Cost of Election Litigation and The Quest for Justice in Nigeria: Who Bears The Brunt?

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Abstract

The electoral history of Nigeria is repleted with fraudulent practice which leads to relentless contest of election results by the purported defeated candidates and political parties. The attendant implication that accompany the flooding of election tribunals with petitions. Legal practitioners consequently have filled days at the tribunals with expansive financial implication to the petitioner and defendants' alike. The costs notwithstanding, the petitioners pursue their case in a bid to enact justice by claiming their peoples mandate; the study takes a look at the cost of election litigation and the quest for justice in Nigeria with focus on who bears the brunt. The paper adopts historical method and JJ Rousseau's individual and general will to illuminate the study. The work identifies some cases where court upturned election results as declared by independent national electoral commission (INEC). It discusses some reasons for electoral malpractices in Nigeria and it discovers that INEC officials, politicians and party faithful are culprit in electoral fraud. It also found that non punishment of beneficiaries and perpetrators make electoral malpractices persist. Again, the findings suggest that cost of refund to the victor by the Nigerian state because such individual have struggled for justice in order to affirm the general will rather than their individual will. It is therefore recommended that the

beneficiaries of electoral fraud and other perpetrators should be banned from the subsequent election and from holding political offices for a period of twelve years and jailed for at least a period of two years.

Keywords: Cost, election, litigation, justice.

Introduction

Election history of Nigeria from the colonial era to the first republic, up till the fourth republic shows that those elections held were characterized with fraudulent practices. These fraudulent practices are the major reason why elections results were relentlessly contested by the purported defeated candidates and political parties. It is pertinent to say that what actually made election litigation possible in Nigeria is as a result of institutionalization of democratic governance. Democracy being a global trend, is seen as the government of the majority, the government by the people either directly or through representatives, which today is regarded as the best idea for governance on earth (Jacob 2010:22) it is characterized by a popular government as practiced in ancient Greece from where it derives it source and inspiration. It emphasized the role of the people in choosing their leaders. Sovereign power is exercised by the people even if it's only indirectly (Olapupo, 2010:23) through election. It is therefore an established fact that, election is the hallmark of democracy and free and fair elections is at the nerve centre of democracy. This implies that, there can be no democracy without a credible election. This perhaps explains why states incure huge debt expenses in conduct of elections. And in some countries like Nigeria, the economy is shut down during the time lag of the exercise as human and vehicular movements are restricted. This huge cost notwithstanding, election results are sometimes at variance with the wishes and decisions of the people as a result of deliberate human crafty activity. This has elicited violent demonstrations and protests in many countries

such as Ivory Coast, Kenya, Uganda, Zimbabwe and Nigeria in the time past.

Meanwhile, as people begin to internalize democratic values, so does resort to violence diminishes especially as democratic legal means of resolving disputes now proof reliable. Although the people now approach court of law to test the extent legality of their grievances and claims, the greatest achievement in this respect in sub-sahara Africa is the annulment of the presidential election of president Uhuru Kenyatta of Kenya by the country's Supreme Court this year – 2017 (www.bbc.com world-africa 41123329). While this is commendable, it sends a strong signal to the international community that Africa can make things happen. Although, Nigeria, the acclaimed giant of Africa would have been expected to attain this feat about ten years ago, when an elected president Musa Yar'Adua admitted that his election was marred with irregularities. The unbridled irregularities in elections in the country, explain why election petition tribunals are flooded with petitions after general elections in Nigeria.

To our utmost dismay, the cost of seeking justice through prosecution and other associated cost of litigation is too high for reasonable comprehension. Yet, individuals seeking to enact majoritarian wish bears the financial burden even if the court rules in his favour. We have seen this happen in Governorship election in Osun state, Ekiti state, Edo and Ondo state in Nigeria with many legislative seats at states and federal level, falling in the same category. Regrettably, those who were sacked from office have enjoyed the privileges attached to these offices and were also accorded the status of former office holders. One can simply ask, that, who ought to bear the financial burden of election? Cases particularly that of the individual\party that becomes controversial. What are they fighting for? Is it the general will or individual will? Are the candidates to be held responsible for inability of the state to conduct free and fair election? What are the reasons for electoral malpractices? The desire to answer these questions, relentlessly call for this study.

Definition of Concept

Free & Fair Election: it is the election that is conducted in an atmosphere of peace and in line with the laws of the land through which the true winner is declared elected.

Cost of Election Litigation: this refers to the financial, human resources and time that is spent in prosecution of election cases by candidates\parties who feel aggrieved by electoral officials, security agents and other practices that betray the electoral law which negatively affect election result to the extent that the rightful person\party is denied access to office\power. (Akinlade, 2016:21)

Justice: this means the legal and fair allocation of power, office, honour, benefits goods and services in a state. Philosophers generally regards justice as the most fundamental of all virtues for ordering inter personal relations, establishing and maintaining a stable political society.

Theoretical Framework

Jean Jacques Rousseau's theory of general will illuminates this study. The theory which is a product of Rousseau's conception of social contract and sovereignty owes the view that; people enter into relationships\contracts in their individual and corporate capacity (Garuba, 2004). This corporate capacity is expressed by collective wish\desire and this collective wish is called general will. The General will is the universal voice or group mind (Bamgbose, 1999:10) which is the decision of the majority of the people in a state. This general decision is regarded as the supreme decision and every individual\organization in the state is expected to accord it, with due regard. In fact, the general will can be enforced and the legitimacy\ existence of government is only to the extent at which it can uphold the general will. The general will is sovereign but has certain marked characteristics. They include

- General will is always infallible but it is different from the will of all (Sum of individual will which can err);
- General will seeks towards the public good, and therefore, is always well meaning;

- General will could not be bad because it would determine what was morally good as it allow people to choose those who govern them through election process.

From the above, it will be seen that election litigation in Nigeria is as a result of election malpractice against the general will, in the sense that the supposed election result is not a reflection of the choice of the people (General will). There is also another aspect of the individual will (this constitute the politicians and political parties) that the people actually elected to represent them in the said election. This aspect of "individual will" will take it upon them to make sure that the general will prevails and this can only be achieved through election litigation that will bring about justice at the end of the day regardless of the high financial cost in litigation process.

This work sees a candidate that attracts majority vote in an election as the candidate\party backed by the general will. Therefore such a candidate has legal and legitimate right to take possession of governmental powers and rule over the state. It posits that, if such a candidate is denied right to power either through electoral malpractice or other means, then individual will challenges the general will. Therefore, all hands must be on deck to enforce the general will. In Nigeria's democracy as with the case in other claims, subscribers to the general will approach a competent court of jurisdiction to ensure the execution of the general will. This work therefore argue that, if the court establishes that the general will is truly denied, the candidate supported by majority votes should not only be allowed to take mantle of leadership but the financial cost of enacting the general will (prosecuting the case) ought to be paid from the state treasury because such a candidate\party only sought to enforce the will of the majority – *general will.*

Nature of Election Litigation

Election litigation is a legal process that starts with an election petition brought before a tribunal. Election Petition is neither criminal nor civil cases. Looking at it from the perspective of public policy, they are regarded as unique and therefore given preferential treatment. In legal parlance, it is common knowledge that election petitions are *sui generis*

which means special. But in another expression, it remains a proceeding of its own class and it's unique in its own peculiar way. The election petitions are usually setup to ensure speedy disposal of petition through election petition tribunal. Election petitions have distinguishing features which modify the operation of certain rules of civil proceedings with some technical defects or irregularities which in other proceeding are considered too immaterial to affect the validity of the claim, and could be fatal to proceedings in election petitions tribunal. Election litigation are peculiar in nature, and because of their peculiar nature and importance to the well-being of a democratic society, they are regarded with an aura that places them over and above normal day to day transaction between individual and which gives rise to ordinary claims in court Justice Muhammadu Lawal Uwais (former chief justice of Nigeria) asserted as follows;

"An election petition is not the same as the ordinary civil proceeding. It is a special proceeding because of the nature of elections which by reason of their importance to the well-being of a democratic society are regarded with aura that places them above the normal day to day transaction between individual which gives rise to ordinations between individuals and to ordinary general claim in court, as a matter of deliberate policy to enhance urgency.

Election petition are expected to be devoid of the procedural clogs that cause delay in the disposition of the substantive dispute.

This view was also expressed by Oguntade J.C.A in Abdulahi V. Elayo.

It must be borne in mind that an election petition is not always to be treated as the ordinary civil suit in Court. An election petition creates special jurisdiction and the ordinary rules of procedure in civil cases do not always serve to effectuate its purpose. Talking about the nature of election litigation, it is very capital intensive, that it requires a lot of commitment financially before the process can be ascertain.

Reasons for Election Litigation

There is one central reason that is all encompassing which leads to election litigation, which is electoral malpractice or fraud. This electoral malpractices or fraud manifest in various forms and this is what we will be looking at briefly. Electoral malpractices is what is responsible for the unacceptability of election result, thus, working politicians or political parties seeking for justice go to the court of law to sick for redress as regards the election.

Below are ways through which election malpractices can manifest:

- Inducement of voters or electoral body
- Violence
- Declaring the loser the winner
- Manipulation of figures
- Snatching of ballot boxes
- Stuffing of ballot boxes

Case Studies

The general elections that was held in 2007 was declared *a do or die affair* by the then President Olusegun Obasanjo. The 2007 election was characterized by violence, ballot snatching and ballot stuffing by political thugs. The military and policemen that were deployed to various parts of the country to maintain law and order, but unleashed fear on the electorates while the independent National Electoral Commission (INEC) engaged in false declaration of results due to the bribe they have collected.

The official impunity which marred the election was confirmed by political parties and candidates seeking for redress legally, and this was done through election litigation, which will supposedly bring about justice through electoral tribunal.

The first case we will be looking at is that of Buhari Vs. Yar'Adua (2007) 50 WRN. The Supreme Court established that the ballot papers distributed and used for the presidential election were marked and serialized as required by law. By a narrow margin of 4-3, the apex court

upheld the result of the controversial election on the ground that there was "substantial compliance" with the Election Act 2006 by the INEC. However, the results of several legislative and governorship elections were annulled by the election petition tribunals. In order to reduce political tension in the country, President UmaruYar'dua admitted that the election was highly flawed and set up an electoral reform committee headed by a former Chief Justice of Nigeria, Justice Muhammed Uwais . At the end of investigation into the fraudulent election, the committee recommended inter-alia the conclusion of all election petitions before the inauguration of an elected government and the setting up of an electoral offences tribunal for the prosecution of the electoral offenders. The recommendations made were rejected by the federal government and the National Assembly.
With the aforementioned case, what will be discovered is that no fresh election was held and the presidential result of the 2007 election was upheld.

The second case worthy of mention is the one between Dr. John Olukayode Fayemi & ANOR V. Olusegun Adebayo Oni & ORS CA/IL/EPI/GOV/1/10. This is an appeal against the judgment of the Ekiti state governorship and legislative House election tribunal delivered by Hon Justices Hamman Barka (Chairman) S.U. Dikko and M.B. Goji delivered on 5th May, 2010. In the judgment contained at page 4631-5063 of the record of appeal, the learned majority dismissed the petition of the appellant. Dissatisfied with the judgment of the lower tribunal, the appellant (Dr. Fayemi) have appealed on 24 grounds of appeal in the Notice of appeal. The history of the case was that the gubernatorial elections were held throughout Nigeria on 14th April, 2007, Ekiti state inclusive. At the end of this election, the candidate of the Peoples Democratic Party (PDP), Olusegun Adebayo Oni was cleared and returned, the 1st petitioner who is to be called the 1st appellant, challenged the election of Olusegun Adebayo Oni as the governor of Ekiti state before the then House of Assembly, Governorship and Legislative Houses, Election Petition Tribunal Sitting in Ado-Ekiti on diverse grounds. The election tribunal in its considered

judgment of 28th August 2008 dismissed the petition. Dissatisfied with the judgment of the elections tribunal, the 1st Appellant appealed against the judgment at the court of appeal. The court of appeal sitting in Ilorin in its penultimate judgment delivered on the 17th February 2009 allowed the appeal in part and ordered that a supplementary election be conducted in the named sixty three wards spreading across ten (10) local government Areas of Ekiti state. It added that the results of the election in the six (6) uncontested local government (including Ilejemeje) would remain as declared by the Independent National Electoral Commission (INEC) and shall be added to the result of the other supplementary elections when conducted in compliance with the order of the court of Appeal, the Independent National Electoral Commission (3rd Respondent)on 25th April, 2009 and 5th May 2009 conducted supplementary elections in the 63 wards spreading across ten (10) local government Areas as contained in the judgment of the court of Appeal. Both the 1st Appellant (Dr. Fayemi) and the 1st Respondent (Olusegun Oni) contested the supplementary election, while the 1st Appellant on the other hand contested under the platform of the Action Congress which is the second petitioner also known as the second appellant, the said 1st respondent on the other hand contested under the platform of the Peoples Democratic Party (PDP). Election (11) other political parties participated and sponsored candidates at the said election. At the end of the supplementary elections, INEC having added the votes cast by the respective political parties in the supplementary elections as well as that obtained in the six (6) Local government not affected by the supplementary elections, declared and returned the 1st respondents (Olusegun Oni) as the winner having polled the highest votes of 111,140. The first appellant came 2nd with total votes of 107, 017. Aggrieved by the declaration and return of the 1st respondents as the Governor of Ekiti State the appellants filed a petition to the court of appeal. The court of appeal allowed the appeal and declared Dr. John Olukayode Fayemi as the Governor of Ekiti state.

Looking at this scenario case between Dr Olukayode Fayemi and Olusegun Oni, it will be observed that the cost of election litigation is actually a very long and tasking process which includes a lot of financial commitment. The land mark judgment passed on the 15|10|2010 by the appeal court that seated in Ilorin, Kwara State climaxed the almost three year, six months battle by Fayemi to claim a mandate he believed the people of Ekiti gave him on 14 April 2007 and the subsequent rerun. The quest for justice in Nigeria especially as regards seeking redress to an election result is actually time consuming and involves a lot of finances. Looking at the case above it can be said that the people actually bears the brunt of the cost of election litigation because the overall performance of Dr Olukayode Fayemi after reclaiming his stolen mandate going by his score card is far below average and perhaps one of the reasons he lost the subsequent election.

Another case worth mentioning here is that of Comrade Adams Aliyu Oshiomole and Prof Oserheime Osunbor. The governorship election that was conducted in April 2007 in Edo State was said to have been won by Prof Oserheimen Osunbor of the People Democratic Party (PDP) through fraudulent and massive electoral practices. This led the ACN and Comrade Adams going to the court to seek redress to the election result, which was later upturned in favour of the ACN and Adams Osiomole.
The euphoria which erupted in Edo State and in most parts of the country soon after the verdict is needless proof that, at last, justice has been done. The country most influential labour leader in recent decades, Oshiomlole, a notable activist, contested the governorship elections on the platform of Action Congress (AC). Osunbor a professor of law and two term senator in the fourth republic ran on the ticket of the People Democratic Party (PDP), which controls the federal Government. INEC declare Osunbor winner, on the basis clearly of manipulation of figures derived from ballot box snatching and stuffing as well as outright arbitrary award of figures to the contestants. With threat and intimidation, some other contestants might have given up the fight easily because the cost of election litigation and the

quest for justice in Nigeria is one that requires steadfastness and it require plenty of financial commitment. Oshiomole and the AC painstakingly built its case and pursued it doggedly at the Election Petitions Tribunal. On March 20, the tribunal upheld Oshiomole petition and declared him winner.

Recommendation

It is obvious from the above that, the cost of election litigation and the quest for justice in Nigeria is very tasking, rigorous, time consuming and highly capital intensive. The only valid reason for election litigation is as a result of electoral malpractices during the conduct of election that is to say if there are no electoral malpractices during election, election results will be generally acceptable and there will be no need to contest or detest election result at the law court.

The following are suggestions that will be useful in reducing election litigation and also ensure credibility and general acceptability of election results in Nigeria.

1. Election should be concluded in at least six months before swearing-in. This is to provide time for litigations before assumption of office.
2. Any individual whose victory is a subject of litigation should not be paid salaries and allowances till the end of court case
3. All those found involved in electoral malpractice should be prosecuted and jailed for at least two years and ban from political activities and other public offices for a minimum of twelve years. An act of parliament is required for this purpose.
4. The perpetrators should not be allowed to hold any public office or appointment (ministerial, commissioner, ambassador etc). After the election litigation process, those that are found guilty should not be allowed to occupy any public office based on appointment.
5. Civil society organizations should step up campaign against electoral malpractices.

6. There should be a drastic reduction in privileges attached to political offices. Political office holders should be accorded privileges not more than that of a director in the civil services.
7. The office of the political office holder should be made less attractive in terms of money paid as salary. Like in the United State of America (USA) where president are paid four hundred thousand Dollars a year. But in Nigeria political office holders are paid millions of naira comparable to other country leaders. Political office holders should see joining politics as voluntary issue, and not an opportunity to amass wealth, but to serve people. So therefore, people that are ready to serves should be allowed to contest for elective positions.

If the above recommendations are taken into consideration in Nigeria, it will help curb to the barest minimum election malpractices, bringing about election credibility and general acceptability of election result. Thus, reducing the amount of election petition brought before the tribunal to seek redress for an election result. The result of the elections conducted will be reflective of the general will of the people.

Conclusion

It is obvious from the foregoing that, the cost of prosecuting election litigations are at the expense of the prosecutor. This study sees this as injustice because the case was instituted to enact the general will which is primarily the duty of the state. It is the failure of the state to ensure justice in the conduct of election that precipitates the case in the first instance.

Therefore, this work submit that, a refund of the financial cost is important and due punishment must be visited on the culprits. In seeking redress through election litigation which is highly capital intensive, there is the tendency that even after justice might have prevailed, whoever emerges as the Governor or President as the case maybe is more likely to get back for himself and his political party all that was spent during the litigation process. Thus, making the people (electorate) to bear the brunt of the cost of election litigation.

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