

THEORIES AND HISTORICAL EVOLUTION OF SUBSTANTIAL COMPLIANCE DOCTRINE IN ELECTION PETITION CASES IN NIGERIA*

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Abstract

Substantial compliance doctrine in election petition cases in Nigeria emphasizes that the courts must look at the overall effect of non-compliance before annulling an election. This doctrine is provided for under section 135(1) of the Electoral Act 2022 which provides that an election shall not be liable to be invalidated by reason of non – compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non – compliance did not affect substantially the result of the election. The problem of this doctrine is that there is nowhere in the Electoral Act where the doctrine of substantial compliance was defined. This doctrine has presented several problems and challenges in Nigeria, particularly in the context of determining what constitutes “substantial” non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. As a result of this development, there is need to focus more on the theories and the historical evolution of this doctrine to enable the stakeholders in the justice sector to fully appreciate the doctrine for easy implementation. In this article, the writer is focusing his search light on the theories and historical evolution of substantial compliance doctrine in election petition cases in Nigeria. This article is aimed at opening a flood gate for more robust discussions on the topic. This will definitely enhance Nigeria’s democratic journey.

Key words: Theories, historical evolution, substantial compliance doctrine, election petition, cases.

Introduction

The concept of historical evolution underscores the dynamic nature of Nigeria’s legal system, which has been shaped by indigenous traditions, colonial influence, and post-independence constitutional development. The historical evolution of law in Nigeria is characterized by a blend of customary law, Islamic law, and common law, each of which continues to influence contemporary legal practices. Landmark cases, statutory reforms, and constitutional developments illustrate the ongoing process of legal evolution, highlighting the importance of adapting legal frameworks to meet the changing needs of society. The judiciary that is saddled with the powers of judicial review is constrained with the doctrine of substantial compliance by usurping the powers of the people as enshrined in the constitution¹ through the doctrine of substantial compliance. In this article, the writer looks at the theories behind substantial compliance in election petition cases in Nigeria as well as the historical evolution

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¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

of the doctrine in Nigeria. This article is aimed at opening flood gates of discussions on the topic for the betterment of our democracy.

Meaning and Concept of Legal Theories

Legal theories refer to the frameworks or perspectives used to understand, explain, and interpret laws, legal principles, and judicial decisions. These theories provide a foundation for analyzing the nature of law, its function in society, the role of courts, and how legal rules should be applied. Legal theories vary depending on their focus, such as the relationship between law and morality, the role of judges, and the legitimacy of legal authority. They aim to offer a deeper understanding of legal systems and contribute to debates on justice, fairness, and the application of laws. Some of the major legal theories include:

Natural Law Theory

This theory is of the view that law is based on moral principles inherent in human nature and the natural world. It holds that laws are only valid if they conform to natural moral standards. In *R v Dudley and Stephens*,² the defendants, Dudley and Stephens, were shipwrecked and stranded at sea with a fellow crew member, Richard Parker. After being without food or water for several days, they killed and ate Parker to survive. They were later rescued and charged with murder. The court ruled that necessity was not a defence to murder, reinforcing the principle that law must conform to moral principles, even in extreme circumstances. In *State v Mokgethi*,³ which is a South African case, the defendant, in dire circumstances, killed another individual. The court's refusal to acquit on the grounds of necessity aligned with natural law principles, maintaining that killing, regardless of the situation, violates moral and legal standards. Section 33(2)⁴ guarantees the right to life but does not permit the arbitrary deprivation of life except under specific conditions prescribed by law.

Legal Positivism

Legal positivism asserts that law is a set of rules enacted by legitimate authorities, separate from morality. A law is valid not because it is moral, but because it is issued by the State and recognized by society. In *Adegbenro v Akintola & Anor*,⁵ the Governor of the Western Region of Nigeria dismissed Premier Akintola without consulting the House of Assembly. Akintola challenged the action in court. The Supreme Court of Nigeria held that the Governor's power to dismiss the Premier was valid because it was granted by statutory law, even if it seemed unfair or unjust. This is a key example of legal positivism, as the court emphasized the supremacy of written law over other considerations. In *Re: Akinfosile*,⁶ which involved a challenge to the validity of legislative actions in the absence of proper adherence to procedural laws. The court reaffirmed that laws, once passed according to constitutional and statutory procedures, are valid, reflecting the positivist stance that law's authority comes from its formal enactment. Section 5 of the Constitution of the Federal Republic of Nigerian 1999 (as amended) vests executive powers in the Governor of a State, highlighting the supremacy of constitutional and statutory provisions in legal positivism.

Legal Realism

Legal realism emphasizes the role of judges in shaping law through their decisions. Realists believe that legal outcomes are influenced by social, political, and economic factors, rather

² (1884) 14 QBD 273.

³ (1990) (1) SA 32 (A).

⁴ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁵ (1963) 3 SCNLR 175.

⁶ (1966) 1 All NLR 143.

than just strict application of legal rules. In *Ollman v Evans*,⁷ which is a defamation suit where the court had to determine whether the statements made about the plaintiff were factual assertions or merely opinions. The decision emphasized the practical role of judges in interpreting laws, influenced by public policy, societal norms, and personal judgment, illustrating the core principles of legal realism. Also in *Brown v Board of Education*,⁸ which is a landmark case where the U.S. Supreme Court struck down racial segregation in public schools, citing sociological and psychological evidence on the negative impact of segregation. This decision reflected legal realism by recognizing the social realities and consequences of legal rulings beyond mere legal texts. Section 36(1)⁹ ensures fair hearing and the right to a fair trial, giving courts discretion in interpretation, often influenced by real-world conditions, reflecting a realist approach.

Critical Legal Studies (CLS)

CLS argues that law is a tool used by dominant groups to maintain power and perpetuate social inequalities. It challenges the notion that law is neutral and objective. See *Akinsanya v UBA Ltd*,¹⁰ where the court held against the defendant, a low-income earner, in a dispute over loan repayment. CLS theorists would critique this case by arguing that the law favours the wealthy and powerful, as the rules applied ignored the economic disparity between the parties. The decision perpetuated an imbalance in access to justice. Also, in *Feist Publications, Inc., v Rural Telephone Service Co., Inc.*,¹¹ this is a U.S. case that dealt with copyright law. The court ruled in favor of Feist Publications, allowing them to copy factual data compiled by Rural Telephone Service. CLS theorists would argue that copyright law here was used to protect economic interests over broader societal benefit, reflecting the entrenched power structures. Section 6 (6) (b)¹² empowers the courts to enforce the rights of individuals, but CLS critiques how this power can reinforce existing inequalities.

Feminist Legal Theory

This theory critiques the law from a feminist perspective, arguing that the legal system is historically biased against women and perpetuates gender inequalities. It seeks to reform legal systems to achieve gender justice. In *Okoye v Okoye*,¹³ that involved a dispute over inheritance rights in a customary law setting where female children were denied inheritance. The court ruled in favor of equal rights for female heirs, reflecting the shift towards gender justice advocated by feminist legal theory. Section 42¹⁴ prohibits discrimination based on gender, supporting feminist legal theory in challenging unequal treatment of women in law. These examples illustrate how various legal theories shape the interpretation and application of laws in specific cases.

Meaning and Concept of Historical Evolution

Historical evolution refers to the gradual development and changes over time in social, legal, political, and economic systems. It involves a series of progressive modifications in

⁷ (1984) 750 F.2d 970 (D.C. Cir.).

⁸ (1954) 347 U.S. 483.

⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁰ (1986) 4 NWLR (Pt 35) 273.

¹¹ (1991) 499 U.S. 340.

¹² Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹³ (2020) 5 NWLR (Pt 1715) 227.

¹⁴ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

institutions, laws, and practices shaped by historical events, cultural interactions, and human experiences. In the context of law, historical evolution emphasizes the transformation of legal systems, legal principles, and doctrines influenced by societal needs, landmark rulings, statutory reforms, and global trends.

In Nigeria, the legal system has undergone significant historical evolution from customary law and colonial legal structures to the present-day common law system, which integrates constitutional, statutory, and case law. Understanding the historical evolution of Nigeria's legal system requires examining the pre-colonial, colonial, and post-independence periods, as well as the influences of British common law, Islamic law, and indigenous legal traditions.

Key Phases of Historical Evolution in Nigeria's Legal System

Pre-Colonial Era

Before the advent of British colonial rule, indigenous legal systems such as customary law and Islamic law (Sharia) governed various communities in Nigeria. These systems were based on the customs, traditions, and religious practices of the people. The evolution of these indigenous legal systems was shaped by local cultural norms, social relationships, and religious values.

Colonial Era (1861-1960)

With the advent of British colonial rule, English law was introduced into Nigeria. British authorities established colonial courts and legal frameworks that imposed English common law and statutes on the colonies. This period marked the transformation of Nigeria's legal system as it evolved from indigenous legal practices to one heavily influenced by British legal principles. The Supreme Court Ordinance of 1863 is an example of a statute that established English-style courts in Nigeria.

Post-Independence Era (1960-Present)

After Nigeria gained independence in 1960, the country's legal system evolved further to reflect its status as a sovereign nation. The 1963 Republican Constitution replaced the colonial legal framework, and subsequent constitutions, including the 1979 and 1999 Constitutions, established Nigeria as a federal republic with a comprehensive legal system based on common law, Islamic law (in some northern States), and customary law. Post-independence developments also saw the evolution of statutory provisions, case law, and judicial interpretations aimed at strengthening Nigeria's democratic institutions and legal processes. The early case of *Lewis v Bankole*¹⁵ demonstrates the application of both customary law and English law during the colonial era in Nigeria. The issue in this case was the application of Yoruba customary law in a land dispute, and the court had to determine whether the customary practices of the parties could be recognized alongside English legal principles. The court upheld the use of customary law, establishing the precedent for the coexistence of indigenous legal systems with English law during the colonial period. The case involved a dispute over family land and the application of Yoruba customary law concerning inheritance. The colonial court ruled that customary law could be applied as long as it was not repugnant to justice, equity, and good conscience, an important principle that evolved from British colonial influence. Also, *Ogunbambi v Abowab*,¹⁶ illustrates the historical evolution of Nigeria's legal system during the colonial period, particularly the

¹⁵ (1908) 1 NLR 81.

¹⁶ (1951) 13 WACA 222.

doctrine of repugnancy. The West African Court of Appeal applied customary law but subjected it to the repugnancy doctrine, which required that customary practices to be consistent with principles of natural justice. In a dispute regarding land ownership, the court applied Yoruba customary law but modified it to ensure that the legal outcome was not repugnant to English legal principles. This case highlights the historical tension between indigenous customs and the imported English legal system during the colonial era. The case of *Bello v A.G. Oyo State*¹⁷ demonstrates the post-independence evolution of Nigeria's legal system, particularly the application of constitutional law principles. The Nigerian judiciary, in this case, interpreted the 1979 Constitution to safeguard fundamental human rights and the rule of law, showing a departure from colonial legal principles and an emphasis on Nigeria's evolving constitutional framework. Bello, a former Chief Justice of Oyo State, was wrongfully convicted without a proper trial. The Supreme Court held that his rights to a fair hearing, as guaranteed by the Constitution, had been violated, marking a significant step in the evolution of constitutional jurisprudence in Nigeria. The case of *Attorney General of Lagos State v Attorney General of the Federation*¹⁸ showcases the post-independence evolution of Nigeria's federal legal structure, with the Supreme Court interpreting the constitutional powers of both the federal and state governments. It reflects Nigeria's shift from colonial legal traditions to a federal constitutional system based on the rule of law and separation of powers. The Lagos State government challenged the Federal Government's decision to withhold funds meant for local governments. The Supreme Court ruled in favour of Lagos State, interpreting the federal structure of the Constitution and emphasizing the autonomy of State governments in matters of local governance.

Meaning and Concept of Substantial Compliance in Election Petitions in Nigeria

Substantial compliance in the context of election petitions in Nigeria refers to a situation where, despite minor deviations from the procedural requirements set by law, the essence of the legal requirements is met in a way that does not undermine the integrity of the electoral process. The principle emphasizes that procedural irregularities or minor errors should not invalidate an election result if the essential elements of the process have been substantially followed. The principle of substantial compliance is primarily guided by the Electoral Act, 2022¹⁹ which provides that certain defects should not invalidate election. The concept of substantial compliance in election petitions in Nigeria is shaped by a combination of statutory provisions, judicial precedents, and principles of electoral law. This framework aims to ensure that minor procedural errors do not unduly disrupt the electoral process or invalidate an election result if the core requirements have been substantially met. The focus on substantial compliance emerges from judicial interpretations rather than a direct statutory provision.

Meaning and Concept of Election Petition in Nigerian Jurisprudence

An election petition is a formal legal process through which the validity of an election result can be challenged in court. Under Nigerian law, it provides a mechanism for aggrieved candidates or political parties to contest the conduct, results, or qualification of the winner in an election. Election petitions are distinct from regular lawsuits, as they are governed by special rules, timelines, and procedures due to their critical role in safeguarding the integrity of the electoral process. In Nigerian jurisprudence, election petitions serve as a vital tool in

¹⁷ (1986) 5 NWLR (Pt. 45) 828.

¹⁸ (2004) 18 NWLR (Pt. 904) 1.

¹⁹ See section 135 of the Electoral Act (No. 15 of 2022).

ensuring accountability and transparency in elections. Grounds for filing an election petition typically include: (1) Non-compliance with the Electoral Act: This could involve failure to adhere to election procedures, such as improper use of voting technology or irregularities in the collation of results. (2) Corrupt practices: Allegations of vote-buying, violence, or undue influence can be raised in election petitions. (3) Disqualification of a candidate: An election can be challenged if it is proven that the declared winner was not qualified to contest, based on factors such as age, citizenship, or criminal records. (4) Election malpractice or rigging: Election petitions can allege that the outcome was manipulated through ballot stuffing, multiple voting, or other forms of malpractice.

Election petitions are typically adjudicated by Election Petition Tribunals/Courts, which are established under the Nigerian Constitution and the Electoral Act. Appeals from the decisions of these tribunals/courts may be taken to the Court of Appeal, and in some instances, the Supreme Court. In *Atiku Abubakar v Buhari*,²⁰ Atiku Abubakar of the People's Democratic Party (PDP) filed an election petition challenging the 2019 presidential election, which declared Muhammadu Buhari of the All Progressives Congress (APC) as the winner. Atiku alleged that there were widespread irregularities and that INEC's failure to transmit results electronically violated the provisions of the Electoral Act. The Election Petition Tribunal and subsequently the Supreme Court dismissed the petition, affirming Buhari's election and holding that the petitioner failed to provide sufficient evidence of substantial non-compliance with the law. Section 132(7) of the Electoral Act 2022 provides that any person who is aggrieved by the outcome of an election may present a petition to an Election Tribunal or Court within 21 days after the date of the declaration of the result of the election. Also in *Buhari v INEC*,²¹ which is a landmark case that arose from the 2007 presidential election, where General Muhammadu Buhari of the All Nigeria Peoples Party (ANPP) challenged the declaration of Umaru Musa Yar'Adua of the People's Democratic Party (PDP) as the winner. Buhari filed an election petition, alleging widespread rigging, electoral malpractice, and non-compliance with the Electoral Act. The Supreme Court, while acknowledging some irregularities, held that the petitioner failed to prove that these irregularities substantially affected the outcome of the election. Yar'Adua's victory was upheld. See *Adeleke v. Oyetola* (*supra*) and *Wike v Peterside* (*supra*).

Section 134 of the Electoral Act 2022 outlines the grounds upon which an election may be challenged through a petition, including corrupt practices, non-compliance with electoral laws, and disqualification of the winner. In *Fayemi v Oni*,²² Dr. Kayode Fayemi of the Action Congress of Nigeria (ACN) challenged the declaration of Segun Oni of the People's Democratic Party (PDP) as the winner of the 2007 Ekiti State governorship election. Fayemi filed an election petition alleging that the election was marred by widespread irregularities, vote manipulation, and non-compliance with electoral laws. The Election Petition Tribunal ruled in favour of Fayemi, annulling Oni's election. This judgment was upheld by the Court of Appeal, which declared Fayemi the duly elected governor of Ekiti State. See *Peter Obi v. INEC* (*supra*).

Election petitions play a crucial role in Nigerian electoral jurisprudence by providing a mechanism for challenging the validity of election results.

²⁰ (2019) LPELR-48113(SC).

²¹ (2008) 19 NWLR (Pt 1120) 246.

²² (2010) 17 NWLR (Pt 1222) 326.

Theories of Substantial Compliance

The doctrine of substantial compliance in the Nigerian electoral process refers to the standard that electoral irregularities must be substantial enough to affect the outcome of an election for the courts to nullify it. The doctrine aims to balance between technical breaches of electoral laws and upholding the will of the electorates where the irregularities are insignificant to the overall result. The theories of doctrine of substantial compliance in Nigerian electoral process are as follows:

Theory of Substantial Compliance

The doctrine of substantial compliance is rooted in the idea that elections are primarily about the expression of the will of the people. As long as the core objective of an election, that is, the reflection of the voters' will, is met, the courts may overlook minor procedural irregularities. This theory promotes electoral stability by ensuring that not every procedural flaw results in the invalidation of the election. See *Buhari v INEC*²³ where General Muhammadu Buhari, the presidential candidate, challenged the 2007 election results, alleging massive irregularities. The Supreme Court upheld the election, stating that there was substantial compliance with the Electoral Act 2006 despite some irregularities. The court held that the petitioner must prove not just that irregularities occurred, but that they were substantial enough to have affected the result of the election. The mere existence of irregularities was insufficient to overturn an election. In this case, the doctrine of substantial compliance was affirmed by the court as essential for the stability of elections, ensuring that only significant breaches lead to nullification.

Theory of Electoral Integrity

This theory posits that substantial compliance is necessary to uphold the integrity of elections. It emphasizes that procedural adherence guarantees fairness but allows flexibility for minor deviations that do not undermine the overall election result. In *Atiku Abubakar v INEC*,²⁴ the petitioner, Atiku Abubakar, challenged the 2019 presidential election, alleging widespread non-compliance with the Electoral Act, particularly concerning the transmission of results electronically. The court ruled that despite some irregularities, the election was conducted in substantial compliance with the law, and the irregularities did not substantially affect the outcome. The court reaffirmed the need to establish that the non-compliance was of such magnitude that it affected the result. The mere presence of irregularities or procedural flaws was not enough. The judgment in this case demonstrates the importance of balancing electoral integrity with practical flexibility, ensuring that technicalities do not nullify the genuine expression of voters' will.

Theory of Materiality

This theory emphasizes the materiality of the non-compliance. It asks whether the irregularity materially affected the result of the election. Courts focus on the outcome, and where the irregularities are proven to be minor or immaterial to the result, the election stands. In *Wike v Peterside*,²⁵ Nyesom Wike, the then governor of Rivers State, was challenged by Dakuku Peterside over alleged widespread violence, ballot snatching, and voter intimidation in the 2015 gubernatorial election. The tribunal annulled the election, but the Supreme Court

²³ (2008) 19 NWLR (Pt 1120) 246.

²⁴ (2019) 5 NWLR (Pt 1670) 1.

²⁵ (2016) 7 NWLR (Pt 1512) 452.

reversed this decision, holding that the petitioner failed to prove that the irregularities affected the result. The Supreme Court held that an election should not be invalidated for every irregularity. The petitioner must show that the irregularities were so widespread that they materially affected the outcome. The decision stresses the materiality of irregularities, reinforcing that only significant breaches impacting the results can justify nullification.

Theory of Non-Punitive Approach

This theory suggests that the substantial compliance doctrine prevents the court from adopting a punitive approach to election petitions. Rather than focusing on penalizing every breach of procedure, the court should focus on whether justice is done, that is, whether the election outcome truly reflects the will of the electorates. In *Oshiomhole v INEC*,²⁶ Adams Oshiomhole challenged the result of the 2007 Edo State gubernatorial election, citing widespread rigging and irregularities. The tribunal found in his favour, and the Court of Appeal affirmed this, holding that the non-compliance with the electoral law was substantial enough to have affected the outcome. The Court held that the purpose of electoral law is not punitive but corrective. Thus, only when non-compliance substantially affects the result should it lead to the annulment of the election. This judgment illustrates the non-punitive perspective, affirming that courts should not annul elections based on procedural irregularities unless the breach distorts the electoral outcome.

Theory of Voter Representation

This theory is based on the understanding that elections are a means to represent the will of the people, and the substantial compliance doctrine ensures that minor irregularities do not obstruct this representation. It focuses on the fairness and transparency of the overall process. In *INEC v Oguebego*,²⁷ there was a dispute regarding the authenticity of the list of candidates submitted by political parties. The Supreme Court held that where the process allowed the electorates to express their will, even if there were disputes over party nominations, the election result should stand unless there was proof of significant non-compliance that affected the outcome. The Supreme Court reinforced that the primary concern of electoral laws is to reflect the will of the electorates and that minor irregularities in the process of candidate nomination did not affect the expression of voters' will. This case highlights the significance of voter representation, underscoring that procedural flaws that do not distort the electorate's intent should not invalidate elections.

History of Substantial Compliance in Electoral Process in Nigeria

The historical development of the doctrine of substantial compliance in Nigeria's electoral process is a response to the complexities of electoral disputes, evolving through judicial interpretations and legislative reforms. The doctrine seeks to balance the need for fairness and integrity in elections with the stability and continuity of governance. Below is an outline of its historical evolution.

Early Development and the Pre-Independence Era

Before Nigeria gained independence in 1960, the country operated under a colonial system, with elections largely conducted under British electoral laws. The idea of strict compliance with electoral procedures was predominant during this time. However, there was no formal doctrine of substantial compliance, and any significant breach of procedure could lead to the annulment of elections.

²⁶ (2009) 4 NWLR (Pt 1132) 607.

²⁷ (2015) 18 NWLR (Pt 1491) 273.

Post-Independence Era and the Emergence of Substantial Compliance

After independence, Nigeria adopted its own Constitution and electoral laws, which gradually moved away from rigid adherence to technical compliance. The focus shifted towards ensuring that elections reflected the will of the people, even if minor irregularities occurred. This era saw the first signs of the substantial compliance doctrine taking shape. In *Awolowo v Shagari*,²⁸ Chief Obafemi Awolowo challenged the election of Shehu Shagari as President of Nigeria in 1979, arguing that Shagari did not meet the constitutional requirement of securing one-quarter of the votes in two-thirds of Nigeria's then 19 States. The Supreme Court held that while there were irregularities, they did not substantially affect the outcome of the election, thus affirming Shagari's victory. This landmark case marked the beginning of the substantial compliance doctrine, as the court moved away from strict legal formalism and began emphasizing the overall integrity of the electoral process over technical breaches.

The Doctrine of Substantial Compliance Gains Prominence

In the 1999 democratic transition, following years of military rule, Nigeria's electoral system underwent significant reforms. The 1999 Constitution²⁹ and the Electoral Act 2002 were introduced to guide elections. The doctrine of substantial compliance began to feature more prominently in judicial decisions as courts were tasked with interpreting these new laws in the context of electoral disputes. In *Buhari v Obasanjo*,³⁰ Muhammadu Buhari, the presidential candidate of the All Nigeria Peoples Party (ANPP), challenged the election of President Olusegun Obasanjo in the 2003 election, alleging widespread irregularities. The Supreme Court upheld Obasanjo's election, holding that while there were irregularities, they did not substantially affect the overall outcome. This case solidified the substantial compliance doctrine, as the court held that only irregularities that significantly impacted the election results could warrant nullification, emphasizing the will of the electorates over procedural defects.

Refinement of the Doctrine in the Electoral Act 2010

With the introduction of the Electoral Act 2010, the substantial compliance doctrine was given a clearer statutory basis. The Act specified that an election would only be invalidated if non-compliance with the law substantially affected the result. This marked a significant turning point in the legal treatment of electoral disputes. Section 139(1)³¹ provides that no election shall be invalidated by reason of non-compliance with the Electoral Act unless it is proven that such non-compliance substantially affected the result of the election. The inclusion of this provision codified the substantial compliance doctrine, shifting the burden of proof to the petitioner to demonstrate that irregularities materially impacted the election.

Post-2010 Period: Greater Reliance on Substantial Compliance

Following the 2010 Electoral Act amendment, courts increasingly relied on the substantial compliance doctrine to adjudicate electoral disputes. The doctrine became a safeguard against annulling elections over minor procedural errors, ensuring the stability of the political process. In *Oshiomhole v INEC*,³² Adams Oshiomhole challenged the 2007 Edo State

²⁸ (1979) 6-9 SC 51.

²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁰ (2005) 2 NWLR (Pt 910) 241.

³¹ Electoral Act 2010 (as amended).

³² (2009) 4 NWLR (Pt 1132) 607.

gubernatorial election, alleging widespread rigging. The Court of Appeal annulled the election, finding that the irregularities were substantial enough to affect the outcome. Oshiomhole was declared the winner after a re-run election. This case exemplifies the application of substantial compliance, as the court acknowledged that not all irregularities warrant annulment but determined that the irregularities in this case were substantial.

Modern Application: Substantial Compliance and the 2019 General Elections

The 2019 general elections saw further reliance on the doctrine of substantial compliance, particularly in the presidential election petitions. Courts used the doctrine to uphold the results of elections despite allegations of procedural breaches, focusing on whether such breaches affected the outcome. In *Atiku Abubakar v INEC*,³³ Atiku Abubakar challenged the victory of President Muhammadu Buhari in the 2019 election, alleging irregularities such as failure to electronically transmit results and voter suppression. The court held that while there were irregularities, they did not substantially affect the overall result. This case reaffirms the court's reliance on substantial compliance, as it dismissed the petition on the grounds that the irregularities cited were not significant enough to alter the election outcome.

Recent Legislative Reforms: Electoral Act 2022

The enactment of the Electoral Act 2022 introduced several reforms aimed at addressing issues in the electoral process, including electronic transmission of results and improved safeguards against irregularities. The doctrine of substantial compliance continues to be a key aspect of resolving electoral disputes, though recent legal reforms aim to reduce the occurrence of irregularities in the first place. Section 134³⁴ emphasizes that an election will only be invalidated if the petitioner proves non-compliance with the law and demonstrates that such non-compliance substantially affected the result of the election. It also introduces new guidelines for the conduct of elections and transmission of results, aiming to minimize the likelihood of procedural errors. The 2022 Electoral Act continues to uphold the doctrine of substantial compliance, but with a stronger emphasis on technological transparency and procedural integrity, reflecting the evolving nature of electoral processes in Nigeria.

The substantial compliance doctrine continues to be a crucial tool in preserving the integrity of elections while maintaining stability in governance, with courts applying it to ensure that electoral outcomes reflect the will of the electorate despite minor irregularities.

Some Notable Decided Cases Based on the Doctrine of Substantial Compliance in Nigerian Elections

1. *Ogbuabor v Ogbu*.³⁵ In this case the appellant challenged the election results based on irregularities in the conduct of the election. The tribunal dismissed the petition, arguing that the irregularities were minor and did not affect the overall outcome of the election. On appeal to the Supreme Court, the Supreme Court held that for an election to be invalidated on the grounds of non-compliance with the Electoral Act, the non-compliance must be substantial and not merely procedural. The court emphasized that substantial compliance is sufficient to uphold the election result if the core requirements were met.

2. *Dare v Afolabi*.³⁶ The petitioner in this case alleged that the election process was marred by

³³ (2019) 5 NWLR (Pt. 1670) 1.

³⁴ Electoral Act 2022.

³⁵ (2015) LPELR-25868(SC).

³⁶ (2018) LPELR-44359(SC).

procedural flaws. The tribunal found some procedural errors but ruled that these did not substantially affect the outcome of the election. On appeal to the Supreme Court, the Supreme Court affirmed the tribunal's decision, reinforcing that minor procedural errors do not automatically invalidate an election. The court emphasized that substantial compliance with the electoral laws is enough to sustain an election result unless the errors are grave enough to impact the integrity of the election.

3. *Ikpeazu v. Otti*.³⁷ The petitioner contested the election on the grounds of numerous procedural lapses, including issues with the conduct of the election and documentation. The tribunal reviewed whether these lapses were substantial enough to affect the result of the election. The Supreme Court held that while procedural errors were present, they did not constitute a substantial breach affecting the election's outcome. The court applied the principle of substantial compliance, affirming that the election result was valid because the core electoral requirements were observed.

4. *Makarfi v. Sheriff*.³⁸ This case dealt with internal party elections where allegations of procedural deviations were made. The petitioner claimed that these deviations significantly affected the election's legitimacy. The Court of Appeal examined whether the deviations were substantial or merely procedural. The Court of Appeal upheld the election results, applying the principle of substantial compliance. The court determined that the deviations were procedural and did not impact the overall integrity of the election. The judgment reinforced that substantial compliance with procedural requirements is sufficient to validate the election.

5. *Bola Tinubu v. Olusola Oke*.³⁹ The petitioner challenged the election results on grounds of procedural flaws, including issues with the recording and declaration of results. The Supreme Court reviewed whether these flaws were significant enough to affect the election's outcome. The Supreme Court upheld the election results, emphasizing that the procedural flaws were minor and did not affect the election outcome. The court applied the principle of substantial compliance, reinforcing that the election process was valid despite minor errors.

The principle of substantial compliance ensures that elections are not invalidated by minor errors or procedural lapses, thus upholding the democratic process while ensuring that the core requirements are met.

Conclusion:

The doctrine of substantial compliance is deemed essential in Nigerian electoral jurisprudence as it upholds electoral stability while ensuring that the will of the people is respected. It reflects a balanced approach where minor irregularities do not automatically lead to the nullification of election results unless they substantially affect the outcome. This doctrine is supported by numerous case laws and statutory provisions that guide Nigerian courts in election dispute resolution. The problem with this doctrine is that there is no yardstick to measure this doctrine and the politicians have utilized this loophole to perpetuate all forms of electoral malpractices including violence during elections. The doctrine unintentionally encourages electoral malpractices, undermining the overall integrity of elections and democracy in general. This doctrine is seriously undermining the tenets of democracy where every vote must count. The writer looks at the theories behind substantial compliance in election petition cases in Nigeria as well as the historical evolution of the doctrine in Nigeria. This article is aimed at looking at the past, the present and future trends

³⁷ (2016) LPELR-40484(SC).

³⁸ (2017) LPELR-41922(CA).

³⁹ (2022) LPELR-59470(SC).

of the topic under review. This will go a long way in opening more rooms for discussions of the topic for the betterment of our democracy.