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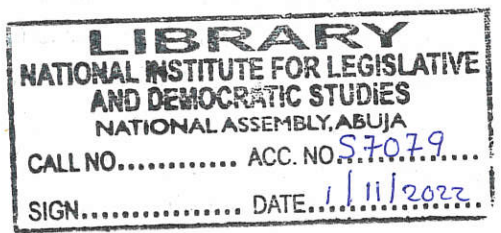
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ASSESSING THE EXTENT AND APPLICATION OF CAMPAIGN FINANCE LAWS TO ASPIRANTS, CANDIDATES AND POLITICAL PARTIES

By

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Abstract

A brewing debate that has been going on in current national discourse regards who the subjects of campaign finance laws are between political parties, candidates and aspirants of elections throws up the question regarding the status of an aspirant or candidate, and whether any difference(s) exists in fact between the two. This article differentiates between an aspirant and a candidate of an election by analyzing the relevant provisions of the Constitution of the Federal Republic of Nigeria, the Electoral Act, and relevant case law on the subject. The paper acknowledges that political resources drive party vibrancy and competitiveness, and as such, the existence of a level playing ground in terms of public financing of political parties is crucial because beyond the obvious fact that it ensues credibility, it emphasizes the importance of transparency and accountability in tune with a legal framework that monitors the abuse of funds in the electoral process. Consequently, the paper finds that campaign finance laws in Nigeria are not in tune with contemporary realities and recommends essential amendments to the Electoral Act.

Key Words: *Aspirant, Candidate, Campaign, Election, Finance, Expense.*

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1. INTRODUCTION

There has been a growing controversy within recent Nigerian national discourse regarding the extent of the application of campaign finance laws. In this regard, the burning question is who between a political aspirant and a candidate of an election is bound to comply with the provisions of the Electoral Act on campaign financing. This subject is particularly germane because the distinction between an aspirant and a candidate has been the subject of keen interest between politicians, commentators, and the general public.

Campaign finance is one of the more complicated topics in the field of election law and policy. Political campaign finance refers to funds used to promote the interest of political parties and candidates. It can refer to all funds raised to promote candidates and political parties by individuals, charitable organizations and political action committees.² Notwithstanding money being a necessary aspect of modern politics, it creates challenges for democracies around the world. In one way or another, these problems relate to breaking a link between voters and those who are elected or seeking election.³ Beyond being competitive in the race, fundraising superiority correlates with victories: the better-funded candidate tends to win elections.⁴

Although the exact problems may vary between different jurisdictions, the challenges almost always bear a uniform coloration because political campaigns have enormous expenditure ranging from cost of travel of candidates and staff to political consulting.

This paper attempts a juxtaposition of an aspirant and a candidate at an election vis-à-vis the relevant provisions of the Electoral Act with a view

² Heard, Alexander, *The Costs of Democracy*, Chapel Hill NC: University of North Carolina Press, 1960.

³ Magnus Ohman, "Controlling money in Politics: An Introduction" (2013) International Foundation for Electoral Systems. Available online at: https://ifes.org/sites/default/files/a_brief_introduction_to_money_in_politics_final_magnus_ohman.pdf (Accessed 25/09/2019)

⁴ Maggie Koerth-Baker, *How Money Affects Elections*, Available online at: <https://fivethirtyeight.com/features/money-and-elections-a-complicated-love-story/> (Accessed 25/09/2018)

to ascertaining the scope and reach of campaign finance laws as it regards a candidate or an aspirant in an election.

2. LEGAL FRAMEWORK OF CAMPAIGN FINANCE LAWS IN NIGERIA

I. The Constitution of the Federal Republic of Nigeria 1999 (as amended):

There is no express provision within the wordings of the Constitution stipulating the limit of expenditure of political parties and their candidates but there are sections that deal with the finances of political parties generally,⁵ and of utmost interest is the limitation placed on political parties especially with respect to their funding activities. *Section 225 (2)* is unambiguous on the finances of political parties that “*every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with a similar statement of its expenditure in such form as the commission may require.*”

Sub sections (3), (4), (5) and (6) of the same provision are even more forthcoming on the roles of INEC in checking the financial dealings and status of political parties. To this end, Subsection (3) states that “*no political party shall - (a) Hold or possess any funds or other assets outside Nigeria; or (b) Be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.*” Sub-section 4 states that: “*Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the commission within twenty-one days of its receipt with such information as the commission may require.*” Sub-section 5 on its part holds that “*the Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine all such books and records.*”

Section 226 (1) permits INEC to mandatorily prepare and submit annually to the National Assembly a report of the accounts and balance sheet of every political party. In preparing its report, sub-section 2 of the same

⁵ Section 225-6 made provision on finances of the political parties.

provision empowers INEC to: *“Carry out investigations as will enable it form an opinion as to whether proper books of account and proper records have been kept by any political party, and if the Commission is of the opinion that proper books and accounts have not been kept by a political party, the Commission shall so report.”*

It is also important to examine the provisions of *section 228* of the 1999 Constitution, especially as it deals with public funding of political parties and punishment for those that contravene the sections. It states inter-alia that *“the National Assembly may by law provide- (a) for the punishment of any person involved in the management or control of any political party found after due inquiry to have contravened any of the provisions of sections 221, 225 (3) and 227; (b) for the disqualification of any person from holding public office on the ground that he knowingly aids or abets a political party in contravening section 225 (3) of this constitution; (c) for an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and (d) for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the commission more effectively ensure that political parties observe the provisions of this part of the chapter.”*

These are constitutional instruments aimed at closely monitoring and supervising the activities of the income and expenditure of political parties.

II. The Electoral Act, 2010

In Nigeria, the framework governing political campaign finance is the Electoral Act. According to *Section 91(2) and 91(3)* of the Electoral Act, the maximum election expenses to be incurred by a candidate at a presidential and governorship election shall be one billion naira only and two hundred million naira only respectively. Also, *Section 91(4)* of the Electoral Act states that the maximum election expenses to be incurred by a candidate for a senatorial and House of Representatives election shall be N40m only and N20m only respectively. Independent political campaign finance experts have frequently noted that Nigeria’s president, governors,

senators and members of the House of Representatives spend much more than the amount allowed by the Electoral Act.

The implication here is that the campaign finance laws in Nigeria are not in tune with the realities on the ground. While there is a need to advocate a reduction in the amount of money spent by politicians and political parties, there is also a need to review the electoral realities and laws in the country.

3. CROSS-COUNTRY SURVEY

i. United States of America (USA)

Many countries rely heavily on private donors to finance political campaigns, and in such countries, fundraising is often a significant activity for the campaign staff and candidates, especially in larger and more prominent campaigns. In the United States of America, campaigns are a multi-billion dollar industry, dominated by professional political consultants using sophisticated campaign management tools. Although the quadrennial presidential election attracts the most attention, the United States has a huge number of elected offices.⁶

There are wide variations between different states, counties, and municipalities on which offices are elected and under what procedures. While parties play a significant role in fundraising and occasionally in drafting people to run, the individual candidates themselves ultimately control campaigns. For example, one survey in the USA found that 23% of candidates for statewide office surveyed say that they spent more than half of their scheduled time raising money, and over half of all candidates surveyed spent at least 1/4 of their time on fundraising.⁷

⁶ The Modern Political Campaign, Available online at: <https://courses.lumenlearning.com/boundless-politicalscience/chapter/the-modern-political-campaign/>

⁷ Peter L. Francia, "Begging for Bucks - Campaign Fundraising" - Available online at: https://web.archive.org/web/20040916073623/http://www.findarticles.com/p/articles/mi_m2519/is_2_22/ai_74410584 (Accessed 12/02/2020)

Another study finds that political donations give donors significantly greater access to policymakers.⁸ As a result, countries like the USA have rules on contribution limits with rules in place on how the candidates can raise and spend their money. The primary rule is that the money raised has to be disclosed, and Presidential candidates in an election year for instance, file monthly reports. There are limits as to how much an individual can give any candidate, and in this regard, no individual can give more than \$2,800 to any candidate for any one election. The limit on giving to the national party committee is \$35,500, so it's higher for the party committee than it is for individual candidates.⁹ The idea is to ensure policing of undue donor influence and at the same time preserving most benefits of private financing including the right to make donations.

ii. The United Kingdom (UK)

Unlike the American model, campaign finance in the United Kingdom is very prudent in application and scope with very strict spending limits imposed upon the parties and candidates. Spending limits during election campaigns apply to candidates, political parties and non-party campaigners. Political parties spend is capped at £30,000 for each constituency that it contests in a general election so where a party presents a candidate in each of the UK's 650 constituencies, the maximum spend for that party would amount to a total of £19.5M.¹⁰

Political parties have to report information on donations to the Electoral Commission every quarter. Every donation of more than £7,500 that is made to a party must be declared, along with those of more than £1,500 made to a party's accounting units. These limits vary for different elections. Political parties have to record what they spend during the election

⁸ See Kalla, Joshua L.; Broockman, David E. (2015-04-01). "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment," *American Journal of Political Science*. 60(3): 545–558. doi:10.1111/ajps.12180. ISSN 1540-5907.

⁹ See "Elections 2020- Campaign Finance in the 2020 Elections" - *FPC BRIEFING* by Ellen Weintraub, Commissioner Federal Election Commission- Available online at: <https://www.state.gov/elections-101-campaign-finance-in-the-2020-elections/>

¹⁰ See "General election 2019: How much can parties spend?" Available online at: <https://www.bbc.com/news/election-2019-50170067> (Accessed 18/09/2020)

campaign, and also report their spending to the Electoral Commission in a spending return.¹¹

Non-party campaigners on their part, have to register with the Electoral Commission if they intend to spend over £20,000 in England, and £10,000 in Scotland, Wales or Northern Ireland. And once these non-party campaigners have registered with the Commission, they have to record their spending, and report it to the body.¹² Much of the campaigning in Britain remains local, with candidates pounding the streets, knocking on doors, issuing leaflets and sending mails. This is very much in contrast with the American model that has been described in Britain “*as the worst of all worlds,*” *focused on “raising money and not about getting ideas across.”*¹³ If the spending rules are broken, the maximum fine is £20,000 per offence. The Conservative Party, the Labour Party, and Women's Equality parties were very recently investigated for weekly spending reports that were inaccurate ahead of the last general election.¹⁴

4. THE SUBJECTS OF CAMPAIGN FINANCE LAWS: ASPIRANTS OR CANDIDATES?

In order to determine who between an aspirant and a political candidate are the subjects of campaign finance laws, it is imperative to define (and identify) those two categories of persons. An aspirant in plain terms seems to refer to a person having the ambitions to achieve something, typically to follow a particular career. A political aspirant more specifically is referred

¹¹ See “*Campaign spending: Political parties and non-party campaigners,*” Available online at: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/campaign-spending-political-parties-and-non-party-campaigners> (Accessed 29/08/2020)

¹² Ibid

¹³ This was the view of Justin Fisher, a professor of political science at Brunel University London- See “*Britain’s Campaign Finance Laws Leave Parties With Idle Money,*” Available online at: <https://www.nytimes.com/2015/05/05/world/europe/britains-campaign-finance-laws-leave-parties-with-idle-money> (Accessed 25/08/2020)

¹⁴ See “*General election 2019: How much can parties spend?*” Available online at: <https://www.bbc.com/news/election-2019-50170067> (Accessed 18/09/2020)

to as a contestant, applicant, competitor, etc. of a political position within a political party.¹⁵

The Electoral Act is not explicit with either a definition or a distinction between the two terms. Within the wording of Section 91 (2)-(4) and subsections (8), (9), (10) and (12), the word “*candidate*,” not “*aspirant*” is used. Consequently one may assume that provision of the Electoral Act on campaign financing applies only to the Candidates of an election. However, section 92 (1) provides that: “*For the purposes of an election, election expenses means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including, the polling day in respect of the particular election.*” This provision implies that in computing the period of time as regards the legality or otherwise of election expenses, it covers a period before the party primary election up the general elections.

It is pertinent to note however, that while the laws have not been explicit with the definition of a candidate or an aspirant, the political sphere has been replete with claims and counter-claims from commentators on the subject. In the run-up to the 2019 general elections, supporters of President Muhammadu Buhari and former Vice President Atiku Abubakar who was the main opposition candidate spent nearly N60M on Presidential nomination forms for the two politicians thereby triggering renewed debates around campaign finance provisions.¹⁶ The main opposition party the People’s Democratic Party (PDP) described the development as a violation of the Electoral Act.¹⁷ Citing Section 91 (9) of the Electoral Act that “*no Individual or other entity shall donate more than One Million Naira to any candidate*,” critics argued that the money spent on the two politicians violated the campaign finance provisions in the 2010 Electoral Act.

This position was backed by Chief Mike Ozekhome (SAN) who stated that both presidential aspirants and their supporters who bought the forms for

¹⁵ <https://en.oxforddictionaries.com/definition/aspirant> (accessed on 18/09/19)

¹⁶ See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)

¹⁷ See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)

them are in breach of the electoral law, and by the provisions of S. 91 (11) of the Act, liable to punishments ranging from nine months imprisonment or a Five Hundred Thousand Naira fine or both.¹⁸ Countering this, Festus Keyamo (SAN) opined that S. 91 (9) of the Electoral Act “*limits (CASH) not material donations in respect of candidates to NIM,*” and that President M. Buhari was only an aspirant at that point in time and only becomes a candidate when he submits his filled nomination forms to the party.¹⁹

Unfortunately, judicial pronouncements have done little to eliminate the shroud of ambiguity that surrounds the subject of who a candidate or aspirant is. In the case of *Akingbulu v Ogunbanjo*,²⁰ Hon. Justice Monica Dongban-Mensem (JCA) held thus:

"In my limited understanding of the electoral process it appears reasonable to expect that once a person has been nominated by his party, presented and screened by INEC officials the only hurdle left in the process of election is the casting of votes. The outcome of the votes (polls) caps the election processes. Thus, such a person is a candidate and his locus standi is incontestable. He has crossed the threshold of campaign to the pedestal of a nominated candidate. He has been armed with the authority to represent his party and its supporters at the battle."

By this pronouncement, the learned JCA identifies a candidate only as someone who has been nominated by a party, presented and screened by the election body's officials having crossed the threshold of campaign. This tallies (somewhat) with the line of thinking of Mr Keyamo (SAN) because at that point in time the incumbent Nigerian President had neither been nominated by his party, nor gone through a process of electioneering campaigns.

Similarly, in the case of *Engr. Onwukaike Nwambam v Chief Innocent Utulor Ugochima and others*,²¹ M.A. Owoade (JCA) delivering the lead Judgement in a dispute over exclusion of candidates for elections by a

¹⁸ See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)

¹⁹ See <http://dailypost.ng/2018/09/07/n45m-nomination-form-keyamo-replies-critics-says-buhari-not-yet-apc-presidential-candidate/> Accessed 21/09/2018

²⁰ (Unreported Appeal No CA/L/EPT/LAS/NA/001/2007)

²¹ (2010) LPELR-4643 (CA)

party, held thus: *“indeed, to sustain an argument on unlawful exclusion, the claimant must first establish valid nomination by a recognized political party and publication by INEC of his name as the candidate for the election. It is only after the claimant has established the investiture of legal right of a duly nominated and officially published candidate for an election that the burden of proving lawful exclusion can conceivably arise in relation to the returned candidate.”*

In the instant case, having failed to prove valid nomination, the appellants claim for unlawful exclusion failed. This in essence meant that his non-nomination by the party translates to not being a candidate and may as well have only been an aspirant.

In another case of *P.P.A. v Saraki*,²² Sankey JCA observed thus: *“The 'candidate in an election' referred to' both in sections 144 (1) and 145 (1) (d) is a person who has competed with others in the process of selecting a person to occupy a public office. In the interpretation of this statute I have called in aid the golden rule of interpretation, which seeks to ascribe to the words in a statute their ordinary and literal meaning.”*

By the learned JCA's dictum, it is clear that an individual only becomes a candidate upon competing with others in the process of selecting someone to occupy an office.

Away from these judicial pronouncements, the combined effect of *Sections 91 and 92* of the Electoral Act may imply that the provision of the Electoral Act on election expenses covers both the Aspirant and a Candidate for an election. Saving this assumption and eliminating this ambiguity, the Independent National Electoral Commission in its *“Guidelines for Political rallies and campaigns by political parties, candidates, aspirants and their supporters (2013),”* charts a definitive way with the definition of the two terms. Although a subsidiary legislation, it is the only law that explicitly defines the two terms. The Guidelines state that *“a person is a candidate at an election if he or she is a member of a political party; is sponsored by a political party; is nominated by a the political party through the process of party primaries (in line with Section 87 of the Electoral Act 2010 as*

²² (2007) 17 NWLR (Pt. 1064) 453 at pp. 519-521 paras G-D

*amended) or adjudged to be a candidate by a competent Court or Tribunal; and has satisfied other requirements or qualification for elective office in the Constitution (FRN) 1999 (as amended)."*²³

The same legislation defines an aspirant to be "any member of a political party seeking sponsorship and support to be a candidate for an elective office in the election."²⁴ It goes further to state that aspirants seeking sponsorship as candidates can solicit for support from their political party members by holding private fund raising, reception, courtesy calls, visits, display of party emblem, slogan, posters, billboards through traditional or new social media platforms (such as the internet and related social networks) provided such aspirants do not solicit for votes or advance their aspirations for any specific elective office before the release of the timetable by the Commission in compliance with Section 99 of the Electoral Act 2010 (as amended).

By these two definitions, the distinction between an aspirant and a candidate is clear, as are the pre-election conducts required of them by the electoral body.

5. CONCLUSION, AND SUGGESTIONS FOR REFORM

Proponents of private financing believe that it fosters civic involvement and diversity of views, while also preventing undue government influence towards favoring those with political influence.²⁵ Critics of the system on the other hand, claim that it leads to votes being "bought" and produces large gaps between different parties in the money they have to campaign against.²⁶ On a general note, antagonists of election financing describe campaign finance as political corruption and bribery, and the need to maintain political campaign is viewed in some quarters as weakening ties

²³ Section 8

²⁴ Section 4

²⁵ See Kalla, Joshua L.; Broockman, David E. "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment" (2015) *American Journal of Political Science*. 60 (3): 545–558 doi:10.1111/ajps.12180. ISSN 1540-5907.

²⁶ *Ibid*

to a representative democracy due to the influence that large contributors have over politicians.²⁷

Another school of thought rejects the notion that large donations create even an appearance of corruption. They believe that spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties.²⁸ Their argument is that citizens have ultimate control over their politicians because, at the end of the day, money does not vote, people do.²⁹ It is a mathematical fact that when it comes to counting votes, a non-donor has the same amount of influence as a donor. However, before any citizen casts a ballot, before they watch a debate or see an advertisement or even become aware of their choices, candidates are subject to a filtration process in the form of fundraising.³⁰

These contending views have their merits but this paper aligns with the notion that the attempts to regulate campaign financing reflects the commonly held belief that uncontrolled political fund-raising and spending can undermine the integrity of the democratic process and erode the confidence of the electorate in political Institutions.³¹ Thus, transparency in political finance was initiated by the United Nations Convention Against Corruption (UNCAC), which states that all countries should "*consider taking appropriate legislative and administrative measures, consistent with*

²⁷ Ansolabehere, Stephen; John de Figueiredo; James M. Snyder, Jr. (2003). "Why Is There So Little Money in U.S. politics?" *Journal of Economic Perspectives*, Massachusetts Institute of Technology 17 (1): 105–30. doi:10.1257/089533003321164976.

²⁸ See the case of *McCutcheon v. FEC*, 572 U.S. 185 (2014); see also *First Amendment — Freedom of Speech — Aggregate Contribution Limits — McCutcheon v. FEC*, 128 HARV. L. REV. 201 (2014).

²⁹ See Lawrence Lessig "What an Originalist Would Understand Corruption to Mean", 102 CALIF. L. REV. 1, 22 (2014)

³⁰ *Ibid*

³¹ Ansolabehere, Stephen; John de Figueiredo; James M. Snyder, Jr. (2003). "Why Is There So Little Money in U.S. politics?". *Journal of Economic Perspectives*. Massachusetts Institute of Technology 17 (1): 105–30. doi:10.1257/089533003321164976.

the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”³²

These views have led to reform of campaign financing with the hope of eliminating big-money influence in politicking especially as independent political campaign finance experts have frequently noted that Nigeria’s president, governors, senators and members of the House of Representatives spend much more than the amount allowed by the Electoral Act. For instance, the amount specified in the Electoral Act 2006 was doubled in the Electoral Act 2010 by putting the campaign expenses limit of a presidential candidate at N1 billion. While this increase might have been justified by the apparent high cost of politics, the current limits are totally unrealistic going by the actual expenses incurred by political parties that have contested very recent elections.³³

The implication is that the campaign finance laws in Nigeria are not in tune with the realities on the ground. It goes without saying therefore that there is a need for the reduction in the amount of money spent by politicians and this can be achieved through a review of the electoral laws in the country to bring Nigeria in tune with contemporary realities.

Within the immediate context of this work, the following recommendations are proffered-

1. Due to the complexities, ambiguities, and technicalities of the political/campaign finance laws, there should be more explicit definition of terms such as “election campaign,” “party finance,” “political finance,” “expenditure”;
2. Section 92 of the Electoral Act should be amended to clearly include candidates and aspirants in the computation of election expenses;

³² UNCAC Article 7(3)

³³ See Adebowale Olorunmola, “*Cost of Politics in Nigeria*”, A Background Paper of the Westminster Foundation for Democracy. Available online at: <https://www.wfd.org/wp-content/uploads/2017/09/Cost-of-Politics-Nigeria.pdf> (Accessed 19/05/2020)

3. Section 91 of the Electoral Act should be amended to bring aspirants within the regulatory purview of the law regarding limitation of election expenses.