Global Journal of Politics and Law Research
Vol.5, No.6, pp.50-62, November 2017
Published by European Centre for Research Training and Development UK (www.eajournals.org)

SECTION 140(2) AND 141 OF THE ELECTORAL ACT, 2010 OF NIGERIA: A LEGISLATIVE MOCKERY

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ABSTRACT: *Nigeria as a democratic country has three divisions of government. These are; Executive, Legislature and the Judiciary. These three arms of government function independently of each other. Each of these branches of government is a creation of the law and functions within the limits marked out for it by the law and the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Legislature is the law making organ of government. By virtue of section 4 of the Constitution, the legislative power of the Federal Republic of Nigeria is vested in the National Assembly which consists of a Senate and a House of Representatives. The National Assembly has power to make law for the peace, order and good government of the Federation or any path thereof. The House of Assembly at the State level makes law for the peace, order and good government of the State or any path thereof. The exercise of legislative power by the National Assembly or by a State House of Assembly is subject to the jurisdiction of the courts of law and judicial tribunals established by law. Therefore, the National Assembly or a State House of Assembly shall not enact any law that oust or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law. The constitution of the Federal Republic of Nigeria, 1999 is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Any law which is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void. This paper examines the legal status of section 140(2) and 141 of the Electoral Act, 2010, which prevents the Tribunals or Courts from pronouncing winners of elections. The section of the Act only allowed the Tribunal and Courts to order for re-run elections. The National Assembly by enacting that Act ousted the jurisdiction of the Courts and thereby ran foul of the constitutional provision. The paper contends that the National Assembly acted in excess of its legislative powers and any action taken by any of the authorities without or in excess of its legal authority or power is ultra vires the Constitution and therefore void.*

KEYWORDS: Section 140(2), Section 141, Electoral Act, Legislative Mockery, Nigeria

INTRODUCTION

The 2003/2007 general elections were marred by electoral irregularities such as Nigeria never witnessed since independence in 1960. The irregularities include: rigging, use of thugs, illegal disqualification of eligible candidates, exclusion of candidates, snatching of ballot boxes, inflation of electoral votes, intimidation and harassment of electorates by security agencies in favour of a particular political party, using the instrumentality of the State. The attendant consequences of these irregularities in a bid to win elections by all means pushed Nigeria to the precipice and shook the foundation of the very existence of the nation. In its wake, both local and international observers condemned the outcome of the elections as nothing near international standard and called for its nullification. The government in power

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

turned deaf ears on this clarion call. The aggrieved parties in the elections had no option but to turn their cases over to court of law for adjudication. The judiciary as the hope of the common man came to the rescue and nullified some of the elections of candidates of the National Assembly, State Houses of Assembly and gubernatorial elections. Sometimes, courts ordered for fresh elections, and declared some of the candidates of the opposition party winners of the elections. For example, in the case of **Mr. Peter Obi v INEC[1],** the appellant aggrieved with the declaration of **Dr. Chris Ngige,** as the Governor of Anambra State by INEC, filed a petition at the Governorship and Legislative Houses of Election Tribunals, challenging the declaration of **Dr. Chris Ngige,** as the candidate who won. The tribunal upheld the appellant's petition stating that he was the candidate who was validly and duly elected. Dr. Ngige dissatisfied, appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the decision of the tribunal. Consequently, Peter Obi took the oath of office as the Governor of Anambra State on the 17th day of March, 2006.

The outcome of the court's decision on those electoral matters weighed heavily on the ruling party, Peoples Democratic Party (PDP) that was the greatest beneficiary of the sham called the election. This development did not go down well with the ruling party which had majority of its members in the National Assembly. As a face saving measure and to ensure the party's continued dominance in the affairs of the country through electoral malpractices, the National Assembly amended the Electoral Act 2006. In the amendment the National Assembly enacted sections 140(2) and 141 of the Electoral Act 2010 which purportedly ousted the jurisdiction of the judiciary. Section 140(2) prevents Election Petitions Tribunal from pronouncing winners of elections. It states, where an election tribunal or court nullifies an election on the ground that the person who obtained the highest number of votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest number of votes as elected, but shall order fresh election[2]. Section 141 of the Act states: An election tribunal or court shall not under any circumstance declare any person a winner of an election in which such a person has not fully participated in all the stages of the said election[3]. This section of the Act only allowed the tribunals and the courts to order for re-run elections. The provision of that section of the Act is inconsistent with the constitutional provision, that the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law[4]. It further states that National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law[5]. The enactment of sections 140(2) and 141 of the Electoral Act, 2010 by the National Assembly dominated by the ruling PDP members is a pure demonstration of a dictorial monolithic political construct in which the ruling PDP sought to make itself supreme in a democratic Nigeria. The purport of the Act is to enable PDP rig election in their favour and prevent the court from nullifying same. The National Assembly by this Act compromised democratic principles. This is self serving as PDP dominated Legislative House through the enactment of the said sections of the Electoral Act, sought to oust the functions of the judiciary, a clear violation of the Constitution.

1(2007) 11 NWLR (pt. 1046) p 436 at 616
[2] Section 140 (2) of the Electoral Act 2010.
[3] *ibid*, section 141.
[4] Section 4(8) of the Constitution of the Federal Republic of Nigeria 1999
[5] *ibid*

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

The intention of the party in power is to wittingly or unwittingly perpetuate itself in power through manipulation of electoral process in Nigeria by emasculating the judicial process through legislation. The attitude of the National Assembly is unbecoming of elected public officials meant to serve the interest of the public whom they represent. When elected public officials compromise democratic principles and surrender to undemocratic pressures, they weaken their respective offices and lend credibility to non democratic institutions and practices. If the judiciary is strangulated, PDP led Government and indeed politicians would have created and nurtured a political structure that will expedite the collapse and disintegration of Nigeria. To avert the impending political doom that will ensue if the said sections of the Act are allowed to operate, the National Assembly should immediately set the machinery in motion to amend the Electoral Act and have the offensive sections of the Act expunged.

The primary functions of the legislature is law making. However, the exercise of law making power of the legislature is limited to making laws for the peace, order and good governance of the State. This seemingly limitations of legislative power is rationalized as a necessary consequence of written Constitution as a law antecedent and superior to government…[6] it means therefore that the legislature must exercise its powers within the confines of the law. Accordingly, **Guobadia** stated thus:

> *A legislature that proceeds to pass a law, the content and purpose of which are in flagrant violation of the spirit and letter of the Constitution is not acting within the ambit of the law making powers granted to It*[7].

In **Attorney General Abia State v Attorney General of the Federation,**[8] the apex Court declared unconstitutional, an Act of the National Assembly which sought to extend the tenure of Local Government Councils from three to four years. The court is of the view that the subject matter of elections into local government councils did not come under the legislative competence of the National Assembly.

Section 140(2) & 141 of the Electoral Act, 2010 ousted the jurisdiction of the court to hear and determine electoral matters and therefore inconsistent with the provision of the Constitution[9]. All governmental powers derive from the Constitution. Thus, the legislature was not acting within the ambit of the law when the said sections of the Act were enacted, the purpose of which was to oust the jurisdiction of the Court to determine electoral matters, the reason of which is to legalize electoral malpractices for the benefit of the ruling party.

Powers and functions of the legislature

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) vests the legislature with the responsibility and authority to make laws[10]. However, there are other responsibilities placed on the legislature by the Constitution of Nigeria, as in other democracies across the globe, such as that of the United States of America. They include:

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[6] D.T Akper and A Ozoemena, the role of the legislature in the promotion and protection of democracy in Nigeria. Nigerian Association of law teachers proceedings of the39th Annual Conference 2003. P.52
[7] D.A Guobadia and D. Adekunle (ed)Nigeria: issues in the 1999 Constitution, Lagos, NAILS, 2000. P. 17
[8] (2002) 38C P. 106.
[9] Op. Cit, Section 4 (8)
[10] Section 4(1) of the Constitution, of Federal Republic of Nigeria,1999.

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

Appropriation Control

The Constitution provides that the country's budget must be considered by the legislature and the appropriation bill passed before money can be withdrawn from the relevant funds to run the Government[11]. This makes it mandatory for the Executive to wait for the approval of the legislature before it can draw funds for its function, both at the federal level and at the state levels. Therefore, any expenditure by the executive from the consolidated revenue funds must be approved by the legislature, hence the term budget approval.

Investigation Power

This is another constitutional power bestowed on the legislature. The legislature is empowered by the Constitution to initiate or cause to be directed an investigation to be conducted concerning the affairs of any person, authority, ministry or Government Department charged or intended to be charged with a duty or certain responsibilities, concerning the disbursement or administration of money appropriated or to be appropriated by the Legislature.

Power to screen and approve executive nominees

The legislature has the responsibility of ensuring that those who are appointed to form part of the executive are persons of proven integrity and unquestionable character. And that all sections of the country or State are given a sense of belonging through the appointment of their sons and daughters[12].

Power of impeachment

One of the greatest tools placed in the hands of the legislature for the promotion of our democracy is the power to remove the President or Vice-President, and the Governor or the Deputy Governor[13] Through this process, the executive is put on their toes and prevented from abusing their powers.

Judicial Functions

Section 6 of the 1999 Constitution (as amended) delegated judicial power to the courts. Subsection (1) &(2) of section 6 provides:

a. Judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the federation.

b. The judicial power of the State shall be vested in the courts to which that section relates being courts established, subject as provided by the Constitution for the state.

The powers vested in the courts include

i. All inherent powers and sanction of a court of law

[11] *Ibid*, section 88(1), (b), (c).
[12] Section 14(4)
[13] *Ibid*, Section 143 (1) and 188(1)

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

ii. All matters between persons, government and authorities as to the determination of civil rights and obligations of the parties.

Thus, judiciary is the branch of government whose task is the authoritative adjudication of controversies over the application of law in specific situation. This power to decide cases is vested in the Supreme Court and lower courts established by the laws made by the legislative. In the course of the performance of its duties and powers, the judiciary does the following:

i. Determine which laws the legislature intended to apply to any case

ii. Determine whether a law is unconstitutional

iii. Determine how legislature meant the law to apply to disputes

iv. Determine how laws should be interpreted to assure uniform policies. Via the appeals process.

The judiciary is often seen as the most crucial arm of government because of the invaluable role it plays in determining rights, responsibility or obligations, between persons, institutions, and the Government. The judiciary covers the personal and institutions through which the laws of the country are interpreted in determination of the rights and obligations of the citizens as that of the Government, it is the last hope of the common man in whatever system of the Government that is in place. Hence, **Honourable Justice Nnamani (**of the blessed memory), once described it thus:

> *The judiciary is the guardian of our constitution, the protector of our cherished governance under the rule of law, the guardian of our fundamental rights, the enforcer of all laws with or without which the stability of society can be threatened, the maintainer of public order and public security, the guarantee against arbitrariness and generally the only insurance for a just and happy society*[14].

Section 140(2) & 141 of the Act was conceived, nurtured and ostensibly targeted to prevent the court from handing down a just decision, as it did in the case of **Rotimi Amaechi v. INEC**[15] wherein the applicant was unlawfully removed by his party, the PDP in the 2007 governorship primary election won by him and substituted by Celestine Omehia who was later sworn in as Governor of Rivers State. The case dealt with the proper procedure a political party must follow for it to be in compliance with the provisions of section 34(2) of the Electoral Act, 2006. Section 34(1) of the Act states:

> *A political party intending to change any of its candidates for any election shall inform the commission of such change in writing not later than 60days to the election. Sub-section (2) provides: Any application made pursuant to sub-section (1) of this section shall give cogent and verifiable reasons.*

[14] Ernest Ojukwu, Reflection on the judiciary's position and the role under separating powers in a democracy and 1999 Constitution the Nigerian Bar Journal vol 1 no 1, 2001 p.3 (d).
[15] (2007) 10-12 ILLR p. 3999-400

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

The appellant was not substituted in accordance with the said law. The Appellant applied to Court to enforce his right. The Supreme Court found for the Appellant and ordered that he be sworn in as Governor of Rivers State.

The same decision was reached in the case of **Ugwu v. Ararume[16].** Ararume's substitution was not in substantial compliance with section 34(2), that a political party wishing to substitute for another within 60 days to the election must give cogent and verifiable reasons to INEC for the substitution sought. The essence of repealing section 34(2) of the Electoral Act, 2006 and enacting section 140(2) and 141 of Act, 2010 in its place, was to oust the jurisdiction of the tribunal or courts from doing substantial justice to electoral matters brought before it for adjudication. If the procedure adopted in substituting a candidate in the above case is glossed over in future political processes by political parties that will perpetuate electoral irregularities in our polity and thus, make the country a laughing stock before the comity of nations.

Electoral irregularities in any manner is a hydra-headed monster that should not be allowed to rear its ugly head as it is against the tenets and principles of participatory and all inclusive democracy. To prevent the court of law or judicial tribunal from performing its functions of adjudication and determination of matters between parties is to create and nurture the worst political structure in the country.

The concept of ouster clause in legislation

An ouster clause is a provision of law which estops the power of court to entertain matter and decides it. If a law contains an ouster clause which effectively ousts the jurisdiction of the court to hear a matter, the only option left for the court is to declare that it has no jurisdiction to entertain such matter, and then strike our or dismiss the case. Ouster clauses render the matters to which they relate non-justiceable as the Court will lack jurisdiction to entertain and decide on such matters.

Ouster clauses are more pronounced during the military regime than what is obtainable in a democratic government. Where the military does not want any involvement in some affairs by the courts, they would simply promulgate a decree to that effect[17].

These Military Decrees purportedly carry ouster clauses that oust the jurisdiction of the Courts from entertaining and determining matters relating thereto. However, ouster clauses are treated with disdain, contempt and revulsion by the courts and where it is possible to render same void, the courts are quick to seize on the opportunity. In the case of **Lakanmi &Anor v. The Attorney General of Western Nigeria[18],** the Appellants were among the

[16] (2007) 12 NWLR (pt.1048) p.36.

[17] The Constitution (suspension and Modification) decrees are replete in the Nigerian legal history. They are; the Constitution (Suspension and Modification) (Amendment) Decree No. 17, 1985, Counterfeit Currencies (special provisions)/Decree1984, Exchange control (Anti-Sabotage) Decree No 7 1984, Federal Military Government (Supremacy and Enforcement of Powers) Decree No 12 1984, Federal Military Government (Suspension and Enforcement of Powers) Decree No 28 1970, Federal Military Government (Suspension and Enforcement of Powers) Decree No 13, 1984, Forfeiture of Assets (Validation) Decree No 45, 1968,Public Officers Protection Against (False Accusation) Decree No. 48, 1984, Public Property Special Military Tribunal (Amendment) Decree No 21,1986, Recovery of Public Property (Special Military Tribunal) Decree No 3, 1984, etc.

[18] (1971) UILR p. 29

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persons whose assets were investigated by the tribunal of inquiry set up by the Western State Government under Edict No.5, prohibiting the Applicants from further dealing with their property except with the permission of the Military Government of Western State. The order further provided that all rents from the properties should be paid into the State sub-treasury pending the determination of the issues involved in the investigation. The Appellants thereupon applied to the High Court for an order of certiorari to quash the order on the ground that it contravened sections 22 and 31 of the 1963 Constitution of Nigeria and was contrary to the Public Officers (Investigation of Assets) Decree No 51 of 1966. The High Court dismissed the appeal on the ground that Decreed No. 51 was not in operation in the Western State where Edict No. 5 of 1967 was made and that section 21 of the Edict ousted the jurisdiction of the court. The Appellants appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, it was held that, Edict No. 5 of 1967 and Decree 45 of1968 from where the tribunals' power originated were *ultra-vires,* null and void.

Similarly, an erudite jurist, **Niki Tobi JSC** did not mince word in condemning "ouster clauses" when he stated in the case of **Inakoju & ors v. Adaleke[19],** thus:

> *This court cannot in the interpretation of specific provisions of the Constitution gallivant about or around what the makers of the Constitution do not say or intend. On the contrary, this Court must interpret any section of the Constitution to convey the meaning assigned to it by the makers of the Constitution. Ouster clauses are generally regarded as antithesis to democracy as the judicial system regards them as unusual and unfriendly. When ouster clauses are provided in statutes, the courts invoke section 6 as a barometer to police their constitutionality or constitutionalism. The courts became helpless when the Constitution itself provides for ouster clause such as section 188(10). In such situation, the courts will hold their heads and arms in desperation. The jurisdiction is to give effect to the ouster clause because that is what is in the Constitution or that is what the Constitution says. It is in the light of this very helpless situation of the courts, the upholders of the rule of law, that parties should not urge them to interpret section of the Constitution as ousting their jurisdiction when it is not. Ouster clause is a very hard matter of strict law which must be clearly donated by the provision. It is not a subject of speculation or conjecture. I am of the view that in the circumstances of this case, the wrong procedure adopted is clearly outside the section 188 (10) ouster clauses and I so hold.*

It is apposite to observe that this dictum of the learned Justice encapsulates the very essence of this branch of government. In the U.S case of **Muskrat V. United States[20],** it was said that:

> *Judicial power is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.*

[19] (2007) 4 NWLR (pt. 2025) p. 588 at 597.
[20] (1911) 219 u.s.p. 346 at 361

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

The validity of section 140 (2) and 141 of the Electoral Act, 2010 was tested in a law court wherein, the Federal High Court declared same invalid and a violation of constitutional provision on the powers of judiciary. The Federal High Court presided over by Hon. Justice Okechukwu Okeke was right when he declared that section 140(2) of the Electoral Act, 2010 which prevents Election Petitions Tribunal from pronouncing winners of election was inconsistent with the constitutional provisions, which empowers the Courts to make declarative injunction. The Court ruled that the said section of the Act which only allowed the Tribunals and the Courts to order for re-run elections was null and void and of no effect whatsoever[21].

The Act clearly contravenes section 4(8) of the 1999 Constitution. Section 4(8) of the constitution provides:

> *save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law and accordingly the National or a State House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law*[22].

The National Assembly goofed in the exercise of its legislative power when it enacted section 140(2) and 141 of the Electoral Act, 2010 which purports to oust the jurisdiction of the court and therefore, that section of the Act is constitutional *ultra vires.*

The supremacy of the constitution

Supremacy of Constitution relates to the power of the Constitution not only to control its amendment but also the determination of all other processes that take place in the other arms of government. The supremacy of the constitution could also be referred to as constitutional sovereignty.

In Nigeria the people are sovereign hence; sovereignty resides in the people, for the constitution provides, that sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority[23].

The people exercise sovereignty through electoral process by which they vote for the candidates of their choice to put in place a democratic government in accordance with the constitution which is the express will of the people, for the regulation of government and national life[24].

Nevertheless, the Constitution of the Federal Republic of Nigeria is not only the organic law and fundamental law of the country, but also the supreme law of the land which has binding force on all persons, bodies, agencies and institutions in the country. The 1999 Constitution clearly spelt out these provisions thus:

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[21] Daily Sun Newspaper, Friday July 1st, 2011, p. 6
[22] Section 4(8) of the Constitution of the Federal Republic of Nigeria,1999.
[23] *Ibid*, Section 14 (2) (a)
[24] *Ibid*, its preamble

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

> *This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria*[25]*. The Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution*[26]*. If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void*[27]*.*

The courts in Nigeria have at every opportunity stated very clearly and eloquently this classic position of the Nigerian Constitution. For example, the apex court in the case of **Attorney General of Abia State & 35 Ors. V. Attorney of the Federation**[28]**,** nullified some sections of the Electoral Act 2001, on the ground that such provisions were *ultra vires* the powers of the National Assembly and held, that by virtue of section 1(1) of the 1999 Constitution, the provisions of the Constitution are superior to every provision made in any Act or law and are binding on and must be observed and be respected by all persons and authorities in Nigeria… The Constitution is the grundnorm and the fundamental law of the land[29]. Similarly, in **Fasakin Foods (Nig) v. Shosanya**[30]**,** the court stated that: "the Constitution is supreme, it is the organic and fundamental law and it is the grundnorm of Nigeria. The Constitution is the *fons et origo* and the foundation of all laws."

The same decision was reached in **INEC v. Musa**[31] wherein it was held that, where the Constitution sets the condition for doing a thing, no legislation of the National Assembly or of a State House of Assembly can alter those conditions in any way directly or indirectly unless the Constitution itself as an attribute of its supremacy expressly stated so.

The court further stated that the Constitution is supreme and the validity of any provision will be tested by the following interrelated provisions, that is:

a. *all powers of the legislative, Executive and judiciary must ultimately be traced to the Constitution.*

b. *the legislative power of the legislature cannot be exercised inconsistently with the Constitution, where it is so exercised it is invalid to the extent of such inconsistency.*

c. *where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution has enacted must show that it has derived the legislative authority to do so from the Constitution*[32]*.*

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[25] Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999.
[26] *Ibid* Section 1(2)
[27] *Ibid*, section 1(3)
[28] (2002) ^ NWLR (pt.763) p.264 at479; also section 6(2) of US Constitution with similar provision
[29] *Ibid* section 1(1)
[30] (2006) 10 NWLR (pt.787) p.148
[31] (2003) 10 WRN p1 at 40-41.
[32] *Ibid*

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

The Supreme Court also on supremacy of the Constitution, held in the case of **Gani Fawehini v Babangida**[33]**,** that it is the limits set under relevant provisions of the Constitution that define and determine the frontiers of the law that can be enacted. Thus, no law not specifically authorized or backed up in the Constitution can be lawfully passed for the Federation of Nigeria. That is the hallmark of constitutional democratic government.

In the light of the above judicial decisions, section 140(2) and 141 of the Electoral Act, 2010, which purports to oust the jurisdiction of the Court of law are inconsistent with the constitutional provision and could only pass as a legislative violation of the 1999 Constitution on judicial powers, which must not find its way into the Act.

CONCLUSION

Democracy in Nigeria is still being nurtured and to enjoy the real essence of democracy anchored on justice, equity and fair play in our march to nation-hood, judiciary should be held sacrosanct as the watch dog of the society. The role of the judiciary as an instrument of stability in a democratic Nigeria cannot be over emphasized. In a Democracy, the form of government should be one that is anchored on the rule of law. Democracy and the rule of law are twin sisters and therefore inseparable, and a democracy that is predicated on rule of law issues such as respect for and obedience to court orders or judgment, equality before the law, absence of arbitrary governance are taken for granted. In the enthronement of democracy and rule of law, and stability in the polity, no other arm of government has a greater responsibility than the judiciary. The comment of **Niki Tobi JCA** (as he then was) in **Onagoruwa v Inspector General of Police,** lend credence on the role of the judiciary when he stated:

> *In an effort to deepen the ideals of democracy in Nigeria, the pivotal role of the judiciary cannot be underplayed. The judge as a man of honour, principles and integrity must be fair and just in the adjudication of cases between parties; without fear or favour. The judge must possess those qualities which the Greek philosopher stated thus: to hear courteously, to answer wisely, to consider soberly and to decide impartially*[34].

The judiciary has always risen in defense of the rule of law, democratic norms and values each time they have come under threat or likelihood of attack, even under the military regime.

The action of the Lagos State Government in disobeying a court order and thereby resorting to self help to evict Chief Odumegwu Ojukwu from 29 Queens drive, Ikoyi Lagos, drew the ire of the apex court in **Military Governor Lagos State v. Chief Ojukwu,** wherein the erudite justice Obaseki JSC, condemned the attitude of the Lagos State Government thus:

> *In the area where rule of law operates, the rule of self help by force is abandoned Nigeria being one of the countries in the world that proclaimed loudly to follow the rule of law, there is no room for the rule of self help by*

[33] (2003) 3 NWLR (pt. 808) p.651
[34] (1991) 5 NWLR. (pt.173) p.599 at 650.

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

> *force to operate. Once a dispute has arisen, between a person and the Government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the state. It is the duty of the Government to allow the law to take its course or allow the legal and judicial process to run its full course. The action the Lagos State Government took can have no other interpretation than the show of intention to pre-empt the decision of the court. The courts expect the utmost respect of the law from the Government itself which rule by law*[35].

The judiciary has demonstrated its determined resolve to enthrone democratic values in our polity as emphasized by Mustapha JSC, in the case of **Attorney General Abia State v. Attorney General Federation,** wherein he succinctly stated the functions, duties, powers, of the judiciary in a democratic set up like ours where the executive is always inclined to act brashly, arbitrarily and in a self serving manner thus:

> *The judiciary especially the Supreme Court in particular is an essential integral arm in the governance of the nation. It is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purpose of safeguarding and protecting the Constitution and its goals. The judiciary when properly invoked, has a fundamental role to play in the structure of government by checking the activities of the other organs of government and thereby promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievements of the goals of the Constitution and not allow the defeat of such good goals and intendments. It is the duty of the Court to keep the Government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution. The Supreme Court has the sacred duty to translate into actuality the noble ideas expressed in the basic law, give flesh and blood, inject life to the abstract concepts of freedom, liberty, transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the Constitution*[36].

The judiciary being the only hope of the common man, harbinger of hope and repository of trust and confidence has worked tirelessly in ensuring that our nascent democracy is firmly rooted in the rule of law. This was aptly captured by the Supreme Court pronouncements on the Anti-corruption case which portray it as being sensitive to the issue of corruption which has eaten deep in the fabric of the Nigerian state. *In **Attorney General Ondo State v. Attorney General of the Federation,** the learned justice of the Supreme Court **Katsina –Alu JSC** stated:*

> *It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their powers. It is good sense that every one involved in corrupt practices and abuse of power should be made to face the law in our efforts to eradicate this cankerworm*[37].

[35] (1987) 10 NWLR (pt 60) p. 325 at 343
[36] (2006) 16 NWLR.(pt 1005) p.265 at 454
[37] (2002) 9 NWLR (pt.772) p.222 at 364

Print ISSN: ISSN 2053-6321(Print), Online ISSN: ISSN 2053-6593(Online)

Electoral malpractices in whatever form or manner is the worst form of corruption, any inhibition of the courts' powers to fight the cankerworm will spell doom for our nascent democracy, which is the combined effect of sections 140 (2) & 141 of the Electoral Act 2010, if applicable. The effort of the learned justice of the Federal High Court Lagos who voided the said Act is highly commendable, as politicians might use same as a plat-form to deepen electoral irregularities and undemocratic norms.

The judiciary more than any other arm of government is the most disciplined, patriotic and committed to the goal of democratic principles and indisputably the vessel that is today holding Nigeria together. Politicians in Nigeria seen not to have learnt any lesson from the military junta who held sway in the country for thirty-three years, for they appear not to be interested in democracy or in nurturing same. Thumbs up for the judiciary that has stood in gap between Nigeria and Nigerians on one hand, and reservation of our nascent democracy on the other hand.

The judiciary as an instrument of stability and preservation of our nascent democracy could be seen in their courageous nullification of elections tainted with irregularities. The attempt by the National Assembly to muscle up the powers of the Courts through the enactment of sections 140(2) & 141 of the Electoral Act 2010 is unconstitutional and *ultra vires* its powers.. The National Assembly members are elected representatives of the people and who are meant to serve the interest of the people, now turn around and enacted such obnoxious Act of Sections 140(2) & 141 of the Electoral Act 2010, which is anti-people and undemocratic.

RECOMMENDATIONS

In Nigeria, every division of government whether legislative, executive or judiciary derives its powers from the people in accordance with the terms laid down by the people in the Constitution. Thus, every power in the country is subordinate, derived from and controlled by the Constitution as laid down by the people, the sovereign. By observing the procedure stipulated by the Constitution, the National Assembly may amend the Constitution provided that parliament or National Assembly cannot repeal section 1 of the Constitution which is the supremacy clause.

Nigeria operates constitutional democracy and to sustain its survival, the provisions of the Constitution from where all governmental powers are derived must be observed and applied *strictu senso.* In applying strictly the provisions of the Constitution, no arm of government should interfere or oust the functions of the other branch, in other to create political stability, peace, orderliness and good governance in the society. The distinguishing feature of democracy is that government derives its authority from citizens of a given society. Thus, democracy means government by the people not by one person (Monarch, dictator, a priest) or government by the few (Oligarchy or Aristocracy).

It is a political system that holds the government responsible to the governed through free and frequent periodic elections offering a genuine choice of candidates for office and that allows discussion and a chance for the opposition to replace those in office. It is therefore undemocratic for the National Assembly dominated by members of the ruling party, PDP, to wish away the popular will of the people through manipulation of the electoral process. This

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is to prevent the court from performing its constitutional functions of interpreting and determining cases. The intendment of section 140(2) &141 of the Electoral Act 2010, is to oust the jurisdiction of the courts and prevent it from performing its functions of interpreting and determining the law. Judiciary is the last hope of the common man. Any attempts to emasculate or muzzle up that arm of government will spell doom for the country which is the intendment of the said Act. The enactment of the obnoxious sections of the said Act, speaks volumes of the gross inexperience of our lawmakers which made them incompetent in the law making process. Most of them have no knowledge of the law. It is important and will be a great asset to our democracy if majority of those trained in law should be lawmakers. There should be seminars or symposium where law makers shall be guided in the law making process by the jurists. Therefore, to save our democracy and restore confidence in our electoral process, Electoral Act, 2010 should be amended and the offending section of the Act expunged as it is inconsistent with the Constitutional provision which empowers the court to make declarative injunctions.

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