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Inside the courts and challenging election outcomes

Overview of Nigeria's election dispute resolution process

By Samson Itodo

“May good judges rise when it matters most to enforce the will of the people expressed through the ballot box.”

Litigating election disputes is contentious, complex, and excessively technical. The technicality of electoral dispute litigation is fueled by the strict requirements of the Electoral Act, coupled with judicial attitudes over the years. The complex and technical nature of election petitions is largely responsible for the failure of election tribunals and courts to address grievances of litigants despite efforts at resolving such election disputes. As expected, political attention is shifting to the courts as aggrieved candidates and political parties that contested in Nigeria's 2023 general elections are approaching the courts to challenge the outcome of the polls and seeking legal remedies. The polling unit was the arena of electoral competition a few weeks ago, but the courts have displaced the polling units as the new arena for electoral contests. As it stands, the courts will determine the final vote in all election disputes it entertains, raising further concerns about the apparent excessive judicialization of the electoral process.

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The process of registering a complaint or challenging the outcome of the election is called an election petition. Election tribunals or the courts address grievances with election results ventilated by litigants. Unlike other cases, election petitions are special cases in a class of their own. Due to their special nature, the procedures, courts, and timelines for filing documents are unique. Some technical defects or irregularities considered immaterial in other proceedings could be fatal to proceedings in election petitions. In addition, election petition tribunals and courts have adopted a strict constructionist approach which admits no extension to the timelines provided in the legal framework. Let's consider five critical components of Nigeria's election adjudication process.



An election petition is a complaint against the credibility of an election conducted by INEC. Where a candidate or political party is dissatisfied with conduct of an election, the process of registering such complaint or challenging the outcome of the election is called election petition.

1. Not all persons can question an election outcome.

Different categories of persons participate in elections, but not all possess the right to challenge or question the result of an election. Section 133 of the Electoral Act 2022 defines persons entitled to present an election petition. They include candidates in an election and a political party that participated in the election. On the other hand, parties also include person whose election is questioned is a party to an election petition. Where the complaint is against a permanent or adhoc official of the Independent National Electoral Commission (INEC), INEC will be listed as a party due to its role in the administration of elections. Nigeria's electoral law considers these persons necessary parties in an election petition. An election petition will suffer an ill fate if these parties are excluded.



Section 133 Nigeria Electoral Act 2022

Persons entitled to present election petitions

- (1) An election petition may be presented by one or more of the following persons
 - (a) a candidate in an election; or
 - (b) a political party which participated in the election.
- (2) A person whose election is complained of is, in this Act, referred to as the respondent.
- (3) If the petitioner complains of the conduct of an electoral officer, a presiding or returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be —
 - (a) made a respondent; and
 - (b) deemed to be defending the petition for itself and on behalf of its officers or such other persons.

The person(s) or political party that initiates or files an election petition is referred to as the Petitioner, while the person or party the petition is made against is called the Respondent. In most cases, the Petitioner will seek to establish that the candidate INEC declared the winner was not validly elected or that they are entitled to be declared the winner. The respondents will include the person or party declared the election winner. **A tribunal or Court would not entertain any petition that questions an election result or a winner declared by INEC unless the person announced as a winner is joined as a party. This is logical as the outcome of the petition affects the said winner declared by INEC. The winner's joinder affords him/her an opportunity to defend his victory in line with the long-established principle of fair hearing.**

2. Special tribunals and courts resolve election disputes

A distinctive feature of election petitions lies in the courts and tribunals with judicial powers to resolve election disputes. Election petitions are determined by election tribunals or courts vested with the authority to hear and determine cases within their jurisdictional competencies. The Constitution of the Federal Republic of Nigeria, 1999 (as altered) (CFRN) and Electoral Act 2022, establish the following tribunals and courts to resolve election disputes:

1. **National Assembly and State Houses of Assembly Election Tribunals for each state of the federation and the FCT** with authority to entertain petitions on National Assembly and House of Assembly elections (Section 285(1) CFRN).
2. **Governorship Election Tribunal** to hear and determine petitions for governorship elections (Section 285(2) CFRN).
3. **Court of Appeal** to adjudicate petitions against presidential elections (Section 239(1) CFRN).
4. **Area Council Election Tribunal** to resolve disputes related to the elections into the office of the Chairman and Councilors within the FCT. (Section 131(1) Electoral Act 2022)

As a matter of law, election petition tribunals are constituted not later than 30 days before an election holds. The Tribunal is required to open registries for business seven days before the election. These tribunals and courts can only resolve an election dispute if the law gives them the authority to do so. Without the legal power, any proceeding conducted by these tribunals or Courts will be an exercise in futility. An election tribunal or Court must fulfill certain conditions before it assumes jurisdiction to resolve an election dispute. **First, Tribunal or Court must be properly constituted.** Members of the panel should be duly qualified as prescribed by law. Secondly, **the subject matter of the case is within the defined scope** or powers of the Tribunal or Court. Lastly, **due process is followed in initiating the case** before a court, and all pre-conditions have been satisfied.

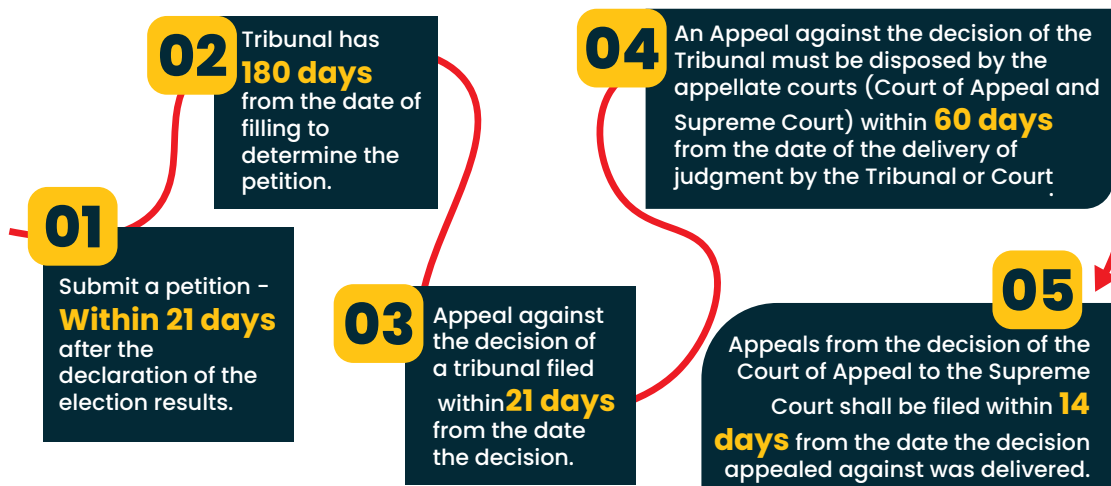
3. All timeframes are sacrosanct.

The Constitution and Electoral Act make explicit provisions on the timeframe within which an aggrieved person can institute a legal case challenging the result of an election. The law also provides a timeline for the courts to determine an election petition. The Court will only entertain an election petition if the petition is filed within the timeframe prescribed by the law. The Petitioner intending to challenge an election result must file their petition within 21 days after the declaration of the election results. Filing a petition outside the fixed period renders it incompetent and strips the Tribunal of the jurisdiction to hear and determine the petition.

An election tribunal has **180 days** from the date of filing to hear and determine an election petition. Any petition determined outside 180 days is invalid. An appeal against the decision of an Election Tribunal is also constitutionally timebound, as it is provided that any person displeased with the decision of the National/State Assembly or Governorship election tribunal must file a notice of appeal in the registry of the Tribunal or Court within **21 days** from the decision date. An appeal against the decision of the Tribunal must be disposed of by the appellate courts (Court of Appeal and Supreme Court) within **60 days** from the date of the delivery of judgment by the Tribunal or Court. In addition, appeals from the decision of the Court of Appeal to the Supreme Court shall be filed within **14 days** from the date the decision appealed against was delivered. It takes approximately **eight months** to resolve a dispute on National/State Assembly elections, **ten months** in the case of a governorship election petition, and **eight months** to determine a presidential election petition. No matter the exigencies, or emergencies, the time fixed by the constitution to hear and determine election cases cannot be extended. This is intended to cure the mischief of the past where election petitions lasted for almost the term of office of the person whose election was questioned, thereby rendering the entire judicial process near fruitless.

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Key Timelines In Election Petitions



Estimated timeframes for resolving election disputes

**National Assembly
/ State Assembly
Election Dispute:
8 months**

**Governorship
Election Disputes:
10 months**

**Presidential
Election Disputes:
8 months**

4. Grounds for challenging an election must be recognized by law.

Any individual or political party that intends to challenge or question the result of an election must ensure the petition is established on a valid ground or reason recognized by law. An election petition can only succeed with valid grounds recognized by the 1999 Constitution or 2022 Electoral Act. Section 134 of the Electoral Act 2022 lays out three grounds. They include;



- 1. Non-qualification:** An election can be questioned if the person declared as a winner was not qualified to contest the election at the time of the election. Where a candidate fails to meet the criteria enshrined in the constitution, such a person is ineligible to contest an election. The requirements of citizenship, age (President 35yrs, Senate and Governors 35yrs, House of Reps and State assembly 25yrs), membership and sponsorship by a political party, and education qualification are the foundational criteria for running for office.



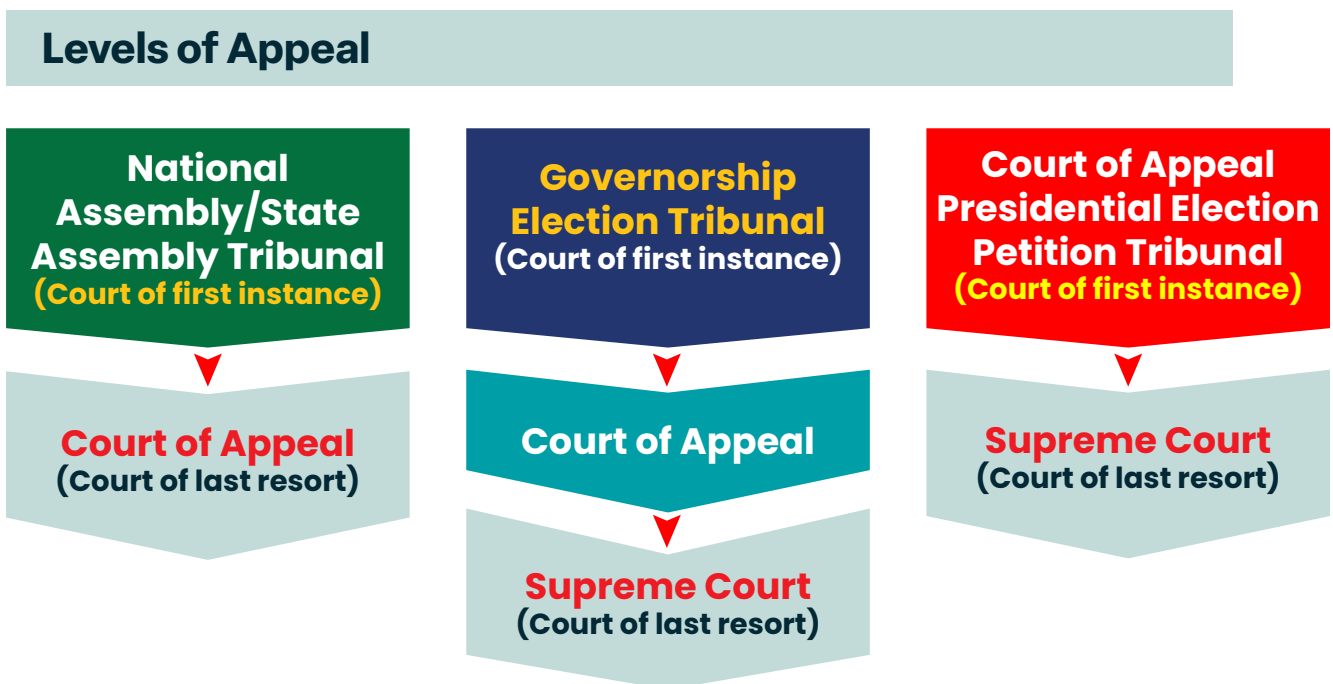
- 2. Corrupt practices and non-compliance:** A petitioner must establish that the election was invalid by reason of corrupt practices or non-compliance with provisions of the Electoral Act, 2022. Corrupt practices include electoral offenses like election fraud, bribery, falsification of election results. Non-compliance refers to outright violations of the Electoral Act, 2022 and INEC Guidelines, which confers an undue advantage to a candidate or party. A petitioner should avoid lumping corrupt practices and non-compliance together under one ground to avoid the attendant negative consequences.



- 3. Failure of the person declared a winner to score a majority of lawful votes:** Once the person initiating the petition can establish the candidate declared a winner of an election was not duly elected by the majority of lawful votes cast at the election, the election will be nullified. This ground relates to errors, computational accuracy in the collation of votes, exclusion of votes against the person filing the petition and that the person declared the winner fails to meet the legal requirement to be returned as a winner.

5. Tribunal judgments are appealable.

Litigants who are dissatisfied with rulings delivered by election tribunals or courts of first instance can appeal such judgments as a matter of constitutional right. Appeals arising from the decision of the Court of Appeal in respect of a presidential election shall be heard by the Supreme Court, which is the Court of last resort. In contrast, appeals against the decision of a Governorship election tribunal lie to the Court of Appeal and from the Court of Appeal to the Supreme Court, which is the final arbiter. Lastly, appeals on National and State Assembly election tribunal judgments are filed at the Court of Appeal, the final Court for all appeals related to legislative elections.



Conclusion

While the recourse to an unelected body of judges to resolve election disputes signals increasing faith in the judicial process, it also exposes the desperation of politicians to exploit the litigation process to clinch electoral victory. Without good judges, the aspiration of advancing electoral justice and political legitimacy may be thwarted. Charles Evans Hughes, in his presidential address to the American Bar Association, described a good judge as: -

“An honest, high-minded, able and fearless judge is, therefore, the most servant of democracy, for he illuminates justice as he interprets and applies the law; as he makes clear the benefits and shortcomings of the standards of individual and community rights amongst a free people.”

This calls for courage on the part of the judiciary to assert itself as a fundamental pillar of democracy, insulate itself from the influence of politicians and uphold the rule of law to the highest standards in the interest of democracy. By so doing, the judiciary would be the true last hope of the common man.

May good judges rise when it matters most to enforce the will of the people expressed through the ballot box.

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