'GO TO COURT!': BETWEEN THE ELECTORAL LAWS AND THE COURTS: INTERROGATING THE BIGGEST LEGAL AND PROCEDURAL ALBATROSSES TO NIGERIA'S ELECTORAL *UHURU**

Abstract

This paper restates that Elections are the constitutionally accepted mode of effecting change of Government in Nigeria. It points out they are regulated by various laws and procedural rules found in the Constitution, the Electoral Act and decisions of Courts. It then concedes that on a broad level, diverse factors are responsible for Nigeria's inability to consistently conduct and attain free, fair and credible elections-These include institutionalized corruption, poor voter literacy levels, institutional weaknesses and even widespread, endemic poverty, amongst others. It then however concerns itself only with those factors preventing Nigeria from attaining a reliable electoral system which relates to the Laws governing Elections and the Courts system, simpliciter. It highlights and examines existing legal provisions cum stipulations considered inimical to the end of true electoral freedom in Nigeria. It also highlights legal lacunae that needs filling to enhance the electoral system whilst also interrogating some rules of practice made under those laws. It then looks at the anomalies of the electoral system through the prism of the Courts and some decisions that they have over time handed down on the electoral disputes submitted before them for their adjudication. Employing the metaphor of an albatross-figuratively standing for a large obstacle and the Swahili concept of Uhuru which translates loosely to Freedom and independence, It charts a direct correlation between legal, judicial and procedural actions, inaction and inadequacies in our system and our broken electoral system, establishing that from a purely legal, procedural and judicial standpoint, these factors discussed herein are responsible for Nigeria's inability to attain electoral freedom. It notes the increasing role of the Courts in deciding electoral outcomes and decries that it does not bode well for our system. It then ultimately suggests measures, changes and steps that are both necessary and helpful to Nigeria attaining an effective, reliable and optimal electoral system, purely and wholly from that same place of the Law, procedure and the Courts' adjudicatory framework.

Keywords: Elections, Electoral Law, Electoral Justice, Electoral Disputes, Credible Elections

1. Introduction

Since Nigeria's return to Democratic Rule in 1999, Elections have variously been held at periodic intervals to fill multiple public offices ranging from Chairs of Local Councils up to Federal Legislative and Executive Offices such as National Assembly Seats as well as to the Office of President. These Elections have in their aftermath often produced outcomes less than satisfactory both to the participating parties as well as the teeming public and international observers. This has usually and from time immemorial led to a beehive of litigation in the immediate lead up to as well as immediate wake of every election cycle in Nigeria. These disputes manifest either as pre-election cases or election petitions properly. Although the buck stops at the table of the Independent National Electoral Commission as it respects the planning and conduct of credible elections in Nigeria[1] and it remains INEC who must carry the can wherever and whenever any given election fails to meet the expected threshold, yet the Role of the Courts in the entire electoral process cannot be overstated. It is the Courts that resolve all disputes arising from the conduct and/or fallout of every election in Nigeria, in exercise of the judicial powers conferred on them by the Nigerian Constitution.[2] In the exercise of the powers of the Courts in the afore-said wise, the two most germane Statutes almost always considered and heavily leant on are the Constitution and, more particularly, the Electoral Act,[3] alongside a myriad of judicial precedents. Although a wide range of factors cumulatively combine to ensure that Nigeria's Electoral System remains some way off from attaining optimal standard-ranging from a perceived dearth of the requisite

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[1] See Para 15, Part 1,3rd Schedule, Constitution of the Federal Republic of Nigeria, 1999(as amended).

[2] By a cumulative reading of Sections 6 and 285, CFRN, 1999(As Amended), Pre-Election Matters are litigated at the appropriate, regular Courts of the land whereas post-election disputes are heard and determined *in limine* by Election Petitions Tribunals, being special Courts constituted whenever necessary for that purpose, under the Constitution.

[3] No 13, 2022. The extant Electoral Act was promulgated under the hand of the hand of erstwhile President Muhammadu Buhari on the 25th day of February, 2022.

political will on the part of government , institutionalized corruption to *inter alia* a lack of independence on the part of cum executive interference with/in the affairs of INEC- the inadequacies in the extant electoral laws of the land as well as the pervasive judicial restraint and a persistent lapse of justice discernible from many decisions of our Courts in electoral matters over the years, arguably constitute an even bigger clog to the wheels of the vehicle of justice motoring towards Nigeria's Electoral Uhuru.[4] Even the most impassioned watcher must agree that Public Confidence in our Courts as the ultimate temporal dispensers of Justice in our Electoral Polity are at an all-time low, so much so that the immediate backwash of the 2023 General Elections saw the rise, across social and mainstream media, of the derisive cliché 'Go to Court' as a sarcastic allusion to 'the crisis of confidence arising from perceptions of judicial partisanships*(sic)* especially in the political context of election disputes'[5] in Nigeria. This paper interrogates how the electoral law in its current state combines with the posture and disposition of our Courts-as perceptible from a good number of their decisions on electoral matters- to constitute formidable albatrosses arguably interdicting Nigeria's march to Electoral Freedom, while proffering curative measures and alternative approaches, the adoption of which may potentially recalibrate and re-direct Nigeria's sail to our electoral promise-land.

2. The Extant Law and Procedure Relating to Elections and Electoral Dispute Litigation In Nigeria: A Clog to Free, Fair and Credible Elections

As already stated, The Constitution and the Electoral Act, constitute the *fons et origo* of the law and procedure governing, regulating and applicable to both the actual conduct of elections as well as the adjudication of disputes arising from or relating to elections in Nigeria-this is without discountenancing the place of a most elaborate body of judicial precedents. A number of the most salient legal issues and provisions of these laws, in addition to the most cardinal principles enunciated over time in judicial precedents, relating to and germane to elections and electoral adjudication, which in themselves pose as drawbacks to attaining free and credible elections, are now isolated and interrogated herein below.

The Presidential Powers of Appointment Regarding INEC's Top brass

By the combined effects the provisions of The Constitution; Sections 153(1)f and 154, 157 and the Electoral Act,2022; Section 6, the Powers of Appointment and Removal of the Chairman and Commissioners of INEC are resident in the President.[6] Thus as a matter of law, The Chairman and Commissioners of INEC assume, remain in and may be removed from Office at the Pleasure of the President of Nigeria[7]. It is submitted that the Powers of the President in this wise constitute a real albatross to electoral freedom in Nigeria, given that a sitting President would usually be a contestant seeking re-election in the said Elections to be overseen by his appointees to the top brass of INEC or have his own Political Party sponsor candidates to the said elections, across board. A telling poser that thus arises in this regard is to precisely what extent does the afore-stated state of affairs, in practice, affect and influence electoral outcomes in Nigeria? Your guess is certainly as good as mine.

INEC as a Legally-Yoked Jack of So Many Trades

It is a real hindrance to attaining consistent free, fair and credible elections in Nigeria that INEC is arguably carrying the weight of the world with regard to its legal duties and responsibilities. These duties range from responsibility for setting up the timetable and modalities for and the actual conduct and supervision of Presidential, Gubernatorial, National and State Assemblies Elections[8], Area Council Elections[9] in the Federal Capital Territory to organizing and superintending referenda[10] and recalls where necessary as well as the closely aligned yet nonetheless onerous duties of delineation of electoral constituencies, Voter Registration/Re-registrations, Information and Data Management and Voter Education, amongst other duties. By a community reading of the Provisions of the 1999 Constitution

[4] The Swahili word for Freedom/independence.
[5] CA Odinkalu, 'Go to Court': Any Remedy for Nigeria's Ailing Judicial System? *The Guardian* (14 July, 2023) <*http/www.guardian.ng*> Accessed on the 5th August, 2025.
[6] Albeit, subject to Confirmation by the Senate of the National Assembly.
[7] It is submitted, as has been demonstrated over time in the Nigerian Political Space, that the Senate's powers of Confirmation of Appointment and approval in the event of Removal are not in any real sense an effective check to the largely unbridled powers of the President in that wise.
[8] By the Provisions of the 1999 Constitution; Sections 71-78,131-134, 178, 179, 112-118.
[9] Electoral Act, 2022; Part VI
[10] Ibid., Section 2

(as amended); Chapter V, Part III, D and the Electoral Act; Part V, the extensive duties and responsibilities of INEC extend to Registration, regulation, de-registration and general supervision of Political Parties. This is arguably One task too many for the Commission, leaving it with excessive responsibilities and duties thus resulting in widespread inefficiencies as well as difficulties which are in themselves a direct consequence of the Commission having too many irons in the fire. This is without mentioning the Commission's legal responsibility to take recommendations from election tribunals as to electoral offenders and to investigate and prosecute all such persons for any electoral offences committed, as may be necessary.[11] It is crystal clear from the afore-stated, that INEC is spreading itself exceedingly thin in regard to its legal duties and responsibilities and thus needs necessarily have some of the weight taken off its overburdened Shoulders.

Mandatory Electronic Transmission of Election Results: A Necessity for Specific Enactment

It is curious that despite recent amendments to the Electoral Act relating to the adoption of technological means for Voter Accreditation and Authentication in addition to INEC's own self-proclaimed forward-thinking strides now captured in the body of our electoral laws in recent times as it relates to the employment of technology to check fraudulent practices often associated with our elections, especially at Voting Point through to Results collation stage, including in particular, provisions for biometric voter Accreditation(BVAS),[12] Electronic Transmission of Election Results remains a matter of discretion for the INEC under the extant Electoral law. Thus notwithstanding the fact that Section 64(4) (a) and (b) of the Electoral Act in setting out the procedure for votes collation, requires a collation or returning officer at an election to collate or announce the result at an election subject to his/her verifying and confirming that the number of accredited voters, actual votes and/or results on the result sheets are correct and consistent with the figures recorded and *transmitted* directly from polling units, yet It has been decided judicially and with finality that failure to electronically transmit Election results from Nigeria's latest presidential Elections did not amount to substantial non-compliance with the Provisions of the Electoral Act such as would vitiate the election and that INEC 'is at liberty to prescribe the manner in which election results are to be transmitted.'[13]

It is clear that Electronic Transmission of Election Results, despite having been heavily bandied and anticipated to be adopted in the lead up to Nigeria's latest general elections, is not as yet legally entrenched as a mandatory requirement in the Electoral Act and needs to be specifically so enacted in black and white and with sufficient clarity and certainty for Nigeria's Journey to Electoral Uhuru to be properly said to be well and truly underway. It is submitted that it is imperative that Nigeria takes advantage of technological advancements of the day such as is afforded by available facilities for Electronic Transmission of Election Results to enhance and improve our Electoral System for the better. In *Atiku v INEC(No 2),*[14] one of two corresponding appeals against two equally distinct verdicts of the Presidential Elections Petitions Tribunal upholding the election of President Bola Ahmed Tinubu, one of the issues for determination *inter alia* was whether failure to electronically transmit the results of the presidential Election and the unavailability of the said results on the INEC Results Viewing Portal(IREV) were such as would go to nullify the election, The Supreme Court held, unanimously dismissing the Appeal, that Results Uploads on the IREV were intended to be an alternative to hard copies of the election results and that the unavailability of the election result on the IREV portal cannot be a ground upon which an election can be nullified. It is submitted, with the greatest respect, that decisions such as in *Atiku's* case here confirm the need for specific legislative action to bring our electoral laws up to date with current technological advancements designed to revamp our electoral system. The Dictum of Uwani Abba Aji JSC in the fore-going case is instructively right on the point. The Learned Justice of the Supreme Court remarked at pages 876-877, paras F-G that:

> Modernity and technology stares us in the face, and we cannot turn back the hand of time. To go against the use of technology or electronic transmission or transfer of election results in this hi-tech time and period is to be an enemy of democracy and to stick to the vicious cycle of election rigging, manipulation, falsification and subterfuge….sincerely, the enactment of the electoral act 2022 was greeted with much

[11] Ibid, Sections 144 and 145.
[12] Ibid., Section 47
[13] *Atiku v INEC (No 2)* 2023 19 NWLR (Pt 1917) 875, per Uwani Abba Aji, JSC
[14] Ibid

> relief and celebration, because we thought it will put things right and Nigerians will have their legitimate mandates delivered to them. In fact, the use, ease, fastness, security, convenience, accuracy, betterment and comfort of the use and deployment of electronic gadgets and devices in elections and transmission/transfer of results cannot be over-emphasized nor compared with the old, rugged and insecure system of manual voting and transmission of results.

The Learned Law Lord ultimately expressed the same sentiments as are shared by this writer that 'legislators should nip to the bud the issue of laxity and latitude given to the commission to choose whichever method of transmission it wants; but adhere to a mandatory, clear and unarguable duty and obligation to be carried out by INEC via a clean and unambiguous statute.'[15]

The fore-going pronouncement is thus a call to specific legislative Action on the part of the National Assembly with a view to explicitly enacting into and thereby firmly entrenching Electronic Transmission of Election Results in our Electoral Law.

The Strict Legal Requirement as to Time for Filing and the Very Narrow Window for Amendment of Election Petitions: A Real Clog to Electoral Justice

It has long been accepted as matter of law and practice that Election Petitions are *sui generis*[16] and it is on Account of its own uniqueness in nature that its proceedings are governed by a special set of rules differing from those applicable to other civil causes, they are heard by specialized courts/tribunals and they typically follow an expedited process, with strict timelines for filing, hearing and determination of matters. These peculiar features have been thoroughly deliberated in decades of legislative and judicial action and firmly enshrined in our Electoral Law. These legal and procedural provisions are of immense merit in themselves. Nevertheless, in more ways than one, they also contrive to constitute themselves as albatrosses to attaining the hallowed end of substantial justice in Electoral matters. Thus, by the provision of section 285(1) of the 1999 Constitution 'an Election Petition shall be filed within 21 days after the date of the declaration of the result of the election. This principle has since been restated in a very long line of judicial authorities,[17] with the Supreme Court, in emphasizing on the strict nature of this rule, stating that this 21 days rule is 'just like the rock of Gibraltar or Mount Zion which cannot be moved.'[18] Also, An Election Petition cannot be amended after the expiration of the 21 days window allowed for presenting same at the Registry[19], with the rules only excepting for mere misnomers, minor typographical errors or mistakes.[20] The effect of the fore-going principles is that all witness depositions or documents intended to be relied on must be equally frontloaded, alongside the Petition, within the 21 days period.[21] Now, it is correct that these legal provisions and safeguards exist to ensure expeditious hearing and determination of electoral disputes--just as the strict legal stipulation on hearing and determining election petitions within 180 days of filing[22] as well as the one requiring appeals arising from a determination on all such matters to be determined within 60 days of the filing of the appeal,[23]--yet it is not so difficult to fathom that this poses a brick wall to the parties as well as their Counsel in all such matters. It usually leaves them in a rapid race against time to meet the deadline in garnering all of the necessary evidence and materials relevant to supporting or establishing their case, one in which the odds are very much stacked against them from the get go. Instances of INEC dallying on applications for inspection or for certified copies of documents in their custody, necessary and requisite for Election litigation are common-place. This equally applies to obtaining records from other public or private bodies, local or international, with these matters and collations and the attendant logistics associated therewith rarely ever being a straightforward call.

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[15] Ibid.

[16] See *Abubakar v Yar'adua* 2008 19 NWLR (Pt 1120) 1; *APC v Marafa* 2020 6 NWLR (Pt 1721) 383; *Ohakim v Agbaso* 2010 19 NWLR (Pt 1226) 172.

[17] *Maku and Anor v Sule and Ors* 2019 LPELR -58513 (SC); *INEC v Yusuff and Ors* 2019 LPELR-48890 (SC); *Abubakar and Ors v Yar'adua and Ors* 2008 LPELR-51 (SC); *Ikpeazu v Otti and Ors* 2016 LPELR-40055 (SC); *Atiku v INEC (No 2)* 2023 19 NWLR (Pt 1917) 875.

[18] *Maku and Anor v Sule and Ors* 2019 LPELR -58513 (SC).

[19] *Oke and Anor v Mimiko* 2013 LPELR-20645 (SC).

[20] *INEC v Yusuff and Ors* 2019 LPELR-48890 (SC).

[21] (n .13); See also *Ogba v Vincent* (Unreported), delivered on 22nd September, 2015.

[22] 1999 Constitution; Section 285(6)

[23] Ibid. Section 285(7).

It is also instructive to factor in the fact that by the very nature of election petitions, Litigants, and in particular their Counsel, typically have to scour through thousands and at times hundreds of thousands or perhaps even millions of electoral documents preparatory to filing, in addition to needing to file hundreds/thousands of pages of processes, having to interview and settle on witnesses, all while striving and straining to stay within the 21 days mark. These considerations combine to go to ensure that Litigants in Election Petitions are often left with a steep hill to climb. It is submitted that attaining substantial justice with theses state of circumstances in most electoral causes becomes akin to finding a needle in a haystack, with our Electoral System ultimately left the worse for it. In *Atiku v INEC (No 2),*[24] certain key documents relating to the educational qualifications of the 2nd Respondent, which the Appellants had sought to rely on to impugn the Election of the 2nd Respondent had not become available to the Appellants at the time of filing the Petition and thus could not be frontloaded alongside the originating processes at the time of presenting the Petition. Upon obtaining the documents, the Appellants subsequently filed additional witness' depositions alongside the said documents sought to be brought in in evidence and had the witnesses subpoenaed and testify at the trial of the Petition. The Respondents objection to the said witnesses' evidence being admitted was sustained by the trial tribunal.

One of the issues in respect of which arguments were canvassed in the appeal was whether the learned Justices of the tribunal were correct in upholding the Respondents' objection and thus expunging the said witnesses' evidence. A full Court[25] of the Supreme Court of Nigeria held, affirming the decision of the Tribunal while dismissing the Appellants' Appeal, that the said evidence cannot be admitted having been sought to be brought in after the statutory 21 days period for filing of the Petition and accompanying processes had elapsed and that it was well outside the Powers of a tribunal or Court to extend the time circumscribed by the Constitution for a party to do a thing he could not do within the time prescribed therefor. It is clear from the fore-going that the window for amending a Petitioner's case in Electoral matters is virtually non-existent. It is submitted that this state of the law plies against the need for substantial justice in our Electoral Polity. An Electoral Jurisprudence that shuts parties out from effectively presenting their cases, prioritizing technical over substantial justice cannot by any stretch be ideal in today's world. Justice in Electoral Matters, as much as in any other class of causes, must not just be done but ought to be seen to be manifestly and undoubtedly done.

The Right to Sponsor Candidates at Elections: An Exclusive Legal Preserve for Political Parties

By the provisions of the 1999 Constitution (as amended); Section 221, A candidate to an Election in Nigeria must be sponsored by a political party. Thus, a mandatory legal requirement for standing and contesting as a candidate in an Election in Nigeria is that an aspirant must belong to and be sponsored by a political party. As a matter of fact, matters of nomination, selection or election *vide* primaries of candidates and the exercise of powers relating or corollary thereto are wholly within the discretion of the political parties, so much so that a political party's power or right to nominate or sponsor a candidate to an election in Nigeria is unbridled, with it being settled that Courts will not inquire into the decisions of nor the modalities adopted by any given political party in determining its list of candidates to an election.[26] The Effect of the foregoing principles is that there is an absolute bar on Independent candidacy in Nigerian Electoral Law. The popular expression that the political party reigns supreme is apt and most apposite in any matter as to determining who emerges any given party's candidate in any election in Nigeria.[27] However, a most pertinent question in the wise of this particular discourse is just how 'supreme' is the political party in Nigeria in relation to the matter of determining its candidate(s) for any given electoral contest? Now, any keen and thorough observer of the political space in Nigeria must agree that its' best known features include a very firm, almost strangle-like hold on the structure and workings of political parties by their highest-ranking elected executives; the President and the Governors at the Federal and State levels respectively, with minimal room for dissent and individuality,

[24] (n. 13)

[25] Coram John Inyang Okoro, Uwani Musa Abba Aji, Mohammed Lawal Garba, Ibrahim Mohammed Musa Saulawa, Adamu Jauro, Tijani Abubakar and Emamanuel Akomaye Agim, JJSC.

[26] *PDP v Sylva* 2012 LPELR-7814 (SC).

[27] The Courts very narrow Jurisdiction in this respect is limited to inquiring into whether any given party has followed its own laid down internal rules and procedures in determining the emergence of any given Candidate; by Election or Selection, by the provisions of the Electoral Act, 2022; Section 84(14).

with the significant control of the parties on the emergence of candidates usually prioritizing loyalty over merit.

The current situation on political parties often goes to ensure that card-carrying members of political parties often feel pressured to conform to party expectations, with their individual abilities to express dissenting views being severely limited. This then results in key individual contributions being often overshadowed, thereby potentially stifling progress and innovation. It is also common to see party affiliation heavily influence election results, with Voters often swayed by party reputation instead of the quality of individual candidates. A direct consequence of this *status quo* is that the choices open to the voting populace at Elections is almost always limited to the choices emergent from the whims of a select, powerful view. It is in the light of the fore-going that the state of the law on this matter of political party supremacy stands as a giant albatross[28] to Nigeria's electoral emancipation. It is also against the backdrop of the situation that a case is made for independent candidacy to be introduced into our Electoral System, as a potentially key step to ensuring that Electoral Outcomes ultimately reflect the popular mandate of the teeming voters.

3. Pervasive Lapse of Justice, Juridical Restraint and the Nigerian Electoral Courts: A Mini-Voyage Through the Cases

We have attempted, in the fore-going section of this paper, an inquiry into some of the biggest legal and procedural rules posing as drawbacks to Nigeria's journey to Electoral Freedom. Now, there remains a number of principles of our Electoral Jurisprudence, which either by themselves or on account of their application and interpretation in a retinue of electoral matters by the Courts over the Years have continued to be a millstone around the neck of Nigeria's journey to Judicial freedom, in the opinion of this writer. These include inter alia the principle requiring a petitioner seeking to impugn an election to not only establish that the said election did not *substantially* comply with the provisions of the act but equally go further to prove that the said non-compliance *substantially* affected the result of the election[29] and the judicial *rationes* for the declaration of a runner up as the winner of an election where the party originally returned winner is subsequently disqualified. Two of such decisions will now be revisited and examined in some detail.

***Amaechi v INEC*: A Judicial Usurpation of the Voting Powers of the Electorate?**

The Decision of the Supreme Court in this widely discussed Appeal is a classic illustration of a judicial instance of lapse of justice in electoral adjudication, in the opinion of this writer. In that case,[30] the Appellant had contested and won the PDP's gubernatorial primary for Rivers State and his name was first forwarded to INEC by the party. However, long after submitting his name to the INEC, The Party ((3rd Respondent in the matter) wrote to the 1st Respondent substituting the Appellant's name with a Mr Celestine Ngozichukwu Omehia-who did not participate in the original primary that saw the emergence of the Appellant-on the ground that the Appellant's name previously submitted was done in error. In consequence of the development, the Appellant, as Plaintiff, approached the Federal High Court seeking a declaration that the substitution of his name with the 2nd Defendant's/Respondent's was unconstitutional and illegal, amounting to an infraction of the then extant Section 32 of the Electoral Act, 2006. The trial Court held that the Appellant's substitution was in Order. The Appellant then appealed to the Court of Appeal with the 2nd and 3rd Respondents also cross-appealing. In the intervening while, the Gubernatorial Election was held in Rivers State, the 2nd Respondent was returned as Winner and the 3rd Respondent also expelled the Appellant from the Party. The 2nd and 3rd Respondents challenged the jurisdiction of the Court of Appeal to entertain the Appeal on the ground that the gubernatorial election had been held and that the Appellant had been expelled from the PDP. The Court upheld the Respondents' objection and dismissed the Appeal, whence forth the Appellant further appealed to the Supreme Court. The Supreme Court in setting aside the decision of the Court of Appeal and allowing the Appeal, held that votes cast at an election belong to the Political Party and given that the Appellant was the validly nominated candidate of the party, he ought to step into the shoes of the 2nd Respondent who steps aside. It ordered the Certificate of Return issued to the 2nd Respondent

[28] ,A large seabird known for its impressive wingspan and gliding abilities. In the context of this discourse, it is used in the metaphorical sense to refer to something that greatly hinders accomplishment.

[29] *Akinlade and Anor v INEC and Ors* 2020 17 NWLR (Pt 1754) 439; *Takori v Matawalle* 2020 17 NWLR (Pt 1752) 165.

[30] 2007 5 NWLR (Pt 1080) 227.

(Celestine Omehia) be withdrawn/ cancelled and a fresh certificate of Return issued to the Appellant. It is submitted, with profound respect, that this decision, at the time it was handed down, marked a travesty of electoral justice of quite sizeable proportions.

It must be accepted that justice in Electoral causes must emphasize the importance of upholding the will of the voters in the outcome of elections. One cannot agree less that the decision is in total disregard to the right of the voters to decide who gets their mandate to govern. A more appropriate relief in favour of the Appellant in that matter, it is submitted, would have been the Court ordering a rerun with the Appellant on the ballot thereby preserving the right and prerogative of the electorate to decide by their votes who gets to govern them rather than a situation where a candidate-who never was one of the option/choices at the vote- is foisted upon the electorate through the instrumentality of the Courts. Thankfully, Section 141 of the Electoral Act has now come to prevent the electoral travesty of the level seen in *Amaechi's case* as it precludes the Courts from granting the relief of being declared a winner to any candidate who has not participated in every step of the electoral process, up to the ballot.[31]

***Uzodimma v Ihedioha*: A Judicial Summersault in Application of Established Legal Principles**

The Decision in *Uzodimma and Anor v Ihedioha and Ors*[32] is nonetheless perplexing, especially when weighed against the light of prior and later jurisprudence on the key issues for determination therein. In this case, both the 1st Appellant and the 1st Respondent were contestants in the Imo State gubernatorial elections of 2019 with the 1st Respondent being declared winner and issued a Certificate of return in consequence thereof, the 1st Appellant finishing in fourth place. The Appellant, alongside his party, challenged the Outcome of the election contending that his votes from 388 polling units were wrongly excluded from the total count. The trial tribunal refused to find for the Appellants and the Court of Appeal upheld the tribunal's order dismissing the Appellants' petition.

The Appellants appealed further to the Supreme Court. The Supreme Court allowed the Appeal, holding that votes due to the Appellants from 388 polling units were wrongly excluded. Relying on uncertified election result sheets tendered by a Deputy Commissioner of Police, the Court found that the said total of the Appellants as shown in the results sheets, when calculated and summated with the total number of votes otherwise scored by the Appellants, showed that they scored the highest number of Votes at the said election. It ordered that the 1st Appellant be issued a certificate of return and be sworn in immediately. It is submitted, with respect, that the decision in *Uzodimma* demonstrates a failure of justice for a number of telling, cogent legal reasons. First, in its evaluation of the records, the Supreme Court found that a total of 213, 495 votes belonging to the Appellant (and 1,903 belonging to the 1st Respondent) were unlawfully excluded from the total count whereas by that calculation and on the facts made available to the Court in the determination of appeal , that finding brought up the total number of votes cast at that election to 953,083, more than the sum total number of accredited voters at the election which stood at 823,743-- by a whopping 129.340. Such a scenario, it is humbly submitted, belies logic and procedure at elections as it is unlawful for the total number of votes cast in an election to exceed the total number of accredited voters. Secondly, It was telling that in disturbing the finding of facts made by the trial tribunal which finding was upheld by the Court of Appeal, the Court chiefly factored in result sheets tendered by a police officer as to 388 polling units-not being certified nor obtained from the INEC whilst disregarding the evidence disclosed in INEC Form EC40G to the effect that that there were no valid elections in the said 388 polling units, contrary to long established principles of practice and procedure requiring public documents to issue from and be certified by proper authority to be admissible in evidence,[33] a principle so well entrenched in precedent that judicial authorities on it are legion.[34] Lastly and more tellingly, the Court did not set out the various local government results at the election nor in evaluation of same show how it arrived at the declaration that the Appellant attained the constitutionally required geographical spread, a *sine qua non*, amongst other things, to being declared outright winner at the said election.[35]

[31] Electoral Act, 2022

[32] 2020 LPELR-50260 (SC).

[33] See the Evidence Act, 2011; Sections 102, 104 and 105.

[34] *Magaji v Nigerian Army* 2008 LPELT-47121 (SC); *Buhari v INEC* 2008 19 NWLR (Pt 1120) 246; *Agagu v Dawodu* 1990 7 NWLR (Pt 160) 56; *Aromolaran v Agoro* 2014 18 NWLR (Pt 1438) 153; *Kubor v Dickson* 2013 4 NWLR (Pt 1345) 534.

[35] See the 1999 Constitution; Section 179.

It is submitted, with the greatest respect, that a decision founded squarely on considerations of Justice in this matter would have either declared the election inconclusive and/or ordered a re-run or a run-off between the parties, at best. This decision is clearly one electoral cause too many, demonstrative of a most concerning pattern in electoral disputes adjudication in Nigeria, marked by an overwhelming air of failure in delivering substantial justice to and for the benefit of the electorate. It is in response to the recent advent of judicial decisions such as *Uzodimma* that It has very recently been boldly posited that 'judges, once constrained arbiters of electoral disputes, have become increasingly unconstrained in determining who holds power, shifting legitimacy from voters to the court. This influence has extended beyond the courtroom, creating a system where a small, connected elite, decides leadership under the cover of legal process.[36]

4. Conclusion

We have only just examined how firmly a number of legal and procedural clogs impede the optimization of Nigeria's electoral System, in the preceding parts of this paper. What then, may well be the Panacea? It is suggested, by way of recommendation, as an antidote to the myriad legal and procedural issues bedeviling Nigeria's Electoral System and clogging its journey to the El-dorado, that the Electoral Act be amended to specifically and mandatorily provide for electronic transmission of election Results in Nigeria as this will make for greater transparency, authenticity and accountability in addition to enhancing the integrity of the Electoral Process. A further amendment of the Constitution, the Electoral Act and by necessary implication the Rules of Practice and procedure regulating electoral litigation, allowing for some flexibility in relation to the filing and especially amendment of electoral disputes will equally be most fitting and apposite. This is without prejudice to retention of the strict time limit for determination and delivering of verdicts. Greater flexibility, allowing for say two amendments between the presentation and determination of Petitions will go a long way in ensuring that substantive justice is mostly attained in our Courts in relation to electoral disputes. An amendment of the Constitution that sees the President relinquish the Power to appoint the INEC Chairman and Commissioners, to the electorate, through a separate vote of its own, will equally be a No-Brainer and would be a gargantuan Step towards making the commission truly independent. In addition, It is also recommended that INEC be unbundled, taking away its duties relating to Political Party administration and regulation as well as those pertaining to prosecution of electoral offenders, enabling it to concentrate on the already onerous duty of organizing and delivering free and credible elections. A Political Parties Regulatory Commission will be of immense use if created alongside an Electoral Offences Commission-which will approach and tackle electoral offenders with greater vigour, laser-focus and optimal dedication, much as in the instance of the Economic and Financial Crimes Commission, tasked with offences relating to Graft, squarely. By way of further recommendation, a case is made for the amendment of the Constitution and the Electoral Act to allow for independent candidacy in our elections, enabling the electorate to freely decide on and rally round any given candidate of their choice that they may wish to adopt in any given election, devoid of and immune from the overbearing influence of the cutthroat and Machiavellian tendencies that is so typical of the murky waters of the Nigerian Political Party system. Lastly, it is hoped that there will be a renaissance of sorts in Courts that will make for greater clarity, consistency, fairness and the utmost regard to the ideals of justice and equity as well an unwavering recourse to the need for the wishes of the electorate to be foremost and a reflective constant in the determination of electoral causes and matters.

[36]CA Odinkalu, The Selectorate; When Judges Topple the People IBook Overview) <http//amazon.com/selectorate> accessed 20th July, 2025.