

## INDEPENDENT NATIONAL ELECTORAL COMMISSION AND THE COURTS: A REVIEW OF COURT'S ATTITUDE IN PRE-ELECTION MATTERS TOWARDS SUSTENANCE OF CONSTITUTIONAL DEMOCRACY IN NIGERIA

### Abstract

*The Independent National Electoral Commission (INEC), is saddled with the responsibility of conducting free, fair and credible elections in Nigeria. INEC was established to hold elections in Nigeria and uphold democracy and democratic values. The Courts, on the other hand, represent the judiciary in Nigeria with the core function of the interpretation of the law and dispensation of justice in accordance with the law. The role of Independent National Electoral Commission (INEC) is investigated together with roles and attitude of the courts in sustenance of electoral democracy in Nigeria is reviewed through the cases. To achieve the objectives, the doctrinal methodology of research was employed while data were garnered from both primary and secondary sources. It was discovered that interference and favouritism, reliance on technicality, as well as non-respect to party's constitution and the Electoral Act by both INEC and the courts are the banes of electoral democracy in Nigeria. This study recommends non-interference, respect to the provisions of the Electoral Act as well as neutrality of both INEC and the courts in dealing with issues pertaining to elections in Nigeria.*

**Key words:** Independent National Electoral Commission, Court, roles, electoral democracy

### 1.0. Introduction

The Independent National Electoral Commission<sup>1</sup> and the Courts play very crucial role in the Nigerian electoral democracy. Since the return to democracy, Nigeria has engaged in one form of electoral reform or the other. The latest is the enactment of the Electoral Act<sup>2</sup>. Election in democracy is very important. It is through election that the people take firm decisions on how they would want to be governed over a period of time.<sup>3</sup> Both the Independent National Electoral Commission and the court play vital roles in seeing that elections are conducted in Nigeria.

However, the socio-political, civil, and economic hardship prevalent in the country today suggest that the general will of the electorates during election are usually subverted by not just the INEC which should be an unbiased umpire, but also the courts through technicality, interference and unjust pronouncements in electoral matters.

It is against this background that this study appraised the role of INEC and courts in the sustenance of electoral democracy in Nigeria. The study also reviewed the attitude of the courts towards pre-election matters in Nigeria.

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<sup>1</sup> Hereinafter referred to as INEC.

<sup>2</sup> Electoral Act, 2022.

<sup>3</sup> F.C. Uwakwe and I.W. Nwoke. 'An Appraisal of the Rights of Women to Participate in an Election under the Nigerian Electoral Laws', 2022) African Journal of Law and Human Rights, 168.

**2.0. Independent National Electoral Commission and Its Roles in Elections in Nigeria**  
 INEC, which was established through the Constitution of the Federal Republic of Nigeria, 1999, is very crucial to maintaining the legitimacy, openness, and equity of Nigeria's electoral system.<sup>4</sup> With its goal of maintaining democratic values through conducting free and fair elections, INEC has grown to be a crucial component of Nigerian politics. In as much as it has engineered underwhelming elections throughout its existence, it is still the electoral umpire in Nigeria's' electoral process.

Under Part 3 of the Electoral Act 2022, one of the key responsibilities of INEC is the registration of eligible voters. The Commission conducts voter registration exercises periodically to ensure that all eligible citizens are given the opportunity to participate in the electoral process<sup>5</sup>. The right to vote is not a negotiable right of any eligible voter. Nevertheless, INEC has not been as efficient in that regard, just like it has not in conducting free and fair elections.<sup>6</sup> Registration is one thing, while collection of Permanent Voter Card<sup>7</sup> is another, and the process of registration is not complete if one cannot collect their PVC or use such medium of registration to vote. INEC usually resorts to using the media to announce falsehood about people being unwilling to collect their PVC, while in reality, the collection of PVC after registration is another mammoth task. Collection most often is hindered by bribery at the INEC registration offices 'to speed up the process' which the economic realities of the country makes it hard to afford in most cases.<sup>8</sup> In most other cases, it is the issue of misplaced PVCs by the Electoral body, which is obviously a sign of inefficiency or complicity and a ploy to disenfranchise some regions.<sup>9</sup> This invariably affects candidates who have huge supporter base in that region. Political party registration and election as well as candidate nomination acceptance are also handled by INEC. It guarantees that political parties follow election laws and rules regarding the choice of candidates and party activities. The nomination and approval of party candidates for elections is another task that INEC manages. Nigerian political parties have deadlines for submitting their lists of candidates to INEC, which then reviews the candidates' credentials and eligibility.<sup>10</sup> Candidates' names for general elections must be submitted within 180 days before the elections. This will give the Commission ample time to arrange and get every information relating to the candidates eligibility, while also printing ballot papers.

INEC monitors and observes elections to ensure compliance with electoral laws and regulations.<sup>11</sup> It collaborates with local and international organizations to ensure transparency and integrity before, during and after the electoral process. INEC, more so, is responsible for

<sup>4</sup> Independent National Electoral Commission, 'INEC History.' <https://www.inecnigeria.org/the-commission/> retrieved on June 30, 2025.

<sup>5</sup> Constitution of the Federal Republic of Nigeria, 1999, Part 1, third Schedule.

<sup>6</sup>O Madueke and C Enyiazu, 'Electoral Integrity and Election Management in Nigeria: The Case of the 2023 General Election.' (2025) <https://onlinelibrary.wiley.com/doi/full/10.1002/waf2.12055> retrieved on June 30, 2025.

<sup>7</sup> Hereinafter referred to as PVC.

<sup>8</sup> A. Amzat – How bribe taking, voters' frustration slow down collection of PVC in Lagos <https://www.icirnigeria.org/how-bribe-taking-voters-frustration-slow-down-collection-of-pvc-in-lagos/> Accessed October 21, 2024.

<sup>9</sup>J. Chukwudi – INEC silent over PVCs discovered in Nnewi Forest, indigenes locate owners <https://dailypost.ng/2023/02/22inec-silent-over-pvcs-discovered-in-nnewi-forest-indigenes-locate-owners/> Accessed October 21 2024.

<sup>10</sup> Electoral Act 2022, Section 29 (1).

<sup>11</sup> C Alvan Nwankwo and R O Dode, 'International Election Observers' Perception of Nigeria's 2023 General Election: Lessons for 2027.' (2024) *African Journal of Politics and Administrative Studies*, 594.

post-election activities, including the resolution of electoral disputes.<sup>12</sup> However, observing election is not a straightforward exercise as it appears. Sometimes, it becomes problematic for the INEC staff and the observers, which may eventually lead to acrimonious situations. Election in fledgling democracies are conducted in a high-stake environment where winning an election is equal to capturing the state and controlling access to its resources. The zero-sum nature of elections and the acrimony that accompanies it in these climes make it necessary for any individual who is a staff to be duly equipped and accompanied by enough security details. That, however, is not usually the case, as cases of ballot box snatching and assault on INEC staff are usually reported<sup>13</sup>.

INEC is also responsible for collating and announcing of election results.<sup>14</sup> The commission receives and aggregates results from various polling units. It ensures that the results are accurately and transparently compiled from various polling units and announces the winners of the elections. For instance, in a Presidential election, the Presiding Officers send results of poll to the Ward Collation Officer; the Ward Collation Officer collates results and then sends to LGA Collation Officer; LGA Collation Officer shall collate results and send to State Collation Officer; State Collation Officer collates results and sends to the Chief Electoral Commissioner (Chairman INEC); the Chief Electoral Commissioner (Chief Returning Officer) collates results from the State Collation Officers, declares the result and returns the winner as President elect of the Federal Republic of Nigeria.

The Presiding Officers/Collation Officers at the various levels complete the result sheet and request the party agents available to countersign.<sup>15</sup> Duplicate copy of the result is made available to each one while the original is taken to the next level of collation.

The Presiding Officers/Collation Officers at each level completes the notice of results of poll and paste at the Polling Unit or Collation Centre.<sup>16</sup> Where the margin of win between the two leading candidates is in excess of the total number of registered number of voters in a Polling Unit(s) where the election was held, the Returning Officer shall decline to make a return until another poll has taken place in the affected Polling Unit(s) and the results incorporated into the existing one. This is supposed to be well structured process, but any rot at any level from the top affects the whole level, and any rot from the least transmits to the top.

This is the case in Nigerian elections as the saying that there is no smoke without fire applies here. In some cases, there are instances of pre-filled result sheets and substantial alterations on the polling result sheets.<sup>17</sup> INEC in conclusion, has many duties, ranging from voter registration, to election administration, result compilation, and dispute settlement. INEC is

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<sup>12</sup> J A Aboh and K E Obem, 'Election Related Conflicts in Nigeria: The Role of Independent National Electoral Commission (INEC).' (2022) *Tamaddun Life*, 64.

<sup>13</sup> S. Akpan – INEC: Our staff assaulted, electoral materials destroyed during bye-elections <https://www.thecable.ng/inec-our-staff-assaulted-electoral-materials-destoryed-during-bye-elections/#:~:text=December%207%2C%202020%207%A58%20am%20The%20Independent%20National,Zamafara%20state%20where%20there%20some%20incidents%20of%20violence>> Accessed October 21 2024.

<sup>14</sup> A Ahmad, 'FACT SHIELD: Who is Constitutionally Empowered to Collate and Declare Election Results?' <https://cddfactcheck.org/fact-shield-who-is-constitutionally-empowered-to-collate-and-declare-election-results/> retrieved on June 30, 2025.

<sup>15</sup> INEC Nigeria, 'Election Officers.' <https://www.inecnigeria.org/collation-and-declaration-of-results/> retrieved on June 30, 2025.

<sup>16</sup> *Ibid.*

<sup>17</sup> J Agberebi, 'INEC investigating allegations of 'filled results sheets' in Kogi.'<https://guardian.ng/news/gov-polls-inec-investigating-allegations-of-filled-results-sheets-in-kogi/> Accessed October 21 2024.

essential to create a strong democratic system in Nigeria because it protects democratic values, makes sure elections are free and fair, and encourages inclusivity.

### 3.0. The Courts and Elections in Nigeria

The legal ladder for establishing court authority is jurisdiction. In short, jurisdiction can be simply defined as the court's authority to determine the case submitted in a manner prescribed by law. In *Madukolu v Nkemdilim*<sup>18</sup>, the Supreme Court held:

Before any court of law assumes jurisdiction so as to determine or adjudicate on a cause or matter, the court must be competent. A court is competent when:

1. The court is properly constituted as regards members and qualifications of the bench and no member is disqualified for one reason or the other.
2. The subject matter of the case is within the court's jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.
3. The case before the court initiated by due process of law and upon fulfillment of a condition precedent to exercise of jurisdiction. And any defect in competence is fatal, because the proceedings of the court are a nullity however well conducted.

It is on this note that this study tends to list briefly hierarchy of the Courts in resolving electoral dispute and how the courts exercises its power in adjudication of election petition in Nigeria and their roles in dispensing justice.

The Supreme Court<sup>19</sup> is the apex court of the land, which implies that the jurisdiction of the court is the highest in Nigeria. The decision of the court is final and cannot be appealed, hence described as being *res judicata*.

The head of the Supreme Court is the Chief Justice of Nigeria.<sup>20</sup> The number of justices of the Supreme Court does not exceed 21, and the President appoints them on the recommendation of the National Judicial Council (NJC), subject to confirmation by the Senate. The Supreme Court has jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determines appeals from the Court of Appeal<sup>21</sup>. There is only one Supreme Court in Nigeria which is located in Federal Capital Territory, Abuja, Nigeria and for it to be properly constituted when sitting on appeals, there has to be 5 Justices sitting.

The Court of Appeal<sup>22</sup> ranks second among Nigerian courts, and second only to the Supreme Court. It has the original jurisdiction to determine and hear any matter as to whether anyone has been effectively elected for the positions of President, Vice President, Governor and Deputy Governor. The Court of Appeal also entertains appeals from the Federal High Court of a state, the election tribunals. Similarly, the Court of Appeal is properly constituted in election matters as three justices.

The Federal High Court<sup>23</sup> is the 3<sup>rd</sup> in rank of courts in Nigeria. It has original jurisdiction in civil matters and cases as set out under Section 251 of the extant Constitution of the Federal Republic of Nigeria. It is headed by the Chief Judge and comprises any number of judges as allowed by an act of the National Assembly. However, it can be properly constituted if it

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<sup>18</sup> (1962), 2 SCNLR 341

<sup>19</sup> Constitution of the Federal Republic of Nigeria, Section 230.

<sup>20</sup> *Ibid.*

<sup>21</sup> Constitution of the Federal Republic of Nigeria, section 233 (1)

<sup>22</sup> Constitution of the Federal Republic of Nigeria, section 230

<sup>23</sup> Constitution of the Federal Republic of Nigeria, section 249

contains at least one Judge of the court. The Federal High Court has a division in each of the thirty-six states in Nigeria. The Federal High Court solely entertains all the pre-election matters in Nigeria since the practice direction of the Federal High Court 2022. It has original jurisdiction to entertain pre-election matters as held in the case of *Osho v Ape & Ors*<sup>24</sup>; *Also held in PDP v Ngbor & Ors*.<sup>25</sup>

The State High Court<sup>26</sup> has the jurisdiction under the Constitution of Nigeria to entertain Local Government electoral dispute. There is a State High Court in each of the states in Nigeria and in the Federal Capital Territory, Abuja<sup>27</sup>. The State High Court entertains election dispute as to local government chairman: Any aggrieved party who is dissatisfied with the conduct of election into chairmanship position of the local government can initiate an action at the State High Court. The case of *Osun Independent Electoral Commission (OSIEC) v Mr. Asholu Adebowale Timothy & Ors*<sup>28</sup> is illustrative and further drives the point home that the State High Court has competence over the local government chairmanship election.

Magistrate Courts are to try electoral offences or offenders. Such can be brought before the magistrate court for summary trial. There are also Area Council Election Tribunal. The Area Court Tribunal shall have jurisdiction to hear and determine any question as to whether anybody has been validly elected to the office of the chairman, vice chairman and councilor or the term of office of such person elected into such at the Federal Capital territory Abuja<sup>29</sup>.

Just as the hierarchy of the various courts is listed out in the above, so does it exist in the Election Tribunals. A petitioner would not institute an action at the Supreme Court to complain that there were irregularities in a gubernatorial election which he participated, as such would rob the Supreme Court of jurisdiction to entertain the matter. It should be noted that this is not the only situation where the question of jurisdiction will be raised. Just as the Supreme Court opined in *Madukolu v Nkemdilim*<sup>30</sup>, one of such instance jurisdiction can be raised is to question whether due process of law and fulfillment of a condition precedent has been followed. This is the case with the Supreme court in invoking section 22 of the Supreme Court Act in Pre-election matter, it must be clear that the action and disposal of the matter was done within the 180 days as prescribed by law in respect of the Court of first instance and conclusion of said matter within 60 days by the appellate court before assuming jurisdiction. When this is not the case, the Supreme Court cannot invoke section 22 of the Supreme Court Act to assume jurisdiction, as the condition precedent for the assumption of such jurisdiction have not been met, hence incompetent to entertain such matter as held in *Danladi v Udi*<sup>31</sup>.

It is pertinent to state that courts have played a pivotal role in the sustenance of electoral democracy in Nigeria. In every democracy, the court is mainstay. There is no democracy without the courts, as the court is an essential ingredient of democracy. The electoral democracy in Nigeria would be much messier than it is at the moment, if there were no court,

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<sup>24</sup> (2023) LPELR 59728 (SC)

<sup>25</sup> (2023) Lpelr-59930 (SC)

<sup>26</sup> Constitution of the Federal Republic of Nigeria, section 255

<sup>27</sup> *Ibid.*

<sup>28</sup> (2023) LPELR – 59932 (CA)

<sup>29</sup> Electoral Act 2022, section 131(1) (a)-(c).

<sup>30</sup> *Supra.*

<sup>31</sup> (2022) ANWLR (Pt 1834) 185

as every faction would take their grievances to the streets and that would lead to anarchy. The loser will always think that the court is perverse and injudicious in their judgment. However, where there is no existence of the court to adjudicate this electoral dispute in the country, especially by political gladiators, there will exist a state of anarchy in the country.

The judiciary also interprets and applies electoral laws. This interpretation helps clarify the legal framework governing elections, thereby influencing how elections are conducted contested. The INEC is the electoral referee, while the Court decides whether the referee and the players have played in accordance with the Law. It is not for INEC to say what the law is, rather they will follow the due process as provided by the Electoral Act and the Guidelines, and at the end, if there were any grievances in respect of the outcome of the election result, that should be brought before the courts, the courts will interpret such, as envisaged under the Act<sup>32</sup>.

The judiciary is essential to the settlement of electoral disputes because it offers a channel for resolving electoral complaints. In this respect, the judiciary has helped to sustain the political rights of the electorate in Nigeria. As earlier stated, the alternative to this is to resort to self-help, with consequential anarchy. In *Action Congress v INEC*<sup>33</sup>, the question before the Federal High Court was whether INEC had the authority to check the qualifications or documents of candidates and/or screen and/or disqualify candidates in the elections, including Vice-President of Nigeria and Action Congress presidential candidate Alhaji Atiku Abubakar. The Court held that INEC had the power to verify candidates' claims of credentials or papers, but the power to disqualify any candidate sponsored by any political party, including Atiku Abubakar, was vested in the Courts. However, the Court of Appeal ruled otherwise, namely, that INEC had the power and authority to screen candidates sent to it by political parties and to remove the name of any candidate who failed to meet the criteria set out by the Constitution without having to go to court. On appeal to the Supreme Court, and after detailed deliberations, the lead Justice of the Supreme Court delivered his judgment thus:

Having carefully considered the submissions of counsel to the parties, I have no difficulty in coming to the conclusion that the respondent (INEC) has no power whatsoever to disqualify any candidate from the general elections. I hold so. This appeal has merit and therefore succeeds.

The inclusion of the name of Atiku Abubakar on the ballot paper restored Atiku's political rights. This was also the case with Rotimi Amaechi's substitution by the PDP with the name of Celestine Omehia. In that case, the latter contested and won the gubernatorial elections of Rivers State, but the Supreme Court nullified the party substitution and ordered the swearing-in of Rotimi Amaechi, who had not contested the governorship election of Rivers State.

More importantly, the Court plays more of an interventionist role. Section 6 of the constitution Federal Republic of Nigeria's 1999 amended expressly states the judiciary's longstanding function as an arbiter and guardian of the judicial powers. The judiciary's pervasive role in electoral matters is acknowledged in a number of ways, including under the general judicial powers granted by section 6 of the constitution of the Federal Republic of Nigeria, 1999 as amended, or under the specific provisions of section 285 of the constitution of the Federal Republic of Nigeria, 1999 as amended, which established the various Election

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<sup>32</sup> Electoral Act 2022, section 130(1).

<sup>33</sup> (2007) 12 NWLR (Pt. 1048) 220 S.C

Tribunals, or under the Electoral Act as applicable over time, particularly under the newly enacted Electoral Act requiring aggrieved aspirants to approach the Court in the event of non-compliance with the Electoral Act or candidates and political parties to approach the Election Tribunals if dissatisfied with the conduct of the election. The electoral process in Nigeria admits of separate and distinct stages namely pre-election and post-election stage and the court with the authority to consider pre-election cases is the Federal High Court<sup>34</sup>. Under the Electoral Act, 2010 as amended, the courts used to have concurrent jurisdiction, to wit: The Federal High Court, The High Court of the Federal Capital Territory and the High Court of a state. The Court has held in the case of *Michael Chinedu Oli v INEC & Ors*<sup>35</sup> that it is only the aspirant who participated in the primary election that has the *locus standi* to bring an action before the Federal High Court that the provision of the Electoral Act or the political party Rules or guidelines have been breached. This complaint can only be made by an aspirant in the primary election that is impacted. Pre-election matter, must be filed in the appropriate form no later than fourteen days after the date of the event, decision, or action that is being complained of and the court has 180 days from the institution of the matter in the Federal High Court to dispose of the matter, while appeal court, if any, shall dispose of the appeal within 60 days<sup>36</sup>. Where the suit is contentious and cannot be settled by merely affidavit evidence, then it must be by writ of summons rather than by originating summons, as was laid down in *APC v Machina*.<sup>37</sup>

#### 4.0. Pre-Election Matters and the Legal Regime in Nigeria

Before every general election is conducted in Nigeria, the Political Parties are required by law to conduct internal primary elections to nominate candidates that would represent the various parties at the general election. This is evidenced under Section 84(1) of the Electoral Act 2022 where it was clearly stated that a political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions which shall be monitored by the Commission. Disputes often arise from issues of qualification, disqualification, nomination, substitution, conduct of primaries and sponsorship of candidates for or before the general election are pre-election matters.

The legal regime for pre-election matters is a comprehensive framework that governs the activities leading up to an election, ensuring fairness, transparency and order. At its core, this regime is defined by various electoral laws and regulations, which include national and local legislation outlining the electoral process. These laws specify eligibility criteria for candidates, detail the nomination procedures, and establish the rules for campaigning. Central to this process is the role of Independent Election Commission, responsible for overseeing elections and enforcing compliance with several laws, that include the following –

#### 4.1. The Constitution of the Federal Republic of Nigeria:

This is the *grundnorm* of all Laws in Nigeria<sup>38</sup>. It is the Law from which all laws derive their power and authority, and any law which is inconsistent with the provision of this constitution shall, to the extent of its inconsistency, be declared null and void.

It is in this same vein that the constitution makes provision for pre-election matter, where it provided that pre-election matters mean any suit by:

<sup>34</sup> Electoral Act 2022, section 84 (14).

<sup>35</sup> (2023) LPELR – 60587 (SC)

<sup>36</sup> Supreme Court Act 2022, section 22 .

<sup>37</sup> (unreported)

<sup>38</sup> Section 1 of the 1999 Constitution as amended

1. An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for the conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidates for an election;
2. An aspirant challenging the actions, decisions or activities of INEC in respect of its participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the selection or nomination of candidates and participation in an election; and
3. A political party challenging the actions, decisions or activities of INEC disqualifying its candidate from participating in an election or complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by INEC in respect of the nomination of candidates of political parties for an election, timetable for the election, registration of voters and other activities of the Commission in respect of preparation for an election<sup>39</sup>.

It is a settled principle of law in (a) and (b) above that the aspirant must belong to a political party, he complained about and he must have participated in the primary election or at worst been an aspirant who fulfilled all the conditions to participate. This was the case in *Uba v Moghalu*<sup>40</sup>. Furthermore, the constitution in section 285 (10) and (12) respectively provides for the time limit for determination of the election matter and appeal emanating therefrom. They are reproduced hereunder:

A court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit, while section (12) thereof. An appeal from the decision of a court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing an appeal. Any litigant who fails to bring an action within the time frame provided by the constitution, the suit is incompetent and devoid the court's jurisdiction as held in *Ebebi v Ozobo*<sup>41</sup>

The aforesaid section of the constitution of Nigeria, 1999 as amended provisions, in defining pre-election matters are not exhaustive. Therefore, a number of matters arising from disputes which arise before the general election are referred to as pre-election matters.

#### 4.2. Electoral Act, 2022

As earlier stated, the provisions of section 285 (14) of the Constitution in defining a pre-election matter is not exhaustive. Thus, it preceded the definition of pre-election matter with this phrase - "for the purpose of this", as same was applied in *Okoli v Duru & Ors*<sup>42</sup>.

Thus, it is humbly submitted that pre-election matters can emanate from other sources in law. This is now contained in the extant Electoral Act<sup>43</sup> which provides thus:

Any aspirant who participated in the primaries of his political party, who has reasonable grounds to believe that any information given by his political party's candidate in the affidavit or any document submitted, given by that candidate in

<sup>39</sup> Ibid Section 285(14)

<sup>40</sup> (2022) 15 NWLR pt. 2 at 306

<sup>41</sup> (2022) 1 NWLR (pt 1810) 165

<sup>42</sup> (2006) LPELR 12601 (CA) @ 21-22

<sup>43</sup> Electoral Act, section 29(5).

relation to his constitutional requirements to contest the election is false may file a suit at the Federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false.

Similarly, section 84 of the same Act, provides thus:

Notwithstanding the provisions of this 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 have 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 for redress<sup>44</sup>.

It should be pointed out that the provisions of the law creates another species of a pre-election matter which now only clothes any aspirant who participated in the primaries of his political party with the requisite *locus standi* challenge the information supplied by a candidate of his political party and to challenge the conduct of the primary election of his political party before the general election. By the current position of the law, only aspirants are conferred with the requisite *locus standi* to institute pre-election matters in court<sup>45</sup>. In other words, it should be noted that the current Electoral Act has now limited this pre-election suit to –

1. An aspirant who participated physically in the primaries of his political party and the election must have been conducted by the relevant arm of the political party so authorized to conduct the primary election, i.e., the National Executive Committee (NEC) or the National Working Committee. This was the decision of the apex court in *Ndukwe v Ayo*<sup>46</sup> as stated by his Lordship Jauro JSC. The aspirant can only sue his political party's candidate as was held in the case of *Uba v Ozigbo*<sup>47</sup>

2. The aspirant can only sue his political party's candidate regarding his constitutional requirements in connection to the subject matter of this suit<sup>48</sup>. This suit can only be instituted at the Federal High Court<sup>49</sup> as illustrated in the case of *PDP v INEC & Ors*<sup>50</sup>

### 4.3. Party Guidelines

Every political party in Nigeria has rules and regulations guiding it. It ranges from how to elect candidates for election, to how to disqualify candidates or dismiss a member. The Court has held that in the conduct of its primaries, it will never allow a political party to act arbitrarily. A party must obey its own constitution, as held in *Uzodinma v Izunaso*<sup>51</sup>.

It can be seen from the provision of section 29(5) and 84 (14) of the Electoral Act, 2022 that the Federal High Court has the Jurisdiction to entertain pre-election matters.

### 4.4 The Evidence Act 2011

The Act provides for whom the burden of proof lies and standard of proof required. Election matters are proved by preponderance of evidence.<sup>52</sup> Section 131 of the Evidence Act is very clear that he who asserts must prove. The said section is reproduced *seriatim*:

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<sup>44</sup> Electoral Act, section 84 (14).

<sup>45</sup> *Ibid*.

<sup>46</sup> (2023) 5 NWLR pt. 1877 pg. 309

<sup>47</sup> (2022) 10 NWLR Pt. 1839 pg. 431

<sup>48</sup> *Ibid* Section 29

<sup>49</sup> *Ibid* Section 84(14)

<sup>50</sup> (2023) LPELR 60457(SC)

<sup>51</sup> (2011) 17 NWLR (pt. 1275) 30

<sup>52</sup> Evidence Act 2011, section 134.

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Lending credence to this is the fact that the burden of proof in Electoral matters resides on the petitioner or the aspirant who participated and lost in the primaries of an election.

#### 4.5. The Rules of Court and Practice Directions

These are procedural guidelines governing how cases are handled in the various courts. These rules are designed to ensure fair and efficient administration of justice. The specific rules can vary depending on the court and the type of case. For instance, the Chief Justice of Nigeria has the power to make rules and procedure guiding electoral matters by way of Practice Direction. This is clearly stated in the 1999 Constitution as amended thus:

Subject to the provisions of any Act of the National Assembly, the Chief Justice of Nigeria may make rules for regulating the practice and procedure of the Supreme Court<sup>53</sup>.

Also, the President of the Court of Appeal can make rules and regulation guiding its procedures in electoral matters by way of practice directions:

Subject to the provisions of any Act of the National Assembly, the president of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal<sup>54</sup>.

The Chief Judge of the Federal High Court can make a practice direction, which are rules and regulations guiding the court:

Subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court<sup>55</sup>.

The role of the court cannot be overstated, and it is pertinent to point out that currently the Federal High Court is the only court with jurisdiction to entertain pre- election matters in Nigeria.

Thus, pre-election matters occur from preparations towards the general election. In other words, pre-election matters are, as the name implies, matters that occurred before the general election itself. In *APC v Lere*, Rhodes-Vivour J.S.C, stated

They are live issues that must be heard and a judgment delivered. Litigations arising from party primaries, e.g., substitution of candidates, complaints about the conduct of primaries are pre-election matters as held in *Modibo v Usman* and *Gbileve v Addingi*<sup>56</sup>

The importance of pre-election matters cannot be over-emphasized as they are live issues which must be determined by the court and judgment delivered, even after the general election has been conducted and a candidate has been sworn in to occupy an exalted position such as a Senator, member of the Federal House of Representatives or Governor. This is corroborated by what transpired after the 2019 general elections, when a governor was

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<sup>53</sup> Section 236 of the 1999 Constitution

<sup>54</sup>Ibid Section 248

<sup>55</sup>Ibid Section 254

<sup>56</sup> (2020) 1 NWLR (PT. 1705) 254 at 279.

removed before the swearing-in ceremony. Some senators and members of House of Representatives were removed by the Supreme Court on account of pre-election matters after taking oath of allegiance and after the inauguration ceremony as was held in *APC v Lere*<sup>57</sup> and *PDP v Degi-Ereymiemyo & Ors*<sup>58</sup>

From the analysis, the following matters have been classified by the courts as pre-election matters which include:

1. Nomination of candidates as held in *PDF v INEC & Ors*<sup>59</sup>
2. Double nomination of a candidate, as seen in the case of *Uche Nwosu v APC*<sup>60</sup>
3. Disqualification of a candidate as held in *Uche Nwosu v APC, supra*
4. Wrongful substitution of a successful candidate's name by the Electoral Body
5. Wrongful omission of a successful candidate's name on the register, as held in *PDM and Anor v. INEC and Ors*<sup>61</sup>
6. Complaints about the conduct of primaries; *Anozia v AG Lagos State*<sup>62</sup>
7. False declaration on oath about particulars of a candidate<sup>63</sup>.

### 5.0. Attitude of the Courts in Pre-Election Matters: A Review of Some Selected Cases

In Nigeria, the courts play a vital role in pre-election matters, ensuring the integrity and fairness of the electoral process. One of their primary functions is to conduct judicial reviews of decisions made by the Independent National Electoral Commission (INEC). This involves scrutinizing actions related to the conduct of elections, including candidate nominations and eligibility criteria, *locus standi*, false information, consider time for commencement of action, etc.

The constitutional qualifications are those contained in sections 66, 67, 106, 107, 131, 137, 177 and 187 of the Constitution of the Federal Republic of Nigeria which are essentially the same qualifications across board for the elective positions in the country. A political party shall not impose any nomination, qualification or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections except these basic qualifications outlined above.<sup>64</sup>

Section 84 of the electoral Act on the other hand provides for nomination of candidates by political parties, and also the qualification for candidates with reference to the Constitution. It provides that, Notwithstanding the provisions of this 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 have 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 for redress.<sup>65</sup>

The question begging for an answer is who is an aspirant in the context of section 84(14) of the Act. Section 152 of the Interpretation Act defines an aspirant to mean a person who aspires or seeks or strives to contest an election to a political office. It follows therefore, that an aspirant is one who participated fully in the primary election conducted by the political

<sup>57</sup>*Supra*

<sup>58</sup>(2020) 1-2 SC (PT.1)

<sup>59</sup> (2023) LPELR 60457 (SC)

<sup>60</sup> (2020) 16 NWLR pt. 1749 pg. 28

<sup>61</sup> (2020) 17 NWLR (Pt. 1753) 303 at 324

<sup>62</sup> (2023) 2 NWLR (pt. 1869) 545

<sup>63</sup> (2020) 3 NWLR (Pt. 1712) 470 at 500 – 515; (2014) 16 NWLR (P. 1433) 394

<sup>64</sup> Constitution of the Federal Republic of Nigeria.

<sup>65</sup> Electoral Act, 2022 section 84 (14).

party. The question is whether a person who did not participate in a primary election can bring an action against it. In *Michael Chinedu Oli v Independent National Electoral Commission (INEC) and Ors*<sup>66</sup>, the apex Court held to the effect that an aspirant who did not participate in the primary election of his political party does not have the *locus standi* to challenge the said primary. The court went further,

...in order to be imbued with the *locus standi* to question a primary election, an individual must categorically state that he physically participated in the primary election conducted by the relevant arm of the political party so authorized to conduct primary elections. It is not enough to merely allege that he bought nomination forms and was screened and cleared and made reference to the case of *Ndukwe v. Ayu*.<sup>67</sup> The further stated that for an individual to qualify as an aspirant and for a matter to be classified as pre-election, there must have been a primary election conducted by the National Executive Committee or National Working Committee of the party and the individual must have participated in the primary election.<sup>68</sup>

Similarly in *UBA v Ozigbo*<sup>69</sup> the Supreme Court held thus: "For a candidate to come within the narrow compass of Section 87 of the Electoral Act, the aspirant must show to the Court that the National Executive Committee of the political party conducted the primary election he is challenging and that he was an aspirant not only by mouth but that he took part or participated in the vexed primary election. In view of the above-stated position of the law on this issue, the ludicrous argument that this court should hold is that participation in the primary election cannot contemplate participation by buying nomination of interest form, as the person must participate and lose before having the *locus standi* to bring an action before the court.

It is pertinent to note that the above authorities apply with respect to section 285 (14) (a) & (b) and does not apply under section 285(14) (c). In respect of section 285(14) (c) of the constitution of Nigeria as amended, a political party equally lacks the *locus standi* to challenge the actions of INEC in relation to another political party.<sup>70</sup>

Furthermore, an aspirant can be disqualified on ground of false information to the INEC which includes presenting a forged certificate to INEC under the provision of Section 182(l)(g) of the 1999 Constitution of Nigeria as amended. Or with respect to section 29(5) of the Electoral Act where there is reasonable ground to believe that the information given by the political party's candidate in the affidavit is false, may file a suit at the federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false. Flowing from this line of argument, Section 29(6) of the Electoral Act allows the aspirant with the second highest number of valid votes and who satisfies the constitutional requirement as the winner of the election.

It is pertinent and mandatory that a political party must comply with the provision of the Electoral Act and the party's constitution in the conduct of its primary. In *Nwafor Christian O. v Barr. Nomeh Chikaodili Innocent and Ors*<sup>71</sup>, the Appellant purportedly managed to get a

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<sup>66</sup> (2023) LPELR 60587 (SC)

<sup>67</sup> 66 (2017) CLR 3(e) (SC), (2023) 5 NWLR Pt. 1877 Pg. 309 at 347

<sup>68</sup> (2022) 10 NWLR Pt. 1839 Pg. 431

<sup>69</sup> (2022) 10 NWLR Pt. 1839 Pg.

<sup>70</sup> *PDP v INEC & Ors* (2023) LPELR 60457 (SC)

<sup>71</sup> (2023) LPELR 60589 (SC)

certificate of return from the 2<sup>nd</sup> Respondent, which he must have gotten out of order. This is because the 2<sup>nd</sup> Respondent who went against its party guideline and Electoral Act 2022, issued to the appellant a certificate of return when it was clear and undisputed that it was the 1<sup>st</sup> Respondent that won the primary election. The 2<sup>nd</sup> Respondent does not have the power of "sponsoring any person that has capacity to win General Election" but must follow the law. What the 2<sup>nd</sup> Respondent did by sponsoring the Appellant and forwarding his name instead of that of the 1<sup>st</sup> Respondent (who won the primary election of 4/6/2022), is contrary to Section 84 (5) (C) (i)(ii) of the Electoral Act, 2022, which provides for the conduct of voting by delegates and declaration of the winner with the highest number of votes.

"In the case of nominations to the position of a senatorial candidate, a member of House of Representatives and a Member of a State House of Representatives and a Member of a State House of Assembly, the political party shall, where it intends to sponsor candidates... (ii) The aspirant with the highest number of votes cast at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party." It follows that only the name of the winner of a primary election, can be submitted to INEC. In *Abdullahi v Argungu & Ors*<sup>72</sup> it was held Article 12 (a) of the 2<sup>nd</sup> Respondent's Electoral Guidelines for Primary Elections, 2022, is *impairi* material with the above section of the Electoral Act, 2022. The party must therefore respect and honour its guidelines or constitution. Parties are bound by the Constitution of Nigeria, the Electoral Act and their own Constitution and guidelines. Where they act contrary to the provisions of the law and the guidelines which they have enacted for themselves, such actions will be declared invalid. In its conduct of its primaries, the Courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own Constitution.<sup>73</sup>

Whether it is in the "best interest of the political party" or not, in nominating and sponsoring a candidate for general elections, it must act within the bounds of the law and not in its own interest. "In its own interest" is no longer obtainable but in "the interest of the law". When a political party acts "in its own interest" and goes contrary to the law, the Court has the jurisdiction to intervene even in its domestic or internal affairs. In *Uba v Moghalu & Ors*<sup>74</sup> the court considered this matter prior to coming into effect of the Electoral Act, 2022, thus: "... in making its choice, a political party must act within the law and must comply with its own Constitution and guidelines... While the actual choice of candidate is within the domestic affairs of the party, which is not justiciable, the party must adhere strictly to the provisions of the Electoral Act, and its own Constitution and guidelines in carrying out the exercise. Section 87(9) empowers the Court to intervene where a party has acted arbitrarily and with impunity. In *Moghalu's case*<sup>75</sup> the stated that although the Primary Election Appeal Committee had appealed that the said wrongly conducted primary election ... be "allowed to stand in the overall interest of the party", it never played its role well in always ensuring that everybody ought to play by the Party's Guidelines, otherwise it will lay a precedence of lawlessness and disorderliness in the party's internal democracy that will soon split in pieces. The Courts would have respected the choice of a party's candidate and has always done that but not when the party itself has gone against its own guidelines or Constitution... The purport is that, so long as political parties adhere to the provisions of their constitutions in the choice of candidates for political office, the Courts will not interfere...

<sup>72</sup>(2023) LPELR-S9950(SC) (PP. 15-18 PARAS. F).

<sup>73</sup>*Akpatason v Adjoto & Ors* (2019) LPELR-48119(SC)

<sup>74</sup>(2022) LPELR-57876(SC) (PP. 9-12, PARAS. A-C)

<sup>75</sup>(2022) LPELR-57876(SC) (PP. 18-20, PARAS. F-D) AND (PP. 20-22, PARAS. D-C)

On the other hand only the Federal High court has the jurisdiction to entertain Pre-election matters. Appeals from the Federal High Court go to the Court of Appeal, and terminates at the Supreme Court as stated in *People Democratic Party v Emmanuel Onwe & 4 Ors.*<sup>76</sup> Such appeal must be within 14 days from the delivery of judgment.<sup>77</sup> While an appeal from a decision of a court in a pre-election matter shall be heard and disposed of within 60 days from the filing of the appeal.<sup>78</sup> The attitude of the courts towards pre-election matters has generally been characterized by a focus on upholding the rule of law, electoral integrity, and the protection of fundamental rights. The Court has also been known to be technical in dispensing pre-election matters, and has been criticized for swaying away from the maxim *Ubi jus ibi remedium*.

In *APC v Bashir Sheriff, Ahmed Lawan and Anor*<sup>79</sup>, the Federal High Court held that the candidate of a party that won the legally recognized primary election supervised by the Independent National Electoral Commission (INEC) is the authentic candidate of the party. In *FRN v Dairo*, the court stated that the Rules of court are meant to be obeyed. However, obedience to rules must not be slavish to the point that justice in a case is destroyed or thrown overboard... Therefore, if in the course of doing justice, some harm is done to some procedural rules which hurt the rule, the court should be happy that it took such line of action in pursuance of justice.<sup>80</sup>

In final analysis, the Court could have easily overlooked the process by which the action was brought in determining the question which was brought before the court. As the apex court while sitting on appeal is circumscribed to the ground of appeal before it and nothing more. In upholding the Rule of Law and Electoral Integrity, the judiciary emphasizes the necessity of conducting transparent and lawful party primaries, often intervening in disputes to ensure adherence to internal party rules and the Electoral Act. In *David v INEC*.<sup>81</sup> the Court held that a party who has not been cleared by INEC to contest the election cannot question neither the election nor the return of a candidate. The courts are bound to ensure that political parties comply with the law, particularly; the law on how each political party fields its candidate in an election. Accordingly, the law shall take its course where a political party fails, neglects or refuses to comply with the provisions of the Electoral Act on nomination and submission of the names of its candidate for a general election. Such a political party will be deemed or taken in law to have fielded no candidate in that particular election.

In this case, the candidature of appellant to contest the election was not determined to finality until June, 2019 when the election had been conducted and a result declared. The ultimate result therefore is that APC which is the party the appellant sought to get its ticket to contest the election had no candidate at the election. Even the decision of the federal high Court was made after the window permitted by the Electoral Act for the nomination and submission of names of candidate had closed<sup>82</sup>. The result then is that, the appellant who claims to have been excluded cannot seek to nullify the result of the election, he not having participated in the election.

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<sup>76</sup>(2011) LLJR-SC

<sup>77</sup>CFRN, Section 285(11).

<sup>78</sup>*Ibid* Section 285(12)

<sup>79</sup>(2023) LPELR-59953(SC)

<sup>80</sup>(2015)6 NWLR (pt 1454)141

<sup>81</sup>(2020) 4 NWLR (pt. 1713) 185 at 210, paras B-G

<sup>82</sup>Electoral Act, 2022, section 29(1).

In interpreting the provisions of the Electoral Act, the Court has always taken a strict and comprehensive approach in contemplation of the intent of the draftsman. The Court will not be swayed by the argument of litigants, no matter how sound. In *Ndukwe v Ayu*, The Supreme Court held that for an individual to qualify as an aspirant and for a matter to be classified as pre-election, there must have been a primary election conducted by the National Executive Committee or National Working Committee of the party and the individual must have participated in the primary election"

In *Michael Chinedu Oli v Independent National Electoral Commission (INEC) & Ors*,<sup>83</sup> the Appellant's Counsel while trying to show that the appellant had *locus standi* to institute the action, had tried to make a distinction between Section 29(5) and Section 84(14) of the Electoral Act with emphasis on the word participation. However, the Court refused that line of argument. The Court held,

...for a person to have locus to sue in a Court of law to challenge the nomination of a candidate of a political party, the party must have conducted a primary election in the first place and the complainant must have participated in the nomination exercise and lost. It is only then, that he can have the locus to challenge the result of the primary election. It is also then that the Court by Section 87 of the Electoral Act can have jurisdiction to entertain the matter. Where a party did not conduct primary election in its nomination process, no Court will have jurisdiction to entertain a complaint on nomination of candidate.

Finally, pre-election matter must be filed within 14 days of the cause of action at the Federal High Court and the latter has 180 days to dispose of the matter. Where an aggrieved party files an appeal, it must be done timeously, that is within 14 days from the date of delivery of the judgment appealed against, and the appeal has to be dispensed within 60 days before the court of appeal. Where this condition is not met, the Supreme Court cannot entertain appeal, if any, as the condition precedent has not been fulfilled. In *PDP v INEC & Ors*,<sup>84</sup> the Supreme Court maintained that for Court to consider the merit of the suit, it will only be able to do so by invoking its power to step into the shoes of the trial Court under Section 22 of the Supreme Court Act. For this Court to invoke and exercise its powers under Section 22 of the Supreme Court Act, one of the conditions that must be fulfilled is that the Court below or the trial Court, as the case may be, must have the power or jurisdiction to adjudicate over the matter. Under Section 22 of the Supreme Court Act, this Court cannot make an order or exercise the power that the trial Court or the lower Court cannot make or exercise. The Court referred to the case of *Danladi v Udi*,<sup>85</sup> *Ebebi v Ozobo*,<sup>86</sup> *Idiagbon v A.P.C*<sup>87</sup> and Section 285(10) and (12) of the Constitution reproduced hereunder:

10. A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.
12. An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing of the appeal.

The Appellant's suit was filed on 28th July, 2022, while the appeal to the lower Court was filed on 26th January, 2023. By simple arithmetical calculation, it is clear that as at today,

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<sup>83</sup>(2023) LPELR-60587 (SC)

<sup>84</sup>(2023) LPELR 60457 (SC)

<sup>85</sup>(2022) 9 NWLR (PT. 1834) 185

<sup>86</sup>(2022) 1 NWLR (PT. 1810) 165

<sup>87</sup>(2019) 18 NWLR (PT. 1703) 102

both the 180 days within which the trial Court could exercise jurisdiction over the suit before it and the 60 days within which the lower Court could exercise jurisdiction over the appeal before it, have lapsed. Thus, the jurisdictional competence of both the trial Court and the lower Court have ceased. While this Court is conferred with wide powers by Section 22 of the Supreme Court Act, the powers can only be exercised within the confines of the competence of the trial Court or the lower Court. Once the power of the Court has ceased, the power of this Court under Section 22 of the Supreme Court Act also automatically ceases. Hence, this Court has no power to delve into the merits of the appeal. The Court had this to say,

This Court is a policy Court and it has a responsibility of ensuring that vexatious or manifestly incompetent appeals and actions are not brought before it or before any Court at all. The Supreme Court as an institution must strongly stand against and discourage the filing of suits that ridicule the judiciary as a whole.<sup>88</sup>

In *Samuel v APC & Ors*<sup>89</sup> the apex court held that it cannot exercise its jurisdiction under Section 22 of the Supreme Court Act once the trial Court or the lower Court, as the case may be, has lost its own jurisdiction.

## **6.0. Conclusion**

This study has to a large extent discussed not just the roles that the Independent National Electoral Commission (INEC) and the Courts play in the Nigerian electoral democracy but also the attitude of the courts towards pre-election matters. The study, more so, highlighted the legal regime for pre-election matters in Nigeria as well as how the courts, over the years have handled pre-election matters. From the analysis in the study, it is crystal clear that the mode or attitude of the courts in pre-election matters in Nigeria since the advent of democracy has been generally characterized by clear focus on rule of law, integrity and protection of fundamental rights. The courts however in some instances have been somewhat technical in dealing with pre-election and indeed all election matters.

It is recommended that the INEC and courts should maintain their neutrality to ensure credible and fair electoral democracy in Nigeria in sustenance of our constitutional democracy. The insistence of the courts in majority of the cases reviewed showcased a clear stance of the court towards upholding the rule of law and effort towards sustenance of our constitutional democracy. The court is further urged to ensure that this avowed stance is further reflected in election petition matters proper. If election represents the mandate of the people the courts are enjoined to jettison technicality and do substantial justice in ensuring that the commonweal of the people is not subverted through the technicality cliché in the courts. The courts have never been a party to any election and must deploy itself in the eyes of a reasonable man in fulfillment of that noble role.

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<sup>88</sup>Per Adamu Jauro, JSC (pp. 39-40, paras F-L)

<sup>89</sup>(2023) LPELR 59832(SC)