



NILDS

NATIONAL INSTITUTE FOR LEGISLATIVE AND DEMOCRATIC STUDIES

JOURNAL OF LAW REVIEW

VOLUME 3, 2020



1. Towards Effective Executive-Legislative Relations for National Development
- **Y. Ibrahim Arowosaiye, M. Mustapha Akanbi and F.F. Abdulrasaq**
2. Constitutionality of Judges' 'climb-down' to hear and conclude part-heard matters: a review of *Orji Uzor Kalu v. Federal Republic of Nigeria* & ors
- **Bethel Uzoma Ihugba and Edoba B. Omoregie**
3. Proposed Electronic Voting System: Issues and Challenges
- **Christopher Ochanja Ngara and Ganiyu I. Ejalonibu**
4. Avoiding the pitfalls of Pre-Election Matters
- **Mohammed Amali and Doris Aaron**
5. Continuous detention of Suspects under the Nigerian Terrorism (Prevention) Act, 2013: A Violation of the Right to Personal Liberty?
- **Ebele Gloria Ogwuda**
6. Community Restorative Justice as an optional model in Criminal Justice Administration
- **Yahya Duro Uthman Hambali**
7. Sexual Harassment in the Workplace: Imperative of Legislative Intervention
- **Israel N.E. Worugji and Nheoma Eme Worugji**
8. Optimizing law-making through Lawyer-Legislators
- **Ali Ahmad**
9. Drug Law and the Nigerian Society: Need for Legislative Reform
- **Muhammad Tabi'u and Muntasir Dauda Sharif**
10. Proposals for Parliamentary Control of Subsidiary Legislation
- **Shamsudeen Yahaya and Onyinyechi Ezete**
11. Review of the Investments and Securities Act, 2007
- **Philip Osarobo Odiase**
12. Legislative Houses (Powers and Privileges) Act, 2018: A Review
- **Chukwuka Onyeaku**
13. Paradigm shift in Cybersecurity Regulation in Nigeria: Barriers and Prospects
- **Obinne C. Obiefuna, Collins C. Ajibo and Emeka Adibe**
14. An evaluation of Human Security and National Security Issues in the proliferation of Small Arms and Light Weapons (SALW)
- **Chukwudi Victor Odoeme, Matthew Atonko and Chinonso Ibe Onwuchekwa**
15. A case for judicial harmony in the Law of Customary Arbitration
- **S.A. Danwanka and Samuel Oguche**

National Institute for Legislative and Democratic Studies

All rights reserved. No part of this journal may be reproduced or transmitted in any form or by any means; electronic, mechanical, photocopying, recording or otherwise or stored in any retrieval system of any nature; without the written permission of the copyright holder.

Published 2020

A Publication of the Department of Legislative Support Services,
National Institute for Legislative and Democratic Studies
National Assembly,
Abuja

ISSN: 2659-0565

TO BE CITED AS
NILDS-JLR (2020) VOL 3

© Copyright reserved

TABLE OF CONTENT

CONSTITUTIONALISM

1. Towards effective Executive-Legislative Relations for National Development
- Y. Ibrahim Arowosaiye, M. Mustapha Akanbi and F.F. Abdulrasaq1
2. Constitutionality of Judges' 'climb-down' to hear and conclude part-heard matters: a review of *Orji Uzor Kalu v. Federal Republic of Nigeria & ors*
- Bethel Uzoma Ihugba and Edoba B. Omoregie25
3. Proposed Electronic Voting System: issues and challenges
- Christopher Ochanja Ngara and Ganiyu I. Ejalonibu37
4. Avoiding the pitfalls of Pre-Election Matters
- Mohammed Amali and Doris Aaron49
5. Continuous detention of Suspects under the Nigerian Terrorism (Prevention) Act, 2013: a violation of the Right to Personal Liberty?
- Ebele Gloria Ogwuda57

LAW MAKING

6. Community Restorative Justice as an optional model in Criminal Justice Administration
- Yahya Duro Uthman Hambali76
7. Sexual Harassment in the Workplace: imperative of legislative intervention
- Israel N.E. Worugji and Nheoma Eme Worugji94
8. Optimizing law-making through Lawyer-Legislators
- Ali Ahmad112
9. Drug Law and the Nigerian Society: need for legislative reform
- Muhammad Tabi'u and Muntasir Dauda Sharif125
10. Proposals for Parliamentary Control of Subsidiary Legislation
- Shamsudeen Yahaya and Onyinyechi Ezete133

REVIEW OF LEGISLATION

11. Review of the Investments and Securities Act, 2007
- Philip Osarobo Odiase147
12. Legislative Houses (Powers and Privileges) Act, 2018: a review
- Chukwuka Onyeaku163
13. Paradigm shift in Cybersecurity Regulation in Nigeria: barriers and prospects
- Obinne C. Obiefuna, Collins C. Ajibo and Emeka Adibe172
14. An evaluation of Human Security and National Security issues in the proliferation
of Small Arms and Light Weapons (SALW)
- Chukwudi Victor Odoeme, Matthew Atonko and
Chinonso Ibe Onwuchekwa186

CASE LAW REVIEW

15. A case for judicial harmony in the Law of Customary Arbitration
- S.A. Danwanka and Samuel Oguche206

AVOIDING THE PITFALLS OF PRE-ELECTION MATTERS

Mohammed Amali*

Doris Aaron**

Abstract

The impact of pre-election matters in the democratic process in Nigeria cannot be ignored considering the fact that it has distorted the electioneering process in Nigeria in many instances. Pre-election matters usually lead to a flurry of litigation that has a significant impact on internal party democracies that can in turn impact significantly on the general elections and subsequently, governance. The timely and speedy dispensation of these matters is therefore necessary in order to have a seamless and less chaotic electioneering process in Nigeria. This paper critically examines the legal framework regulating elections and election related issues in Nigeria and finds that notwithstanding the State High Courts/Federal High Court's jurisdiction over pre-election matters, there would be ease and clarity of practice if the Electoral Act and/or the Constitution of the Federal Republic of Nigeria 1999 (as amended) were explicit in stating the exact courts seized of pre-election matters. A case is also made for pre-election matters to have a specially constituted Court as it is the case with the Election Petition Tribunals in order to avoid the scenario where the subject matter of contention may be spent before the reliefs sought are granted.

Keywords: *Pre-Election matters, Elections, Election Petition Tribunals, Jurisdiction.*

INTRODUCTION

Elections are the bedrock of representative democracies, where the authority of government is derived solely from the consent of the governed. The principal mechanism used for translating that consent into government authority is the conduct of free and fair

* LLB, BL, LLM, PhD- Research Fellow, National Institute for Legislative and Democratic Studies, Abuja

** LLB, BL, LLM- Research Fellow, National Institute for Legislative and Democratic Studies, Abuja

elections.¹ An election has been defined as “the act of choosing or selecting one, or more from a greater number of persons, things, courses or rights. It is the selection of one person from a specified class to discharge certain duties in a state, corporation, or society.”² It is the process of choosing by popular votes, a candidate for political office in a democratic system of government.³

Elections allow for a degree of communication between the rulers and the ruled, and further provides a means of legitimizing the rights of the rulers to govern.⁴ The purpose of holding elections in a democratic setting therefore, is to determine the wishes of the people as to who should represent them in their executive and legislative setup.⁵ All elections however, suffer from challenges and irregularities, to varying degrees of seriousness, including human errors, acts of God, and violence.⁶

Towards protecting the integrity of the process and to forestall any breach of the peace that may occur, post-election, election petitions avail aggrieved parties under the Electoral Act 2010 the opportunity to ventilate their grievances.⁷ They are usually the only mechanism through which results can be challenged. Invariably, an election petition presupposes that an election has been held, the result announced and a return made.⁸ This means that any grievance that may have been occasioned by an act that predates the conduct of elections do not qualify for adjudication in election petition tribunals. Consequently, such matters are termed “pre-election matters.”

Pre-election matters simply put, are matters that arise before the conduct of general elections, and these matters usually emanate from intra party affairs of political parties. A range of issues can give rise to pre-election cases and on the authority of *Salim v CPC*⁹, “disqualification, nomination, substitution and sponsorship of candidates” all qualify as pre-election matters. This paper interrogates the extant regime regulating election and election related issues in Nigeria and brings to bear, the need for pre-election matters to have specially constituted courts mirroring those of election petition tribunals. The paper is divided into five parts. Part 1 introduces the scope of the work, Part 2 looks at the legal framework regulating elections and election related issues in Nigeria, Part 3 looks at pre-election matters in Nigeria, Part 4 looks at a case for specific statutory provisions for pre-election matters in Nigeria, while part 5 is the conclusion and recommendations.

¹ C.J. Ubanyionwu, *Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria* (2012) NAUJILJ

² Black's Law Dictionary, 6th Edition

³ See *Ojukwu v Obasanjo* (2006) EPR 242

⁴ C.J. Ubanyionwu, *Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria* (2012) NAUJILJ

⁵ See *APGA v Ohakim* (2009) 4 NWLR PT. 1130, 116 at 175

⁶ Chad Vickery, David Ennis, Katherine Ellena, Alyssa Kaiser, “When Are Elections Good Enough? Validating or Annuling Election Results” (2018) International Foundation for Electoral Systems, Available online at:

https://www.ifes.org/sites/default/files/2018_ifes_when_are_elections_good_enough_final.pdf (Accessed 28/06/2020)

⁷ *ANPP v. PDP* (2006) 17 NWLR (PT 1009) 467¹¹_{SEP}

⁸ C.J. Ubanyionwu, ‘Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria’ (2012) NAUJILJ

⁹ (2013) 6 NWLR (pt. 1351) 501 at 524- 525

LEGAL FRAMEWORK REGULATING ELECTION AND ELECTION RELATED ISSUES IN NIGERIA

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Election Tribunals are a direct creation of *the Constitution* of the Federal Republic of Nigeria (as amended) that provides for the establishment of the National Assembly,¹⁰ Governorship and Legislative Houses Election¹¹ Tribunals. These Tribunals have original jurisdiction to hear and determine petitions as to whether a person has been validly elected into non-appointive offices under the Government of Nigeria at the Federal and State levels. The composition of these Tribunals is as set out in the Sixth Schedule to the Constitution. National Assembly Election Tribunal and Governorship and Legislative Houses Election Tribunals both consist of a Chairman and four other members.

For election petitions regarding the office of the President/Vice President, *Section 239* of the Constitution confers exclusive jurisdiction on the Court of Appeal and also provides for the composition (as regards quorum) of the Court in the hearing and determination of petitions under this heading. By the provision of *Section 239(2) CFRN*, the Court of Appeal shall be duly constituted if it consists of at least three Justices of the Court of Appeal. Since it is settled that pre-election matters are considered as civil matters, a combined reading of the provisions of *Section 252 and 257* of the Constitution, grants the Federal High Court and State High Courts jurisdiction over such disputes.

The Electoral Act 2010

Part VIII of the Electoral Act provides for the determination of election petitions and the establishment of the Election Petition Tribunal for the Capital Territory.¹² The Act provides that no election and return at an election under the Act shall be questioned in any manner other than by a petition presented at the competent tribunal or Court in accordance with the provisions of the constitution or the Act.¹³

The Act is also specific as to the period within which an election petition may be brought (*within 21 days after the date of the declaration of results of the elections*)¹⁴ and similarly specific as to the period within which judgment must be delivered (within 180 days from the date of the filing of the petition).¹⁵ The Electoral Act provides for the establishment of the Area Council Election Tribunal for the Election Appeal Tribunal for the Federal

¹⁰ Section 285(1)

¹¹ Section 285 (2)

¹² Section 134 (1) of the Electoral Act

¹³ See Section 133 (1) & (2) (a) &(b)

¹⁴ Section 134 (1)

¹⁵ Section 134 (2)

Capital Territory.¹⁶ The classes of persons who are entitled to present election petitions are provided for by *Section 137* of the Electoral Act, and this include a candidate in an election; a political party that participated in the election; a person whose election is complained of referred to as the respondent etc.

Section 138 on its part provides for the grounds over which such petitions may be brought, and they include “*that a person whose election is questioned was, at the time of the election, not qualified to contest the election; that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; that the respondent was not duly elected by majority of lawful votes cast at the election; or that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*”

PRE-ELECTION MATTERS IN NIGERIA

Pre-election matters are considered and treated as general civil disputes, and this means that pre-election matters do not hold the statutory peculiarity of election petitions. The fact that pre-election matters are treated as general civil disputes means that the State High Courts and Federal High Courts have jurisdiction over such matters.¹⁷ The risk here however is that when these cases go through the judicial process of appeal right to the Supreme Court as matters adjudicated upon by the aforementioned courts naturally do, the subject matter of contention may be spent, thereby rendering whatever relief sought, nugatory, and the exercise, academic.

In the case of *Plateau State v Attorney General of the Federation*¹⁸, the Supreme Court held that “*a suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favor.*” Academic matters do not help in the determination of live issues, and they add nothing to the truth searching process in the administration of justice because they do not relate to any relief.¹⁹ Summing academic matters up succinctly, the Supreme Court stated as follows- “*any judgment that does not decide a living issue is academic and hypothetical. It stands in its best quality only as an advisory opinion. This court and indeed, any court in Nigeria will not engage in rendering such a judgment. There cannot be said to be a live issue in a litigation if what is presented to the court for a decision, when decided, cannot affect the parties thereto in any way either because of the fundamental nature of the reliefs sought or of changed circumstances since after the litigation has started.*”²⁰

¹⁶ See Section 135 & 136 of the Electoral Act

¹⁷ A combined reading of the provisions of Section 252 and 257 of the Constitution (2006) 2 NWLR 967 at 346

¹⁸ *Oladoye v Administrator Osun State* (1996) 10 NWLR 476 at 38

²⁰ See *Adeogun & Ors v. Fashogbon & Ors* (2008) LPELR-131 (SC)

The overriding notion from the foregoing is that it would be subversive for a court of law to claim to determine disputes where none existed or had ceased to exist.²¹

As stated earlier, pre-election matters do not hold the statutory peculiarity of post-election matters, which in essence means that they are treated as ordinary civil litigations in line with Section 87(10)²² of the Electoral Act.²³ This makes for a lack of clarity as to the timeframe within which aggrieved parties to pre-election matters may lodge their petitions or in which courts they may so do, and leaves room for interpretation, and these disparities have featured in a plethora of cases.

In *Hassan v Aliyu*,²⁴ the Supreme Court held that “*being pre-election matters, the candidate must approach the competent Court to seek enforcement for his rights before the elections take place.*”²⁵ The thinking behind having a Candidate act timeously in pre-election matters is because encouraging any practice otherwise “*will breed uncertainty in the polity when a person may wake up a year or more after an election and swearing-in of a President or Governor to challenge his nomination by way of substitution for the election that brought him to power. Or he may even do so after the tenure of office of the official concerned which attitude ought not to be encouraged by law.*”²⁶

The Courts have also held that the wisdom behind limiting the time to the date of election for pre-election matters is that the question of substitution, nomination and sponsorship of candidates will cease to exist once an election is conducted, hence a pre-election petition must be filed before the election takes place because once the election is conducted and an action in a pre-election matter is not filed, it becomes stale and spent. The only recourse for a party in such circumstance is to try his luck in the Election Petition Tribunal because the status of the matter has changed to post election, clearly outside the ambit of the State High Court, Federal High Court or High Court of the FCT.²⁷

The case of *Amaechi v INEC*²⁸ has often been used as reference for pointing out the required conduct of a petitioner in a pre-election matter because Amaechi approached the Courts as soon as he was substituted, and did not wait until the election took place. Amaechi’s conduct received judicial backing from Muntaka-Coomassie JSC in *Hassan v*

²¹ See *Badejo v Federal Ministry of Education* (1996) 50 NWLR 464 at 15

²² It provides that: “*Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, for redress.*”

²³ Pre-election petitions are filed with INEC, the Federal and State High Courts during the actual course of the electoral process.

²⁴ (2010) 17 NWLR Part 1223, 547 at page 604,

²⁵ Per Muntaka-Coomassie JSC at Page 604

²⁶ Per Jummaji Hannatu Sankey JCA in *James Abawu Watharda v. Maina Ularamu & Ors* (ca/yl/74/2013)

²⁷ *James Abawu Watharda v. Maina Ularamu & Ors* (Supra)

²⁸ (2008) 5 NWLR (pt.1080) 227

Aliyu²⁹ when he stated thus- “substitution and nomination being pre-election matters, the candidate must approach the competent Court to seek for the enforcement of his rights before the real election takes place. This was the position in *Amaechi v INEC*.³⁰ Immediately the candidate was substituted, *Amaechi* did not wait for the election to hold before he sought redress; hence, if the election thereafter took place after the filing of the action having become sub-judice, it remains a pre-election matter even if the matter is brought to this Court.”

On the contrary, it has been argued that there is no statute of limitation limiting the time of filing pre-election matters to the date or time of conduct of the election in question.³¹ It has also been argued that *Section 87(10)* of the *Electoral Act 2010* (as amended) created right of action in pre-election matters, while section 33 of the Act prohibits substitution of candidates after submission to INEC, and there are no time limitations in both provisions of these Acts. Although these arguments were quashed at the apex court, the lack of a clear path for pre-election matters as it is with post-election matters gives the room for non-conformity either by omission or commission, innocently or knowingly, hence somewhat avoidable litigation.

A Case for Specific Statutory Provisions for Pre-Election Matters

In election matters generally, even a slight infraction of the rules, particularly those relating to time, can be fatal to the process filed. The Supreme Court held in the case of *Hassan v Aliyu*³² that “it is settled law that in an election or election related matter, time is of the essence. I will add that the same applies to pre-election matters.” This view lays credence to the need for legislation to give pre-election matters the same (or similar) status accorded post-election matters. This will eliminate any form of confusion as to time frame within which aggrieved candidates can come before the courts, the courts with the requisite jurisdiction, and provide expeditious discharge of cases before elections. Justice delayed may amount to justice denied, and because the fruits of justice must not be overtaken by events, allowing jurisdiction to remain with the High Courts/ Federal High Courts may not achieve the ends of justice considering the fact that cases filed in the regular courts may go all the way to the Supreme Court on appeal.³³ This renders the operational aspect of the electoral process more complicated since judgments are often delivered some time into elections.³⁴

²⁹ n 26

³⁰ (2008) 5 NWLR (pt.1080) 227

³¹ This was the contention of the 1st Respondent in the case of *James Abawu Watharda v. Maina Ularamu & Ors* (Supra).

³² (2010) 17 NWLR Part 1223, 547 at page 604,

³³ *Amaechi v INEC* (Supra)

³⁴ Idayat Hassan “An appraisal of the Legal Framework for the Conduct of the 2015 General Elections: Matters Arising” www.inecnigeria.org/wp-content/.../2015/07/Conference-Paper-by-Idayat-Hassan.pdf

Looking at the case of *Amaechi v INEC*³⁵ for example, although Amaechi approached the Courts as soon as he was substituted, and did not wait until the election took place, judgment was not given in the matter until the elections were over and a governor returned. The case went all the way to the Supreme Court and when Amaechi obtained Judgement, the sitting governor had vacate office while Amaechi was sworn in as governor. The confusion and losses occasion by that singular act can only be imagined.

Another case in point is the recent case of *Advanced Nigeria Democratic Party (ANDP) & Independent National Electoral Commission (INEC); Peoples Democratic Party (PDP) & Douye Diri*³⁶ where the main ground of the petition was that the election be nullified being invalid by reason of the unlawful exclusion of the Petitioner and its candidate in breach of Section 138(1) (d) of the Electoral Act, 2010 (as amended). (*Clearly premised on a pre-election matter*). The Tribunal held in favour of the petitioners to the effect that there was an election and a return made, and the Petitioner at liberty to approach the Tribunal premised on the ground stated in Section 138(1) (d) of the Electoral Act. The Tribunal then nullified the declaration and return of the 3rd Respondent as winner of the 2019 Bayelsa State Governorship election and ordered INEC to conduct fresh elections throughout the State within 90 days for the election of the Governor and Deputy Governor of Bayelsa State.

This judgment was faulted by court of appeal on the grounds that the petition was premised upon a pre-election matter, and that robs the Tribunal of jurisdiction to entertain it. Also that the petition, filed on 26/02/2020, after the decision of the 1st Respondent to exclude the petitioner from the election dated 27/09/2019, was statute-barred, having not commenced within 14 days of the decision complained of. The decision therefore was held to lack merit.³⁷

CONCLUSION AND RECOMMENDATIONS

In the light of the foregoing, this article posits that pre-election matters should carry the sui-generis status of post-election matters. And since the Courts also agree that pre-election matters are indeed the same as post-election matters,³⁸ there should be explicit legislation stating the time frame within which aggrieved candidates for pre-election matters may approach the courts for redress. Similarly, notwithstanding the State High Courts/Federal High Court's jurisdiction over pre-election matters, there would be ease and clarity of practice if the Electoral Act and/or the Constitution of the Federal Republic

³⁵ (2008) 5 NWLR (pt.1080) 227

³⁶ Petition No: Ept/By/Gov/03/2020

³⁷ Appeal Court Nullifies Sacking of Bayelsa Governor Diri. Guradian Newspaper 02 October 2020. Available At <https://Guardian.Ng/News/Appeal-Court-Nullifies-Sacking-Of-Bayelsa-Governor-Diri/>.

³⁸ *Hassan v Aliyu (Supra)*

of Nigeria 1999 (as amended) were explicit in stating the exact courts seized of pre-election matters.

A case may also be made for pre-election matters to have a specially constituted court like the election Petition Tribunals, but considering the attendant cost of convening such Tribunals, it may suffice that jurisdiction is left to the High Courts and the Federal High Court. However, provisions should be made for pre-election matters before such courts to have the same sort of expedited actions Fundamental Human Rights Enforcement cases get under *Chapter IV* of the CFRN 1999 (as amended) through the Fundamental Rights (Enforcement) Procedure Rules 2009 made pursuant to *Section 46 (3)* of the 1999 Constitution (as amended).