

Effects of Pre-Election Matters on Independent National Electoral Commission's Preparation for Election: A Case for Legal Reform

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Abstract:- “Before every general election is concluded in Nigeria, Political Parties are expected to conduct internal preliminary elections to choose candidates that would represent the party in the general election which often lead to issues of qualification, disqualification, nomination, substitution and sponsorship of candidates for an election proceeding the general election”¹

I. INTRODUCTION

Election litigation is bound to occur in an electoral process. While the Independent National Electoral Commission (hereafter “the commission”) is saddled with the constitutional responsibility to handle elections, the judiciary takes responsibility for entertaining disputes arising from the process. Consequently, there has to be a smooth synergy between the judiciary and election management body for a smooth electoral process and continued consolidation of our democracy.

Over the years, pre-election matters have posed serious challenges to the commission's preparation for general elections. The pre-election matter stretches well into the time for elections there by hindering preparation for the elections. This article is geared towards providing the legal solution to this raging problem that affects our nascent democracy. In the course of this article, the meaning of pre-election matter, the court with the requisite jurisdiction to entertain pre-election matters, what the courts must do to dispose of pre-election matters timeously and the role of the commission. The time frame for filing & disposing of pre-election matters, time frame for the submission of candidates name, conditions for acceptance of such candidate, the commission's decision for accepting and rejecting candidates presented and parties rights would be considered and the current position of the law on the subject matter and then conclusions and recommendations.

II. WHAT IS A PRE-ELECTION MATTER

It is not every matter that is related to elections that must be entertained in an election tribunal. A number of matters resulting from disputes which happens before an election are referred to as pre-election matters and come within the jurisdiction of normal courts. In these types of cases,

adjudication can go even up to the Supreme Court. This was clearly depicted in Peter Obi v INEC².

“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 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 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 preparation for an election”³

III. PRE-ELECTION MATTER: JURISDICTION

There has been a controversy hitherto, on the jurisdiction of the Federal High Court and the State High Court to adjudicate on pre-election matters and this was settled in the Supreme

¹ Salim v CPC (2015) EJSC 163@181 paras, E-F;

² (2007) 11 NWLR (pt. 1046) 565

³ The Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21,) Act, 2017.

Court's decision in *Salim v CPC(supra)* the Supreme Court per M U Peter Odili JSC, Pp178-179, paras. H-E Held thus:

“It is therefore to be said in view of this novel provision, that the previous all-embracing interpretation of section 251 of the 1999 constitution is given once the Federal Government or its agencies are involved; would have to be given broad view in the co-existing situation of the provisions of section 87(9), Electoral Act and the *sui generis* nature of the subject matter. In that whole picture therefore, section 251 would be applied subject to this specific legislation in factors of play. That was the mind of this court as anchored by Mohammed, JSCC in *Adetayo v Ademola(2010)* All FWLR (Pt. 533) 1806@ 1823 -1828 when he stated thus:

‘ On the face of the provisions of the Constitution, it appears that impression have been created that the Federal High Court has exclusive jurisdiction to the exclusion of all other courts in Nigeria in any civil case or proceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provision would show that this is not necessarily the true position. This is because in my view, it is the fact and circumstances of each case that determines...

The need to examine parties in the litigation as well as the subject matter of the litigation was strongly advice for close scrutiny.

Also, the Constitution did not provide a time frame within which pre-election matters must be heard and concluded but on the 7th day of June, 2018 new alterations which were inserted, took effect.

“Notwithstanding anything to the contrary in this Constitution, every 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.

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

An appeal from a decision in a pre-election matter shall be filled within 14 days

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.

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.⁴

It was this amendment that empowered the Supreme Court to turn down about 15 pre-election appeals preceding the 2019 general elections. The effect being that the Court lacked

jurisdiction to entertain such matters, and could only strike them out of its cause list. The Constitution now requires the trial court to determine pre-election cases within 180 day and gives Court of Appeal and Supreme Court 60 days each to determine such cases.

IV. THE ROLE OF INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

The mission of INEC is to serve as an independent and effective Electoral Management Body (EMB) committed to the conduct of free, fair, and credible elections for sustainable democracy in Nigeria.

INEC's main roles are:

- a) **“Organize, undertake and supervise 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 House of Assembly of each state of the federation;**
- b) **Register political parties in accordance with the provisions of the Constitution and Act of the National Assembly;**
- c) **Monitor the organization and operation of the political parties, including their finances; conventions, congresses, and party primaries.**
- d) **Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;**
- e) **Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this constitution;**
- f) **Monitor political campaigns and provide rules and regulations which shall govern the political parties;**
- g) **Conduct voter and civic education;**
- h) **Promote knowledge of sound democratic election processes; and Conduct any referendum required to be conducted pursuant to the provision of the 1999 constitution or any other law or Act of the National Assembly.”⁵**

The Commission is expected to display openness and transparency in all its activities and in its relationship with stakeholders. It is also to carry out its functions independently and free from external influence; with equity and excellence being part of its core values, it is saddled with the task of delivering quality electoral services efficiently and effectively, guided by best international practice and standards.

⁴ Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act, 2017 (sections 9- 13)

⁵ Section 15, Part 1, Third Schedule 1999 Constitution(As Amended), section 2, Electoral Act 2010 (As Amended)

The commission is not truly free from external influences in its preparation for elections and this prevents it from rendering quality services and working efficiently.

In the February 2019 general elections, there was delay in delivering ballot papers and result sheets for the elections owing to very tight legal timeframe for the nomination of candidates and dealing with the spate of legal challenges attached. The Commission was sued or joined in over 640 court cases arising from nomination of candidates. On the day of the general elections, there were over 40 different court orders against the Commission on whether to add or drop candidates.

This has a colossal effect on the Commission's preparation for elections as it has no time to print ballot papers, result sheets and also transport them to the various polling units across the country.

V. NOMINATION OF CANDIDATES

The Supreme Court established the principle that primary election conducted by State Executive Committee of a political party is not recognized and only the National Executive organ of a political party can submit the list of candidates in respect of all elections.⁶ However, the Federal High Court made orders empowering State Executive committees of PDP to conduct primaries and submit list of candidates to Independent National Electoral Commission.⁷

Where an election is nullified on the ground that the winner of the election was not qualified to contest the election and a fresh/re-run election is ordered, the disqualified candidate and the political party that sponsored him are not allowed to participate in the fresh/ re-run election. The fresh/re-run election is to be between the same candidates and political parties that participated in the nullified election excluding the disqualified candidate and his political party. This judgment is binding on all Courts in Nigeria without any exception.⁸

The Federal High Court sitting in Abuja assumed jurisdiction and ordered that having regard to the nullification election in Akko Federal Constituency of 28th March, 2015 by Court of Appeal, the All Progressive Congress party who sponsored a disqualified candidate at the earlier election and responsible for the nullification of the election was eligible to sponsor another candidate for a fresh election ordered⁹ contrary to **Labour Party v. INEC**¹⁰.

The Federal High Court on the 29th January, 2016 assumed jurisdiction and held that the fresh election ordered by Court of Appeal in Anambra Central Senatorial District admits new entrants. The Court ordered INEC to include PDP's new

candidate in the Court ordered fresh election in Anambra Central Senatorial District.¹¹

The same court (Federal High Court) assumed jurisdiction and in a judgment delivered on 14th March, 2017 on the same subject matter held that time for nomination /withdrawal or substitution of candidates for the Court ordered election in Anambra Central Senatorial District had lapsed as decided by the Court of Appeal in the case of Labour Party vs. INEC¹² and that there is no room for fresh candidates in a court ordered fresh elections.¹³

Depicting vividly how pre-election matters affect the commission's preparation of election, acceptance/rejection of candidates and subsequent printing of certificates of return is *Gatumbwa vs All Progressive Congress &ors*¹⁴

A deluge of controversies arose after the All Progressive Congress primaries held in Borno state. Professor Babagana Umara Zulum emerged the winner and flag bear of the party APC. Dissatisfied, Gatumbwa sued APC and others in a pre-election suit before the Federal High Court, Maiduguri division. The matter was adjourned to 11th day of March, 2019 for judgment, meanwhile the governorship elections was slated for 9th of March, 2019 after results had been declared by INEC. Although the All Progressive Congress raised a preliminary objection on the competence of the suit, the case could still make its way up to the Court of Appeal and Supreme Court.

All the above court decisions have succeeded in confusing stakeholders as they have created uncertainty in the body of laws by ushering in elements of arbitrariness, unending pre-election matters resulting from vague and ambiguous decisions/orders. Conflicting decisions create instability and hamper development of a consistent body of laws on electoral adjudication. Ultimately, it has caused logistical challenge to INEC and other stakeholders in the electoral process. This has led to unnecessary expenditure for the commission and waste of our meager national resources.

VI. CONCLUSION

The judiciary, over the years through its landmark decisions has greatly shaped the electoral process and democracy in Nigeria. As seen from the above legal discourse, it is now clear that an aggrieved party in pre-election matters has a stipulated time period within which grievances can be ventilated through the courts. The amendment in the fourth alteration of the Constitution which puts a time limit to determination of pre-election matters has removed the cobweb of uncertainty that the judiciary has faced for many years and makes the task of preparing for election very swift for the commission.

⁶Emenike vs. PDP &ors. (2012) 12 NWLR (Part 1315) 556 at 594, Adebayo &ors. vs PDP (2013) 17 NWLR (Part 1382) 1 at 45

⁷EjikeOguebego & Anor. Vs PDP & 2 Ors FHC/ABJ/ CS/854/2014, Prince BiyiPoroye & Ors vs INEC & Anor. FHC/ABJ/CS/395/2016

⁸Labour Party vs. INEC (2009) 6 NWLR (Part 1137) 315

⁹Hon HammaAdama Ali Kumo & Anor vs INEC FHC/ABJ/CS/29/2016

¹⁰Supra

¹¹ PDP vs INEC FHC/ABJ/CS/97? 2016

¹²Supra

¹³ Sharon Olive Ikeazor & APC vs INEC FHC/ABJ/CS/262/2016

¹⁴ Suit no. FHC/CS/55?2018

VII. RECOMMENDATIONS

- Appeals against decisions of pre-election matters should be limited to Court of Appeal level to avoid wasting time appealing to Supreme Court. Allowing appeals go all the way to the Supreme Court makes it very difficult for INEC to know the finality of issues on time. An amendment to the Constitution should be made to this effect.
- Political parties should be directed to hold primary elections within a reasonable time to avoid spillover effects on the judiciary.
- There should be a decentralization of Independent National Electoral Commission regarding candidates nominated for elections. The Commission should focus more on the political parties, rather than the individual candidates. Instead of recognizing an individual for the purposes of certificate of return, INEC should deal with parties only.
- Decisions of Courts of coordinate jurisdiction should be made available to other Divisions immediately after delivery to take judicial notice of such decisions in determining similar cases brought before them.