

JUDICIARY AND THE RULE OF LAW: CHALLENGES OF ADJU

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THE ELECTORAL PROCESS

BY

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JUDICIARY AND THE RULE OF LAW: CHALLENGES OF ADJUDICATION IN THE ELECTORAL PROCESS.
Protocol

I wish to express my sincere appreciation for this unique honour bestowed on me to be a speaker in the gathering of shapers and changers of the fortune of this nation. I do not take this invitation for granted neither do I consider myself the most fitting for this opportunity to express my views on this very laudable occasion. This gathering is not merely a convergence of Speakers of State Houses of Assembly, but the constellation of erudite minds, political bigwigs, highly educated and enlightened parliamentarians from the southern geo-political zone of Nigeria.

It is also an honour to share my thoughts on this very important but timely and critical topic. Important, because of the general perception and connotation on the key words in this topic, but critical in view of the emphasis the present administration places on the Rule of Law (ROL) and ongoing Electoral Reforms.

When I received this invitation to be one of the resource persons for this occasion and give a lecture on “Judiciary and the Rule of Law; Challenges of Adjudication in Electoral Reforms” I was initially tempted to turn down the offer. First, because of my tight schedule and secondly, because of the complexity involved in delivering a lecture before the Rt Honourables and Honourable Members of all the State Houses of Assembly of the southern political zone of the country. However, I quickly reminded myself of the fact that this is one of those opportunities and a call to duty to serve my country and contribute my God endowed knowledge in this important discourse.

Also, as a former member of old Ondo State House of Assembly 1992-1993, where I served as Chairman House Committee on Judiciary and Public Petitions, I felt that necessity was laid upon me to honour this rare invitation.

In view of the above, I whole heartedly accepted the invitation to deliver this lecture at this epoch making event. Again, it is my singular honour and privilege to gather with you to brainstorm on this timely and critical topic “Judiciary And The Rule Of Law: Challenges Of Adjudication In Electoral Reform”.

It is a brainstorming session because we have men and women of high caliber and sagacity who are experts from different fields with immense knowledge in this area who, I believe may do better justice to this topic than me. There is no doubt in my mind that this theme “Electoral Reform: Key to Sustainable Development”, is timely, quite topical, thought provoking, illuminating and all embracing.

Before I proceed to the gist of my presentation, let me commend the initiators of this conference for the good work they are doing in periodically pulling Speakers of the Southern States in Nigeria together to brainstorm on various issues affecting their legislative functions with a view to improving on service delivery to the citizens of their respective States and this Country in general. Great nations were built on collective efforts like this.

The theme of this conference ELECTORAL REFORM: KEY TO SUSTAINABLE DEVELOPMENT is apt and could not have come at better time than now when our Electoral System is undergoing a reform. There is no gainsaying that for this country Nigeria to have a sustainable development there must be a blossoming democracy, whose existence is dependent on a reliable, workable, dependable and sustainable Electoral System.

Permit me to shed little light on the theme of this conference:

ELECTORAL REFORMS AND SUSTAINABLE DEVELOPMENT

‘Reform’, according to the Oxford Advanced Learners Dictionary, means to improve a system, an organization, a law, etc. by making changes to it.¹ For instance, we could say: the law needs to be reformed; or that proposals could be made to reform

the social security system. It also connotes bringing a change into an improved form or condition; to amend or improve by change of form or removal of faults or abuses; to repair, restore or to correct.² Reform could mean fine tuning or redressing serious wrongs without altering the fundamentals of the system. Reform seeks to improve the system as it stands; never to overthrow it wholesale. ³ The improvement of the process can be achieved through fostering enhanced impartiality, inclusiveness, transparency, integrity or accuracy.

Applied to an electoral system, electoral reforms refer to changes in few or all the instruments, machineries or mechanism of the electoral systems in order to improve how public desires are expressed in election results and give it required credibility. Elections encompass activities before, during and after election and include, among other things, the legal and constitutional framework of elections, the registration of political parties, party campaigns and financing, activities of the electoral agencies, media, security agencies, the government in power, voters registration, independence of the adjudicating bodies, etc ⁴

Various definitions of 'sustainable development' have been suggested by various sources. The most frequently quoted definition is from Our Common Future, also known as Brundtland Report⁵ which says 'sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. One of the key concepts of sustainable development is the concept of needs, in particular the essential needs of the world's poor or vulnerable people, to which overriding priority should be given. In a nutshell, sustainable development is all about environmental, economic and social well – being of the people and the sovereignty of the nation.

The essence of this form of development in Nigeria is a stable relationship between human activities and the natural world, which does not diminish the prospects for future generations to enjoy good quality life.

Many observers believe that participatory democracy rooted in well structured electoral systems reforms, un-dominated by vested or primordial interests is a prerequisite for achieving sustainable development.

Some of the key factors inhibiting sustainable development in Nigeria include: bad governance or maladministration, corruption, poor infrastructure, poverty and electoral malpractices. For the purpose of our discussion, I would like us to focus on the election malpractice factor with a view to establishing how electoral reforms are keys to sustainable development.

Democracy is supposed to be the government of the people, by the people and for the people through the exercise of their right to vote for the persons they want to govern them and to be voted for.

In recent times Judgments on election petitions across the country have indicated that elections into various offices were marred by election malpractices including violence, rigging, ballot box snatching and or stuffing and unauthenticated announcement of election results. Quite a number of such elections results have been overturned by the decisions of the Tribunals.

The point to note is that a credible electioneering process is a critical component for sustainability of democracy. The people's vote must count in determining the credible outcome of elections. Elections must be free and fair. The process can be guaranteed through the strengthening of weak electoral systems and sincere efforts at reforms. Political leaders like you seated here today, the elites, civil society and the international community have key roles to play and must sustain the attention to electoral reforms. It is then and only then that, together, we can maintain the progress towards sustainable development.

There is no doubt that we have our Electoral System explicitly spelt out in our various Electoral Acts which were Laws or Acts enacted by the only body vested with the power of making Laws, that is, the National Assembly comprising of the Senate and House of Representatives and the various States Houses of Assembly . It is a common knowledge that a vast majority of our people are clamouring for Electoral Reforms. Why? To my mind this is so because some people feel that there are some gray areas in our Electoral Act and laws that need such review.

However, I wish to reiterate that my key assignment is to elucidate the challenges facing the judiciary in course of adjudicating matters arising from the electoral process, not the dynamics and induces of electioneering. On this note, I will proceed with the topic assigned to me which is

Judiciary and the Rule of Law: Challenges of Adjudication in the Electoral Process:

The Constitution of the Federal Republic of Nigeria vests on the judiciary the power to adjudicate on matters arising between parties. Chapter 1, Part II, Section 6 of the Constitution states as follows:

- (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
- (2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.
- (3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.

(4) Nothing in the foregoing provisions of this section shall be construed as precluding:-

(a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;

(b) the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.

(5) This section relates to:-

(j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and

(k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

(6) The judicial powers vested in accordance with the foregoing provisions of this section-

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law

(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;

(c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;

(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.

The judiciary, also known as the judicial system or judicature is the system of Courts which interprets and applies the law in the name of the State. 8 The judiciary also provides a mechanism for the resolution of disputes.

Under the doctrine of the separation of powers, the judiciary generally does not make law or enforce law. The judiciary rather interprets law and applies it to the facts of each case. Though some school of thought believes that the judiciary makes law through judicial activism. It is a jurisprudential school of thought that laws in the statute books are not laws 'stricto sensu' until the judicial pronouncements are made on them.

This branch of government is often tasked with ensuring equal justice under law. It usually consists of a Court of final appeal (often called the "Supreme Court") together with lower Courts. The judiciary is the guardian of the Constitution and acts as a check on the abuse of the executive and the legislative powers.

The Black's Law Dictionary defines the word "Judiciary" as the branch of government responsible for interpreting the laws and administering justice. 10

The Rule of Law is defined by the United Nation's as "a principle of governance in which all persons, public and private institutions and entities, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated upon, and which are consistent with international human rights, norms and standards"; 12 while the World Bank defines it as "legal – political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions". In the most basic sense, the rule of law is "a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power."13

A careful study of both definitions finds a parallel between the two sectors. We have the government in the exercise of its powers and the citizen in the exercise of their rights with the law having dominion on both sectors.

Black's Law Dictionary sums up the definition of rule of law in three spheres: the

supremacy of regular as opposed to arbitrary power; the doctrine that every person is subject to the ordinary law within the jurisdiction; the doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in the Courts. 14 One aspect of rule of law is the requirement of an existing set of good laws. These include good laws regulating electoral processes and compliance with the decisions of the courts.

The influence and power of rule of law is initiated by the enactment of good laws by the legislature (Senate and House of Representatives at the Federal level and the State Houses of Assembly levels). There are the effective execution of such laws by the various institutions under the Executive Branch, and the equitable interpretation of those laws by the Courts. Such functions should be carried out in a manner that is strong enough to stimulate citizen participation.

Election is one of the cardinal principles of democracy and it is a model in which citizens freely express themselves on how to choose someone into a political office. For there to be a genuine election, there must exist an independent judiciary to interpret Electoral Laws. 16 Other prerequisites include an honest, competent, non – partisan election management body and a developed system of political parties, organized enough to put their manifestos and programmes, traditions and names of

candidates before the electorates as alternatives between which to choose.¹⁷

In Nigeria, the first major hotly contested election petition, as may be recalled, was the celebrated *Awolowo v Shagari* 18 case, in which Chief Obafemi Awolowo on 11th August, 1979 filed a petition against Alhaji Shehu Shagari.

Though the decision of the Supreme Court generated some criticisms or comments, it is commendable that the petition was timeously concluded before the swearing-in of the President. Unfortunately, under the present Electoral System, a candidate returned as elected is already sworn-in and running his term of office despite the fact that a petition on his election is still before an Election Tribunal, Court of Appeal or Supreme Court depending on nature of the case.

Whatever justice that may come to a litigant if delayed, such justice is denied. The bane of our election petitions in Nigeria today is delayed justice. I will therefore attempt to discuss this topic by taking cursory analyses into the critical components of the electoral process and make suggestions on the way out:

The Import of the Rule of Law;

The Electoral Act (2003, 2006), for the purpose of the discussion, our reference will be the Electoral Act, 2006;

The Election Tribunal;

The Election Tribunal Practice Direction;

Pre-Election matter;

Tribunals;

Required Infrastructure;

Expert Evidence;

Conduct of litigant;

Conduct of the legal practitioner before the Tribunal, and

Conflicting Court Decisions

Time limit for conclusion of matter.

THE IMPORT OF THE RULE OF LAW

The justice sector reflects the underlying power structures that affect broader governance dynamics. It also reflects the problem with consensus, competition and inclusion that affect every other aspect of democratic governance. Achieving the rule of law involves every branch of government at every level, business entities, political parties, civil society and individual citizens.

We should therefore be challenged to look at full range of options that address the rule of law problems and treat the justice system as part of the larger political scheme. The need to address the deficiencies in the courts, laws and formal justice sector institutions are critical to promoting the rule of law.

One of the challenges faced by the judiciary in adjudicating electoral process is refusal to comply with decisions of the Court. The recent foot-dragging to comply with the decision of the Tribunal or Court of Appeal e.g. *Emordi vs Igbekwe* is a clear indication of abuse of Rule of Law ; the refusal by the electoral body to issue certificate of return to a successful candidate or make critical tenderable documents available for litigant's use are contemptuous matters that challenge the judiciary. Once a Tribunal or Court delivers a judgment it becomes *functus officio* except a fresh process permissible by law is filed. Contrariwise, in normal court process, the Court has the power to punish for contempt such noncompliance.

THE LIMITATIONS FROM THE ELECTORAL ACT, 2006

To handle election disputes the Electoral Act, 2006 spells out in clear and unambiguous terms the jurisdictions for resolution of disputes arising during an electioneering process. The Act vests the adjudicatory responsibilities in the Federal High Court on such pre-election disputes such as nomination of party candidates, qualification of nominated candidates to elective office, substitution of candidates by parties, and other sundry pre-election matters. The appeal on decision of the Federal High Court lies to the Court of Appeal while further appeal lies to the Supreme Court. A matter of reference is the substitution of party candidate in *Ararume vs Ameachi* where the Court of Appeal (Supreme Court's) in interpretation Section 34(2) Electoral Act, 2006 held that 'cogent and verifiable reasons must be provided by a party for substituting its candidates and in the absence of this such substitution becomes null and void and of no effect'. This provided the platform for lower courts to work with and accelerate the dispensation of justice. Similar cases are *Ehilawo vs Oke*; *Falogbon vs Adeogun* and *Martins Okonta vs Philips*

Though the Section 294 (1) of the Constitution stipulates as follows that;

294. (1) Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.

However, Section 148 of Electoral Act, 2006 only requests for accelerated hearing of election petitions without specifying the deadline for an election petition proceeding. This provides avenue for undue protraction of election petition disposition to more than one year before disposition. This abuse is compounded as counsel take advantage of the Supreme Court's decision on Paul Unongo vs Aper Aku declaring unconstitutional the Electoral Act, 1982 and rebuking the audacity of the National Assembly for providing a time frame within which an election petition must be concluded.

Hon. Justice Uwais, Chief Justice of Nigeria (retired), who incidentally was not only on the panel that decided Unongo's case but actually delivered the lead judgment then held:

"Accordingly the provisions of Sections 129 (3) and 140 (2) of the Electoral Act, 1982 which limits the time for disposing of election petitions by the Courts are in my view ultra vires the National Assembly and therefore null and void."

This solution to the challenge is express provision in the Constitution and the Electoral Act, the timeframe within which an election petition is concluded.

ELECTION TRIBUNAL AND PRACTICE DIRECTIONS

The Electoral Act, 2006 vests in an Election Tribunal (made up of five 5 members) the power to adjudicate on all post-electioneering disputes. The Election Tribunal handles matters arising from Presidential, Governorship, National and State Assembly elections. Appeal on decisions of the Election Tribunal on Governorship, Senators or House of Representative disputes lies and terminates at the Court of Appeal; while appeal on Presidential Election lies to Court of Appeal and terminates at the Supreme Court.

The Election Tribunal conducts its proceedings through the instruments of Evidence Act, Practice Directions, the Electoral Act and the Federal High Court Act in use. The Electoral Act, 2006 empowers the President of the Court of Appeal to provide the rules guiding the conduct of adjudication by the Election Tribunal, which serves as the practice direction.

Paragraphs 3(1) & (2) of the Practice Direction provides for prehearing sessions which must be concluded within 30 days before commencement of hearing of substantive matters in the petition. This direction is intended to allow parties streamline issues between themselves, agree on issues for determination, define manner of application, agree on number of witnesses, consent to tendered documents, etc. Thereafter a pretrial report must be filed before real proceeding commences. The irony is that litigants exploit this direction to disadvantage of the court as they never concede or agree on critical issues such as number of witnesses during this prehearing session thereby prolonging the proceeding. The prehearing session most often delays the commencement of hearing of the substantive matters.

Another challenge before the Tribunal is in Paragraphs 6 and 7 of the Practice Direction which permits a party in petition to join other parties, amend or reply a petition, make room for additional prehearing, etc. All these procedures though intended to give room for fair hearing, become counterproductive in the sense that the Tribunal's time is unduly exploited and justice may be delayed. An election matter may therefore take more than a year before final resolution.

The situation is further compounded as parties are constrained by inaccessibility to needed tenderable documents from INEC. Cases are thereby protracted by series of backlogs of motions and counter motions and interlocutory applications leading to incessant adjournments. This poses a lot of challenge for the judiciary as it elongates the duration for disposition of a matter.

To avoid the allegation of infringement on right to fair hearing parties should have enough time frame but specific deadline within which they can join issues and crystallize their matter before bringing it for real hearing. When issues are properly joined parties are entitled to file their Brief's and Respondent Brief reply only on point of Law. This is another challenge of adjudication in Electoral Process.

COMPOSITION OF ELECTORAL TRIBUNALS

One of great challenges posed in adjudicating any election process is the number of judges required to constitute a Tribunal. The 6th Schedule of the Constitution of the Federal Republic of Nigeria stipulates as follows;

- (1) A National Assembly Election Tribunal shall consist of a Chairman and four other members.
- (2) The Chairman shall be a Judge of a High Court and the four other members shall be appointed from among Judges of a High Court, Kadis of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or other members of the judiciary not below the rank of a Chief Magistrate.
- (3) The Chairman and other members shall be appointed by the President of the Court of Appeal in consultation with the Chief Judge of the State, the Grand Kadi of the Sharia Court of Appeal of the State or the President of the Customary Court

of Appeal of the State, as the case may be.

(1) A Governorship and Legislative Houses Election Tribunal shall consist of a Chairman and four other members.

(2) The Chairman shall be a Judge of a High Court and the four other members shall be appointed from among Judges of a High Court, Kadis of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or members of the judiciary not below the rank of a Chief Magistrate.

(3) The Chairman and other members shall be appointed by the President of the Court of Appeal in consultation with the Chief Judge of the State, the Grand Kadi of the Sharia Court of Appeal of the State or the President of the Customary Court of Appeal of the State, as the case may be.

A quick mental calculation shows the implication of the total number of tribunals, judges and complimentary court staff required to sit per time, per zone, per types of matter across the nation. We can as wells imagine the cost implication for provision of needed facilities for the execution of the Tribunal proceedings. It also has adverse effects on ongoing cases before some of these regular courts with consequential impact on cost to innocent litigants. It leads to delay in dispensation of justice, apprehension on the part of litigants simply due to anxieties arising from exigency of electoral matters.

Virtually in all the cases, there are paucity of funds, inadequate infrastructure, and lack of proper coordination, increase in workload, health hazards, and other unforeseen negative incidences. This retards other judicial duties because a large number of judicial officers are withdrawn from their regular duties to attend to Election Tribunal matters. It may be necessary to review the number of Tribunal members.

INADEQUATE INFRASTRUCTURE

One of the tenets of Rule of law is fairness which is predicated on access to justice. Citizens have access to justice when they have the ability to prevent the abuse of their rights and obtain remedies when such rights are abused. Access to justice allows citizens to enforce their rights against infringements by the state or powerful private interests.

Access to and dispensation of justice are frustrated by inadequate and non-conducive court rooms, as most court room's space cannot accommodate the number of counsels, parties to election disputes, supporters, the press and interested members of the public. Other infrastructural challenges are inadequate court room furniture, lack of basic convenience amenities, outdated or lack of relevant court technology for recording and timely transcription of proceedings, insufficient or lack means of transportation, etc, for Tribunal's secretariat.

Let me emphasise that it is important that justice is delivered in an atmosphere devoid of fear, insecurity, intimidation, harassment, but conducive enough for all the parties interested in the matter.

It is a common occurrence that in most cases either the Chief Judge or a Justice of a State may be required to vacate the Court Hall and Chambers for Tribunal Members, which truncate their normal official duties.

Other challenges are lack of office space and storage facilities to serve as secretariat for the Tribunal as they are often regarded as ad-hoc in nature. Therefore little or no provision is made for office equipment like computers and accessories, and other Information and Communication gadgets. These are some of the infrastructural challenges faced by Election Tribunals in the course of carrying out their adjudicatory duties. It is imperative for the present electoral reform to take into full consideration the need for proper planning and budgeting to provide necessary infrastructure for the smooth running of election petition process.

In my humble view there is the need to have in each State of the Federation, Court halls and chambers purposely built to house the Tribunal members and staff and such should be under the management of the Appeal Court in each State of the Federation.

MEANS OF TRANSPORTATION FOR JUDGES OF ELECTION PETITIONS TRIBUNAL

A big challenge that Judges and Justices of Election Tribunals face is lack of means of transportation to locations and places they are assigned to sit on Election Petitions. In almost all the cases, Judges and Justices of Election Tribunals or Courts transport themselves with their own vehicles. Since there are no provisions made for maintenance, repair and servicing for such vehicles ,consequently they are forced to bear the wear and tear and the cost of repairs of such vehicles. Judges and Justices of Election Tribunals should be provided with good, durable and befitting vehicles for use during the period of Election Tribunal proceedings. This situation can be discouraging and predispose to compromise.

RESIDENTIAL ACCOMMODATION

Justice dispensation requires that judicial officers be well cared for. A healthy body carries a sound mind and mental faculty, which are prerequisites for sound judicial decisions. By virtue of its peculiarity, election disputes occur periodically, and most of the judicial officers are selected at random and constituted to sit on matters at zones or locations far from their personal or official place of abode. Thus, Tribunal judges are faced with the challenge of lack of comfortable and conducive accommodation. These are in most cases not prearranged; thereby Judges and Justices resort to finding accommodation in very insecure places like hotels, motels or government chalets. This is antithetical to the principles of Rule of Law of which security is a key element. This arrangement exposes Judges to high insecurity and harassment by desperate litigants or parties

in election disputes, who can do anything to sway judgment. Even in cases where Election Tribunal Members are housed in government quarters there are insinuations or suspicion of partiality or question of influence from the government of that state.

There are cases whereby some cantankerous litigants will intentionally check into the same hotels where Justice and Judges of the various Election Tribunals are accommodated. Often some of the hotels are owned by politicians, who may thereby engage in subversive and frustrating activity such as not supplying electricity or creating power outages. They may as well not provide necessary hospitality amenities for Judges' during critical stage of the proceeding. Judges may also be exposed to harm such as food poisoning and attacks from aggrieved parties to a petition. Obviously speaking, this is not only a risk to the lives of the Justices and Judges of the Electoral Tribunal, it also gives room for avoidable accusation and unfounded allegation against such Justices and Judges.

Sincerely this is not a good development and does not augur well for the Judiciary and the principles of the Rule of Law. Electoral Tribunal Justices and Judges should as much as possible be insulated and protected from direct or remote contact with litigants or interested parties in election dispute.

EVIDENCE & THE EVIDENCE ACT

Our rules of evidence gives a litigant or a petitioner in Election matter a right to call as many witnesses as possible. Disputants take undue advantage of this provision to the detriment of the court's time and cost; leading to delays and prolonged sittings, sometimes adjournments. Records show instances where litigants abuse this provision by calling as many as 500 witnesses to prove a single fact for which two or more would have been sufficient. There is the need to review this rule of evidence by limiting the number of witnesses. This will reduce time wasting and cost on the part of the Court or Tribunal.

Another challenge faced by the judiciary in adjudicating election matters is the provision of Section 138 of the Evidence Act which requires a party "to prove beyond reasonable doubt" his allegation of the commission of a crime. See Nwobodo & Onu, 1983. In some instances when the allegations of rigging or commission of crime are raised, failure on the part of a petitioner to 'prove his allegation beyond reasonable doubt' often defeats the case against the Respondent no matter how strong the allegation is.

Another contentious challenge is that a petitioner alleging rigging through the stuffing of a ballot box is required by the Electoral Act, Section.... to produce the ballot box with the same stuffed ballot papers. Unfortunately this is virtually impossible to do, since ballot boxes are opened and the papers counted by INCEC officials in the presence of party agents and other authorized witnesses. After counting, these materials and boxes are later kept in safe custody by Independent National Electoral Commission (INEC). Consequently, a tall wall is raised before petitioner who is often unable to produce such evidence, and his allegation is defeated by provision of the law.

There is need to review some laws in the Evidence Act which are inimical to equity and fairness. This review is important to make it workable in line with present developments of electronic proof, expert analysis and allowance for inspection of election materials.

EXPERT WITNESS

The need for an expert witness to offer technical opinion is a great challenge currently facing the judiciary when adjudicating election disputes. In Nigeria, there are insufficient or lack of experts witnesses in this respect. The few experts that have so far being introduced are foreigners who contended with some communication and socio-cultural related problems thereby limiting the dispensation of their professional services.

Examples of communication barriers relate to accents and intonations on the sides of the expert, counsel and Tribunal Judges. This creates the problem of comprehension and affects timely resolution of the case. More than necessary time is spent in by the court battling with how to understand the purpose of the expert witness.

Therefore there is need to build the capacity of Nigerians to offer expert opinions that can guide and fast track the Court proceedings on election matters.

CONDUCT OF LITIGANTS

The Election Tribunal Practice Direction gives a Petitioner and the Respondent many days to file and reply processes. This is often abused by litigants who may delay till the last day before filing their processes. This attitude on the part of the litigants affects the scheduling of cases for hearing and protracts the matter unnecessarily. Also, delays arise as litigants are unable quickly get some critical supporting documents from the INEC as exhibits to their processes. This is also another challenge to adjudicating on Electoral matters.

CONDUCT OF LEGAL PRACTITIONER APPEARING BEFORE THE TRIBUNAL

Election matters become protracted as some counsel seek adjournments through unwarranted interlocutory applications and counter affidavits. This elongates the duration of the Tribunal, implying additional costs and waste of time. Justice delayed, they say is justice denied.

COOPERATION OF INEC WITH ELECTION TRIBUNAL

Another challenge of the judiciary is that in some cases some of the INEC officials do not cooperate with Election Tribunal to expeditiously dispose with election matters. This it does by frustrating litigants' efforts in their request for exhibits in custody of INEC to support their cases. Many times some officials of INEC who are supposed to witness in a matter cannot be produced as most election official are casual. INEC also frustrates the judiciary by non-compliance with orders and blatant disrespect to decision of the Tribunal. This they do by not issuing 'certificate of return' to successful candidates or refusal to answer subpoenas or asking for adjournments. Ordinarily, this is contemptuous, and is punishable by law at the High Courts. Election Tribunals should be empowered to charge any erring party for contempt for disobedience to judicial orders. It is regrettable that no section of the Electoral Act provides punishment a contemnor for contempt of order of Election Tribunal. This should form part of the reviewed Electoral Act.

CONFLICTING DECISIONS OF COURTS

One of the challenges facing the judiciary in adjudicating of electoral process is the issue of conflicting decisions of higher Court i.e the Court of Appeal. The Court of Appeal has many divisions in different parts of the country. Records show that there have been instances of conflicting decisions from Court of Appeal sitting on Election Petitions. This is a challenge to the judiciary on adjudicating election matters.

In Nigeria, our legal system is based on stare decisis. Some of the parties are often torn between two decisions of the Court of Appeal. In such an instance, since such cases do not proceed to the Supreme Court, the Tribunal is at liberty to choose which of the conflicting decision that binds it.

It is my view that there must be a system whereby the decision of the higher courts is reliable, so that Election Tribunals do not find themselves in difficult position on cases having similar facts.

The judiciary must be able to posit a remarkable, united and non-contentious decision which will enhance the integrity of the judiciary.

TRAINING AND RETRAINING

Electioneering matters are unique matters with their idiosyncrasies. To be able to overcome these, there is the need to build the capacity of judicial officer and staff handling election matters so that they can face the changing developments of electioneering process.

Judges and staff also need to be trained on the use of court technology (especially court proceedings recording and transcription machine) which can expedite case processing. Judges and staff also need to be trained on current practices in electronic case-flow management especially the laws guiding admissibility of electronic materials as evidence. Other support staff like drivers, clerk, office personnel need to trained on the conduct, comport and attitude during this critical time. Officers must have respect and adhere to the principle of hierarchy and line authority so that they will not jeopardize the integrity of the Tribunal.

MEDIA REPORTAGE

There is the need for the press to serve as watchdog and disseminate information. There must therefore be press freedom. However, a situation whereby the press deliberately and carelessly disseminates distorted information is not good for the country. The Press should disengage from sensational news that is detrimental to outcome of matters before the Tribunal. This endangers the lives of the Judges of the Tribunal as well as the climate of peace in the nation.

PANACEA

Having enunciated the challenges, we can ask ourselves, What are the ways out?

It is my humble view that the following panacea will alleviate the challenges faced by the judiciary when handling election matters.

Expedite Conclusion of the Electoral Reform

There is need to expedite action on the on-going Electoral Reform, by ensuring that all salient aspects and contentious matters are resolved as we look towards another electioneering period;

In view of the likely changes in the Constitution and the Electoral Act, the Practice Directions of Election Tribunal should be reviewed to accommodate changes made in the reviewed Constitution and the Electoral Act;

Adequate funding should be provided for the running of Election Tribunals especially for;

the building of appropriate and conducive accommodation for Tribunal Judges and Secretariat for operations of the Tribunal at different geopolitical zones of the country;

building of accommodation for staff and other support staff of the Tribunal;

for building of spacious court halls, Judges chambers or court complex for conducive and adequate accommodation of persons during sittings of the Tribunal;

provision of functional means of transportation during the period of dispute resolutions;

proper and adequate funding of the Tribunal's secretariat;

provision of requisite court room technology for audio and video recording of Tribunal proceedings;

provision of e-case management software for processing of electoral matters;

proper planning and budgeting for Election Dispute Resolution Mechanisms;

In order to enforce adherence to the orders of the Tribunal, the Constitution and the Electoral Act should empower the Tribunal to charge for contempt contemnors for contempt;

Capacity Building for Judges and their support staff;

Review of the Evidence Act and Electoral Act;

Public enlightenment on the Electoral reform;

Your Excellency, Governor of Ondo State, Rt. Honourables, Speakers and Members of various State Houses of Assembly here present, eminent Nigerians here present, members of Executive of the Ondo State government here present, staff of the various State Houses of Assembly here present, gentlemen of the press distinguished ladies and gentlemen, I have endeavored to do Justice to this topic from the adjudicative perspective without dwelling into the politics, dynamics and indices of electioneering. In a nut shell, the views expressed here are mine and legalistic from my position as a judicial officer. They are not political in nature or intent. They are issues if considered will contribute to "Electoral Reform as Key to Sustainable Development".

Once again I thank you all for your attention and giving me the opportunity to contribute in my own little way to the development of our democracy.

God Bless You ALL.