) portrays the judicial process as a game of Russian roulette, where a judgment is given based on chance or luck and not according to well established judicial precedents or principles of law." Accordingly, there should be certainty, consistency, predictability and impartiality in the interpretation of the law.

Certain legislative enactments and/or constitutional amendments are necessary in order to cure the electoral process of obvious and inherent defects. In particular, there is an urgent need to repeal Section 146(1) of the Electoral Act that places too much burden on petitioners (who must prove substantiality) even when a case of non-compliance has been established. New sections and sub-sections should be created to devolve the burden among the other stakeholders, particularly the electoral body and the defendants. Other legal tinkering (with the 1999 Constitution) should include the following:

1. A holistic revisit of the so-called adversary nature of our jurisprudence.
2. Removing INEC from any form of control, i.e., making it independent through and through.
3. Funding of INEC should henceforth come from first-line charge.

On the INEC, political parties and the electorate, the following are hereby recommended:

a. An authentic, correct and pool-proof register of all eligible voters be compiled and should be such that can detect and eliminate fictitious and multiple entries, as well as allows for update without manipulation or problems.

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b. Civic and political education be intensified by relevant agencies, groups and individuals – particular on the need to uphold, promote and protect the sanctity of votes.

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