# THE POLITICISATION OF ELECTION LITIGATION IN NIGERIA'S FOURTH REPUBLIC

**BY**

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**A thesis submitted in fulfillment of the requirements for the Award of Degree of Doctor of Philosophy in Political Science, School of Social Sciences, College of Humanities, University of KwaZulu-Natal, Pietermaritzburg, South Africa.**

## DECLARATION

I, EBENEZER OLUWOLE ONI declare that:

1. The research reported in this thesis, except where otherwise indicated, is my original research.

2. This thesis has not been submitted for any degree or examination at any other university.

3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.

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Signed: [redacted] Date: 25 August 2020

## DEDICATION

To the Glory of the Almighty God;
The memory of my late father, Hon. Joseph Bamidele Oni;
And the support of my adorable wife, Elizabeth Oluwaseyi
and children, Caleb Aduragbemi and Treasure Adurasetemi

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## ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| ABN: | Association for a Better Nigeria |
| AC: | Action Congress |
| CAN: | Action Congress of Nigeria |
| AD: | Alliance for Democracy |
| AG: | Action Group |
| ANPP: | All Nigerian Peoples Party |
| APC: | All Progressives Congress |
| APGA: | All Progressives Grand Alliance |
| CDC: | Constitution Drafting Committee |
| CDCC: | Constitutional Debate Coordinating Committee |
| CPC: | Congress for Progressive Change |
| DDC: | Direct Data Capture |
| EFCC: | Economic and Financial Crimes Commission |
| EMB: | Election Management body |
| EU: | European Union |
| EUEOM: | European Union Election Observation Mission |
| FEDECO: | Federal Electoral Commission |
| FGN: | Federal Government of Nigeria |
| GNPP: | Great Nigeria People's Party |
| ICJ: | International Commission of Jurist |
| IEBC: | Independent Electoral and Boundaries Commission |
| IFES: | International Federation of Electoral Studies |
| INEC: | Independent National Electoral Commission |
| IRI: | International Republican Institute |
| LP: | Labour Party |
| NBA: | Nigerian Bar Association |
| NCNC: | National Council of Nigerian Citizens |
| NEC: | National Electoral Commission |
| NEPU: | Northern Elements Progressive Union |

| | |
|---|---|
| NNDP: | Nigerian National Democratic Party |
| NPC: | Northern People's Congress |
| NPN: | National Party of Nigeria |
| NPP: | Nigeria's People's Party |
| NRC: | National Republican Convention |
| PDP: | People's Democratic Party |
| PNU: | Party of National Unity |
| PRP: | Peoples' Redemption Party |
| SAN: | Senior Advocate of Nigeria |
| SDP: | Social Democratic Party |
| SSS | State Security Services |
| TMG: | Transition Monitoring Group |
| UMBC: | United Middle Belt Congress |
| UNDP: | United Nations Development Programme |
| UPGA: | United Progressive Grand Alliance |
| UPN: | Unity Party of Nigeria |
| UPP: | United People's Party |

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## ABSTRACT

Since the early 1990s, the third wave of democratisation has permeated the polity of almost all the African states as authoritarian regimes are replaced with democratic governments through the ballot process. Therefore, in line with the prevailing realities across Africa as well as in other formerly autocratic and closed systems in Asia and Latin America, participatory government was re-introduced in Nigeria in 1999. The use of regular and periodic election as a means of regime change became apparent. However, the conduct of general elections in Nigeria since 1999 has been marred with myriad of controversies thus triggering electoral disputes. This shifts the burden of ensuring free and fair elections and by extension sustaining democracy on the judiciary. This duty, the judiciary performs in the manner it handles and adjudicates over disputes arising from electoral contests. Recent developments in Nigeria have shown that electoral fraud has transcended the casting of votes and has permeated the judicial arm of government. The judiciary is not immune from manipulations by political elite in order to secure electoral victory through the courts when electoral contests shift from the polling booths to the 'temple of justice'. It is therefore in the light of this development that this study examines the politicisation of election litigation in Nigeria's Fourth Republic using the 2007 general elections and the ensuing gubernatorial election litigation cases in Ekiti, Ondo and Osun states of Nigeria as case studies. The study fills the gap in litereature which focuses research attention on electoral fraud around issues relating to voting. The theoretical framework for this study was eclectic combining three theories namely elite, state fragility and separation of power theories. For the purpose of this study, qualitative research methodology using case-study design was adopted. The 2007 general election was selected for study using Ekiti, Ondo and Osun states as case studies using the non-probabilistic sampling technique. Purposive sampling method was employed in the selection of research sites and participants. Instrument for data collection was through the use of In-depth Interview (IDI) complemented by data from documented sources. Data from interviews conducted were transcribed and interpreted using thematic content analysis. Data from both primary and secondary sources were systematically, objectively and descriptively analyzed making valid textual inferences from them by identifying specific characteristics as they relate to the manipulation of the judicial process of resolving electoral disputes to secure electoral victory through the courts. Research findings revealed that a combination of financial inducements, executive control through the appointment of judges,

power of incumbency, delay tactics, promise of promotion and fear of persecution within and outside the judiciary were strategies political elite used in manipulating the judicial process of resolving electoral disputes to secure and/or retain electoral victories through the courts when they initially failed at the ballots. Finally, conclusions were drawn from the findings of the study and discernible recommendations made on how to reform the electoral process and the justice system of resolving disputed electoral outcomes in order to achieve democratic consolidation in Nigeria's Fourth Republic.

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# CHAPTER ONE
# INTRODUCTION AND CONCEPTUAL CLARIFICATIONS

## 1.1 Background of the Study

Central to discourse on democracy is the issue of election (Burns, 1985; Ariyo, 2001; Omotola, 2010) although competing ideas abound on what democracy stands for and this has generated many theories of democracy. Rousseau canvassed that democracy stands on a social contract that creates an indivisible entity to which everybody subscribes, invests their powers and surrenders their persons under the general will (Rousseau, 1968). However, Schumpeter (1976) rejected democracy as emphasising the people's liberty and welfare, arguing that those guiding principles are utopian. He proposed a new perspective of democracy as platform to empower individuals to declare political positions via competitive struggle for votes (ibid, 9). Huntington (1993, 6) contended that democracy, in terms of source of authority or purposes, can suffer imprecision and ambiguity while agreeing with Schumpeter that the main principle of democracy is that leaders are selected by people they govern through competitive elections. However, he criticised democracy's focus on the electoral process as narrow, insufficient and overly minimalistic. Przeworski (1999) and Dahl (1971; 2000) among other writers have defended the electoral and voting process of democracy for representing a systematic avoidance of violence as a method of conflict resolution trailed by benefits including moderation of the incumbent's behaviour, universal compliance with the results obtained through the process and its immense informative potentials (Zagel, 2010, 3).

Arising from the above, free and fair electoral contests have so far become the acceptable means of acquiring political power and facilitating regime change in democracies (Huntington, 1991). The use of election as an acceptable means of establishing government and power transfer has grown considerably since the Cold War ended due to the demolition of communism and the ascendancy of liberal democracy promoted by the United States (Akinola, 2014) which has permeated the African political system over time. In the context of global political transformation from autocracy to democracy, Africa has gradually been integrated into the democratic world as dictatorial and authoritarian regimes have been replaced with democratic governments through elections (Schedler, 2006). Therefore, in line with prevailing political realities around Africa as well as in other formerly autocratic and closed systems in Latin

America and Asia particularly in the 1990s, it was probably not accidental that participatory government[1] was reintroduced in Nigeria by the military regime of Abdulsalami Abubakar in 1999. Espousing participation as the centre of any democratic idea, Agbaje (1999: 193) conceived participation as the extent of individual involvement in matters of the society. It is important to observe that elections open up the political process through voting and this, in turn, is crucial for the functioning of a truly representative government (Alikpili, 2004, 130).

The disengagement of the military from the political terrain in Nigeria on 29 May 1999 opened a new chapter in the annals of the politics of the hitherto undemocratic Nigerian state. This threw a fresh challenge into the political space with a question hanging over the political elite and public officials on whether they could efficiently and effectively manage the political institutions of governance to prevent democratic relapse as experienced in the First Republic of Nigeria (1960-1966) and the Second Republic (1979-1983) respectively. This calls for a system of changing governments periodically to promote actualisation of the principles and tenets of democracy. Therefore, the use of periodic election as an instrument of changing governments became apparent. It was in this sense that Guy (1991) argued that 'democracy is principally the right of the people to enthrone and dethrone the government at agreed times by peaceful means. However, it is apparent that the real possibility suggested by Guy is a factor many developing democracies, including African democracies, are still struggling to attain. Cohen (1991: 75) averred that "even where certain African political systems have been able to maintain a viable set of electoral procedure through several elections, thus establishing some degree of stability for the electoral system, the political value of this attainment is questionable". The question of the political value of periodic, regular elections raised by Cohen is perhaps responsible for the increasing number of post-election litigations in many developing democracies including Nigeria. In such situations, the judiciary becomes critical in resolving disputes arising from the elections. This also shifts the burden of sustaining democracy and ensuring free and fair elections on the judiciary (Taiwo and Ajigboye, 2013: 437). The judiciary performs this role through the judgments it gives on election litigation cases coming before the courts.

[1] Participatory government relates to the opening up of the political space to allow citizens to freely choose their representatives. It is opposed to the authoritarian regimes in which leadership selection is by the instrumentality of force. For better understanding of this concept, see Yagboyaju, D.A., (2011) ''Nigeria's Fourth Republic and the Challenge of a Faltering Democracy''. African Studies Review Vol. 12, Issue 3.

Electoral dispute is a global phenomenon which affects electoral processes worldwide (Petit, 2000; Davis-Roberts, 2009) although the intensity of the dispute may differ from country to country. Electoral dispute refers to disagreement and competing claims that may arise during the electoral process which, if not properly managed, may escalate to violence. This form of dispute is common in countries where economic security is dictated by, derived and secured on the basis of closeness to power (Bratton and Van de Walle, 1997; Omotola, 2008). Therefore, the transfer of political power or change of government via elections has been viewed as battle that must be won to retain political power and control the economy (Ake, 1981). In countries where access to political power is synonymous to economic security, it is notable that elections are trailed by crises to the extent of pushing the country to the brink of disintegration and, in some cases, precipitated military incursion into political governance (IFES, 2011; Norris, Coma, Nai and Gromping, 2016).

A recourse to Nigerian political history revealed that flawed elections have been the precursor to major unwanted and uncivilised developments since independence in 1960 (Luqman, 2009). For instance, while chronicling the Nigerian scenario, Iyayi (2005) posited that the controversy surrounding the fraudulent elections of 1965 constituted the major grounds for the forceful military take-over of power in 1966. Again, the bungled elections of 1983 were used as the rationalisation for the military coup of 31 December 1983. Relatedly, the flawed elections of 1993 (mainly Babangida's cancellation of the presidential elections of June 12 1993) led to the takeover by Abacha in 1993 and the establishment of his monstrous tenure. Similarly, Omotola (2008) and Tohbi (2009) have cited fraudulent elections as the major trigger of electoral disputes in Ethiopia in 2005 and other countries including Nigeria in 2003, 2007 and 2011. It was estimated that, by 2007 alone, about 1,427 petitions were filed against alleged fraudulent election results released by the Independent National Electoral Commission (INEC), the electoral umpire in Nigeria (Sagay, 2012). Further still, studies have revealed that between 2007 and 2015 elections, about 1,170 people lost their lives to election-related violence across Nigeria (*Nigeria Watch*, 2015). Disputed election is also accountable for staggered elections in some states in Nigeria.

The realisation of a sustainable democracy and consequently democratic consolidation is not limited to the casting of votes. As a process, it begins with the enactment of appropriate and

relevant electoral laws, the conduct of elections and the announcement of results, all of which terminate with the effective handling of disputes and petitions emanating from such elections by the judiciary. The judiciary in Nigeria's Fourth Republic has become a political battlefield for the elite to influence the process and outcome of the courts specifically established to handle election disputes. The political elite, through many obnoxious means including ballot stuffing, ballot snatching, multiple thumb printing, under-age voting and false declaration of results, have influenced the electoral process and seem to now consider the judiciary as another avenue to manipulate election results when they initially lose at the ballots. Getting judgments and electoral victories through the courts is a common feature of the politics of the Fourth Republic in Nigeria (Yagboyaju, 2011; Onapajo and Uzodike, 2014).

Political parties and their candidates who lose election at the ballots often contest such outcome in courts to upturn the results through election petition[2]. The unfortunate reality that Nigeria's electoral system is fraught with a litany of problems which usually results in the rejection of election results as being unreflective of the mandate of the electorate has a natural consequence, which is, that election petition tribunals[3]/courts are flooded with election petitions from aggrieved parties that lost at the polls (Dodo, 2012). As exemplified by the 2007 general election experiences in Ekiti, Osun and Ondo states of Nigeria, aggrieved parties sought the nullification of the election results and demanded that courts should declare them the rightful winner. Politicians agree within their circle that judgments and electoral victory can be secured through the ''back door'' in Nigeria by manipulating the judicial process (Vanguard, 2016). This is attributable to the winner-takes-all syndrome of Nigeria's politics in which every contender in an election tries to do everything possible to emerge a winner because of the several benefits attached to power. Whosoever wins in an election controls the machinery and mechanism for determining the resource flow of the country at least for the constitutionally-specified tenure of office. This is one of the major reasons why electoral contest is usually acrimonious. Therefore, in order to ensure equity, electoral tribunals have been incorporated into the electoral process to

[2]Election petition refers to the procedure of challenging the result of an election into federal executive offices, legislative houses, state executives offices and houses of Assembly or local government offices in Nigeria.

[3] Election Tribunal is a constitutionally-created court saddled with the responsibility of resolving disputes emanating from the conduct of elections. See Dodo (2012), The Performance of Election Petition Tribunals: An Appraisal of the North-Central Zone.

ensure required balance where the electoral umpire is deemed to have breached the process either by error or in connivance with other stakeholders in the electoral race. The judicial process of resolving electoral disputes in Nigeria often drags from the lowest court (Election Petition Tribunal) to the highest courts (the Supreme Court), especially when satisfactory judgments are not secured by any of the parties to the disputes or where there are perceived manipulation of the processes that produce the judgments.

## 1.2 Statement of the Problem

This study examines the influence of politics on election litigation processes in Nigeria. Despite efforts at democratising, Nigeria's democracy can not be said to be consolidated. Elections remain controversial as the menu of manipulations that characterise electoral processes remain high thereby increasing post-electin litigation. The history of Nigeria is replete with elections even before independence (Bamgbose, 2012). The trend was originated by the Clifford Constitution of 1922 in response to calls by Nigerians for increased participation in the decision-making process during the colonial administration especially on matters that affected the welfare of Nigerians (Awopeju, 2016). However, studies have shown that Nigeria still confronts the challenge of conducting credible elections that will ultimately reflect the choice of the electorate to choose their leaders freely (Adejumobi, 2000; Agbaje and Adejumobi, 2006; Suberu, 2007; Ibrahim, 2007; Ashiru, 2009; Yagboyaju 2011, 2015). Since the first general elections which took place in Nigeria in 1959 to usher in the much anticipated First Republic in 1960, elections have been generally mired in controversies and characterised by court cases bordering on disputes over electoral outcomes. And these cases have often revealed widespread electoral malpractices and fraud which could threaten democratic sustenance (Aiyede, 2007).

Several factors provide incentives for the widespread electoral malpractices and fraud that define Nigeria's electoral process. The need to maintain a patron-client relationship, described as neopatrimonialism (Bratton and Van de Walle, 1997; Zagel, 2010) in which political leaders provide their subjects with needed security, stability, material gains and favour with the clients receiving them in exchange for their loyalty (Bratton and Van de Walle, 1997: 63) has negatively impacted on the electoral and political life of Nigeria. The neopatrimonial system thus supplants many democratic institutions while muffling the voice of the people. To gain political power, politicians therefore display their loyalty to the neopatrimony as against loyalty to the electorate

who has the power of legitimation. In order to attain political power, politicians desecrate the constitution, abuse the rule of law and break electoral laws (Zagel, 2010). Hence, the legitimacy of political office holders enthroned against the popular choice of the people is often challenged through election litigation. The resultant effect of this negative development in Nigeria's electoral democracy has increased post-election ligations in the country especially in the Fourth Republic which started on 29 May 1999. For instance, the election petition tribunals received 1,427 petitions challenging the outcomes of the 2007 general elections as announced by the Independent National Electoral Commission of Nigeria (INEC) against the 570 received after the 2003 general elections (Sagay, 2012). Clearly, this has been one of the fundamental challenges confronting the consolidation of democracy in the country.

The nature and character of Nigeria's political system remains a serious concern for democratic sustenance. The way the system is structured has turned electoral competition in Nigeria into contestation for power and resources among the elite, thereby resulting in the use of every *tactics* in gaining control of the process. The performance of the judiciary since Nigeria returned to electoral politics in 1999, especially in the manner it handles election litigation cases has further devastated the credibility and integrity of the institution. The institution has been accused of corruption, bias and manipulation of the judicial process of resolving post-election disputes, thereby describing it "as a safe sanctuary for election riggers" (Mohammed, 2008). The structure of the Nigerian judicial system is a major threat to its autonomy and independence and a veritable source of attraction for political/elite manipulation. These identifiable institutional weaknesses could tie the processes and outcomes of election litigations to political forces and interests, thus posing serious challenges to democratic practice and the rule of law in Nigeria. Research studies (Reynolds, 1993; Lehoucq, 2003; Zafarullah and Akhter 2001; Wang and Kurzman 2007; Lafargue, 2008; Makumbe, 2002: Schedler, 2006) have contributed to literature on the politicisation of elections and the many patterns across different regions and countries. These studies have demonstrated how the political elite manipulate the electoral process through vote-buying, intimidation and repression of voters, ballot stuffing, ballot snatching, under-age voting, electoral violence, falsification of results and corruption of electoral officials in gaining electoral victory. However, using the 2007 general elections and the governorship election litigation cases in Ekiti, Ondo and Osun states of Nigeria as case study, this research studied the different strategies and patterns elites use in influencing the judiciary to secure electoral victory

through the courts. It also examined the practices that subject the judicial process to manipulation in Nigeria's Fourth Republic.

### 1.3 Research Questions

This research was guided by the following questions:

1. What underlying interests and forces determined processes and outcomes of election litigations in Nigeria?
2. What were the strategies employed by political and non-political elites in influencing the judicial process in election litigation cases in Nigeria?
3. How can the processes and outcomes of the controversial election litigation cases in Ekiti, Osun and Ondo states be explained within the context of election manipulation in Nigeria?
4. In what ways does the structure of the judiciary in Nigeria allow the influence of the processes and outcomes of election litigations in Nigeria?
5. What are the implications of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic consolidation?

### 1.4 Aim and Objectives of the Study

This study aims to examine the influence of politics in election litigation processes in Nigeria with the interest to understanding the manipulation of the judiciary responsible for the handling of electoral disputes as an emergent phenomenon in winning electoral contests in Nigeria's contemporary democracy. Notably, other objectives are to:

1. Examine the underlying interests and forces that determined the processes and outcomes of election litigations in Nigeria.
2. Explore the strategies employed by political and non-political elites in influencing the judicial process in election litigation cases in Nigeria.
3. Examine how the processes and outcomes of controversial election litigation cases in Ekiti, Osun and Ondo states can be explained within the context of election manipulation in Nigeria.

4. Examine how the structure of the Nigerian judicial system was susceptible to political influences over election litigation processes and outcomes in Nigeria.
5. Explore the implications of intermittent controversies surrounding election litigation in Nigeria's Fourth Republic for democratic consolidation.

### 1.5 Significance of the Study

Not so many people will disagree that there is overwhelming literature on electoral manipulations in Nigeria, most of which dwell on understanding the strategies employed by political and non-political elites to influence, intimidate and repress voters, buy votes, falsify results and manipulate electoral officials to gain electoral victory. However, this study is an attempt at exploring the political behaviour of the different institutions and/or actors involved in election litigations in the Fourth Republic of Nigeria. The research examined the influence of politics in the election litigation processes in the Fourth Republic of Nigeria by understanding the manipulation of the judiciary responsible for the handling of electoral disputes as an emergent phenomenon in winning electoral contests in Nigeria's contemporary democracy. This study is, perhaps, among the first set of academic efforts at exploring the politics that shapes election litigations other than the legal explanations that dominate extant literature.

Proven cases of electoral fraud and corruption by the staff of Nigeria's Election Management Body (EMB) which earned some of them dismissal from their jobs and several jail sentences indicate that election administration in Nigeria is susceptible to manipulations to produce undue winners from electoral contests and this requires interrogation particularly the manner it compromises the judicial process of resolving election disputes. Furthermore, judicial corruption is a phenomenon that is becoming increasingly pronounced in Nigeria's legal cum political lexicon. Thus, a study of the controversies that surround election administration and election litigation processes and outcomes within the prism of electoral and judicial corruption offers more insights into understanding electoral politics in contemporary Nigeria. The study provides reform measures in the electoral and judicial systems especially as it concerns election litigations and, by extension, the deepening and strengthening of the democratic and political system. It tends to contribute to efforts that strengthen democratic ethos and values in the administration of election petitions after electoral battles have shifted from polling booths to the judiciary. This becomes necessary as emphasis was on the rules of procedure as against technicalities and

whims and caprices of political and judicial gladiators in deciding election petitions. Broadly, the study will benefit judicial officers across the country, especially those participating in election petition tribunals, Election Management Body officials, politicians, students of politics and all stakeholders in Nigeria's democratisation efforts.

### 1.6 Scope and Limitation of the Study

There are many scholarly works on the politicisation of elections and the judicialisation of politics and elections in Nigeria. These attempts have covered efforts in the aborted three prior republics as well as the current Fourth Republic. From the inauguration of the Fourth Republic on 29 May 1999, six general elections and several political party primary elections have been conducted with most of the outcomes challenged at Election Petition Tribunals, the Courts of Appeal and the Supreme Court. This research work investigated the handling of election petitions and sundry issues in Nigeria's Fourth Republic, focusing on the 2007 General Elections and the consequent crisis of election litigations by using the gubernatorial elections in Ekiti, Osun and Ondo states of Nigeria which lasted from 2007 to 2010 as case studies. The study specifically looked into political influences or manipulation of the judicial process on the selected cases.

In the course of this research, I encountered certain limitations that dragged the timely completion of the dissertation. First, this study area has not been expansively explored in Political Science except in the disciplinary area of Law. This makes literature on the subject matter of the politics of election litigation scarce in Nigeria. While I am interested in examining the influence of politics on legal adjudication of electoral disputes, most of the available research materials were pointing towards proving legal facts that were outside the purview of this study. Literature search therefore took a lengthy time to accomplish. Secondly, though most of the respondents I interviewed were cooperative and supportive, they were almost difficult to reach at a go. In some instances, I had to travel over three or four times to secure appointment with the participants which elongated the fieldwork timetable and also affected the funds budgeted for data collection.

## 1.7 Research Methodology and Methods

Methodology, in the words of Rebeck *et al.* (2001), incorporates procedures for achieving an objective. In this sense, the objective relates to exploring a phenomenon to expose causes and effects. Research methodology, to a researcher, deals with the understanding of social reality, the interpretation of a phenomenon, and the instrument enlisted to design suitable techniques to get to the subject of investigation. This section is, therefore, about the planning and execution of the research study, focusing on the research design to be used, sample size and sampling technique, data collection method and analysis alongside ethical consideration.

### 1.7.1 Research Design

Research Design is simply a basic plan or architecture for empirical research (Bamgboye and Okoduwa 2009, 35). It provides a bridge between the research questions and the data to be collected. Thus, it shows the link between the research questions and data as well as what tools and procedures will be used in answering the research questions. In the present case, qualitative research methodology, using case-study design, was adopted. This tends to be apt for this research because it is relevant to the objectives of the study. Qualitative research extensively seeks answers to a question with systematic use of predefined procedures, collects evidence and makes findings not predetermined, but applicable beyond the immediate boundaries of the study. The advantage of this over other methods is better captured in the submission of Snider (2010) when he asserts that the outcome is lucid and comprehensive. In qualitative research, subjects are found to answer questions elaborately with richer insights any other approach may not capture. Qualitative methods, according to Obono (2013), are means of collecting and analysing interpretive and subjective social reality in which the researcher is typically immersed. They are particularly good at answering the “why”, “how” and “what” questions.

### 1.7.2 Population, Sample Selection and Sampling Technique

Gubernatorial elections have been held in every state of Nigeria since the 1999 recommencement of electoral politics, thus making every state suitable as the population for this study. Also, there have been six General Elections (1999, 2003, 2007, 2011, 2015 and 2019) in the current dispensation of democracy in Nigeria. However, the 2007 General Election was selected for

investigation being the most fraudulent (Suberu, 2007, Omotola, 2010, Yagboyaju, 2011) with focus on cases from three states as samples. These are the Ekiti State gubernatorial election litigation (2007-2010); Ondo State gubernatorial election litigation (2007-2009) and the Osun State gubernatorial election litigation (2007-2010). The sampling technique adopted for selecting the samples is non-probabilistic; hence the three aforementioned cases and states are purposively selected. Purposive sampling involves selection of sample elements because of certain common criteria. In this type of sampling technique, one or few elements are selected for an intensive study because they are considered either typical or outstanding examples of the variables with which the research is concerned (Bamgboye & Okoduwa 2009, 52). The 2007 election was selected for investigation because in comparison with other elections, it witnessed high menu of political intrigues, fraudulent practices and manipulations at both the ballots and the judiciary. Researchers on Nigeria's electoral democracy, including local and international election observers, submit that the 2007 General Election was the worst-run in the political history of the country. The election has been variously described as: democracy in retreat (Rawlence and Albin-Lackey, 2007); garrison democracy (Omotola, 2009); failed programme (Ibrahim, 2007); politics of personal rule (Okolie, 2010) and muddled elections (Suberu, 2007). This was evident in the number of petitions it generated thus making it the highest in Nigeria's electoral history (Aiyede, 2007).

Cases in Ekiti, Ondo and Osun states were selected because of certain features common to them as belonging to the extreme category of post-election litigations in Nigeria. Election petitions that challenged electoral outcomes from other 33 states of the federation, 109 senatorial districts, 360 federal legislative constituencies, various state Legislative Assemblies and the election into the office of the President can be classified into the typical cases having been settled within the normal procedural manner starting from the election petition tribunals to the appeal court and, finally, to the supreme court (for Presidential election). Though many of these cases were also engulfed in one legal controversy or the other, they were not as pronounced as the cases in Ekiti, Ondo and Osun states for three reasons. First, the cases lingered too long in courts. The three cases lasted for not less than three-and-half years in courts while, in actual fact, the tenure of office of the incumbents whose electoral victories were contested was four years. Secondly, the three cases were the only extreme cases that were retried at both the election tribunal level and the Court of Appeal twice. Normally, election petition process starts at the election tribunal level

(the court of first instance), and moves to the appeal court if the judgment emanating from tribunals is not acceptable to any of the parties.

It is noteworthy that up to the 2007 general elections, the appeal court remains the final arbiter in any electoral dispute in Nigeria except for the Presidential election that extends to the Supreme Court. Governorship election litigations in Ekiti, Ondo and Osun states after the 2007 general election were first tried at the tribunal level and then went into the appellate courts where they were ordered for retrial at the election tribunals. Judgments from the retrial were again contested at the appellate courts which later delivered final judgments. In essence, the three cases were tried at the election tribunals twice and at appeal courts twice. The intricacies involved in these trials and retrials deserve interrogation. Thirdly, the intensity of the three cases in courts put the judiciary in public glare more than any other and also subjected it to critical credibility and integrity test.

### 1.7.3 Research Instruments and Method of Data Collection

This study adopts two methods of data gathering; namely the primary and secondary collection methods.

**Primary Sources:** Primary data are important for this study because, according to Afigbo (1990), they are accepted as reliable since they generate direct information from the participants or key witnesses, thereby reducing the tendency to distort or exaggerate the study object. Arising from this, the instrument for primary data collection involved the use of In-depth Interview (IDI), which sourced information from identified respondents in the selected states. Notably, samples are usually purposive in qualitative research (Patton & Cochran, 2002). This is like the opposite of random sampling whereby research identifies population target based on certain criteria as against choosing them at random. In this connection, respondents or participants were selected due to their ability to generate useful data for the study. While sample sizes are typically small for qualitative research, one way of identifying how many people are needed is to keep interviewing until nothing new comes from data. For this study, this researcher interviewed 15 respondents in each state (45 in the three states) and these included the Chairmen of the political parties involved in the court cases, the Director-Generals of the candidates' campaign organisations, the Media Directors of the candidates' campaign organisations and the candidates

who contested the elections (all of whom are politicians, thereby categorised into the political class); the lawyers who represented the political parties and their candidates in courts and judges who had presided over election petition cases (categorised as members of the judiciary); senior academic members of departments of Political Science and Law in identified universities who had, over time, developed expertise in this field of research through scholarly writings (categorised into the academia) and Executive Directors of Non-Governmental Organisations monitoring election petitions and tribunals in each state (categorised into the civil society organisations). Selected respondents were approached and recruited individually for participation in the interview based on their knowledge of the cases.

The choice of sample size reflects an understanding that, within an interpretivist and phenomenological theory of knowledge, deep data is acquired through a contextually-rich smaller sample size (Vasileiou et.al, 2018). This researcher also engaged in documentary research of archival documents of primary nature such as the judgments from various election tribunals, the constitution of the Federal Republic of Nigeria, Electoral Acts and newspaper interviews of key informants.

**Secondary Sources**: The above-mentioned primary data were complemented by secondary data from documents including journal articles, books, newspapers and internet materials. Data from the secondary sources assisted greatly in strengthening the quality of the primary data gathered and were also useful in the course of the analysis in validating the texts of the interviews conducted.

### 1.7.4 Method of Data Analysis

Data from the primary and secondary sources were interpreted using thematic content analysis. The responses from the interviews conducted were transcribed, interpreted and content-analysed. To Krippendorff (2004: 18), content analysis yields new insights, increases a researcher's understanding of particular phenomena or informs practical actions. The choice of thematic content analysis for this study is informed by its usefulness as an analytical tool because it involves a descriptive presentation of qualitative data. Speaking on qualitative data, Anderson (1997: 1) avers that "qualitative data may take the form of interview transcripts collected from research participants or other identified texts that show experientially on the topic of study and

thematic content analysis is especially useful in analysing such transcripts". Anderson further notes that thematic content analysis "reflects the thematic content of interview transcripts by identifying common themes in the texts provided for analysis in order to give expression to the communality of voices across participants". In his contributions, Patton (2002: 453) argues that it is "any qualitative data reduction and sense-making effort that takes a volume of qualitative materials and attempts to identify core consistencies and meanings". Based on the technique, the researcher undertook descriptive analysis of data from both primary and secondary sources in systematic and objective forms and, in the process, made inferences from them by identifying features relating to the question of the influence of politics in the election litigation processes in Ekiti, Ondo and Osun states of Nigeria which was through the manipulation of the judiciary responsible for the handling of electoral disputes.

### 1.7.5 Credibility and Trustworthiness of the Study

Credibility and trustworthiness are key aspects of qualitative research (Cope, 2014). It is concerned with dealing with responses from research respondents which may be value-laden, in a way that does not negatively impact the outcome of the research. To militate against subjectivity, member checking technique is commonly used in determining how accurate qualitative findings are (Cope, 2014: 90). Ordinarily, this entails returning the final report and specific themes to research respondents in their various locations for them to determine if their perceptions of the studied phenomenon are appropriately captured by the research outcome. For the purpose of this study, the option could not be explored because of time constraint and the financial implications of such exercise, thus the study will be subjected to review by an external examiner or what Lincoln and Guba (1985 cited in Cutcliffe and Mckenna, 2004) called auditor. The external examiner is in no way familiar with either the project or the researcher, hence objectivity in assessment will be guaranteed at the conclusion of the study**.** Curbing subjectivity is necessary so that the researcher could achieve the twin goals of fairness and equity in the presentation of respondents' viewpoints and avoiding lopsided interpretations which could make the biases of the researcher or only a few respondents obvious.

### 1.7.6 Ethical Consideration

Ethical consideration is integral to research (Bryman & Bell, 2007). Ethics speaks to the norms

and standards for conduct that differentiate between what is right or wrong. It helps in determining the difference between behaviour considered acceptable and unacceptable (CIRT, 2018). It is located in the Greek philosophical inquiry of moral life. According to Fouka and Mantzorou (2011), research ethics broadly covers details of daily work, protecting the subjects' dignity and, above all, the publication of the information distilled from the study. Against this background, the researcher was mindful of the right of the respondents to determine their participation in the interview process and, thus, secured their consent before the commencement of the interview. Importantly, the researcher ensured compliance with Bryman and Bell's (2007) fundamental principles relating to ethical considerations in research including:

1. Research participants should not be subjected to harm in any ways whatsoever.
2. Respect for the dignity of research participants should be prioritised.
3. Full consent should be obtained from the participants prior to the study.
4. The protection of the privacy of research participants has to be ensured.
5. Adequate level of confidentiality of the research data should be ensured.
6. Anonymity of individuals and organisations participating in the research has to be ensured.
7. Any type of communication in relation to the research should be done with honesty and transparency.
8. Any type of misleading information, as well as representation of primary data findings in a biased way must be avoided.

In line with the above, participants were given an Informed Consent Form (See Appendix I) before starting interview schedules. Interviewees were adequately informed of the essence of the research prior to conducting interviews. Further, respondents were informed that their participation was voluntary and they could withdraw without restrictions, if uncomfortable, at any stage in the process. They were reassured of their anonymity and that information collected from them was for research purposes only, and would be confidential. In addition, works cited in this study were properly acknowledged and included in the bibliography. This study complied the ethical considerations as prescribed by the University of KwaZulu-Natal Ethics Committee (UKZNEC). The defended proposal and ethical clearance application were submitted for

approval through the Higher Degrees Committee of the school. The proposal was accepted and approved and, thereafter, ethical clearance was granted (See Appendix III). When the research was completed, the thesis was submitted to Turn-it-in software to check the similarity index. The originality report issued will be submitted to the College Higher Degrees office.

## 1.8 Conceptual Clarifications

### 1.8.1 The Notion of Politics/Politicisation

The term *politics* is a common concept with much-contested definitions in the social sciences. The contestation stems from the inability to submit to a consensus of opinion about what constitutes the *political* and where exactly politics takes place. This suggests that politics exists wherever human beings interact for certain purposes. Thus, human communication which invokes principles, statements, argument and disagreement can be explained within the context of politics. Since individuals exist for the actualisation of certain interests and such interests conflict with others, politics becomes the instrument for resolving such conflicts. Since politics is the allocation of values in a political system (Easton, 1957), politics thus occurs in the distribution of such values defined in terms of goods, benefits and struggle for power to take charge of the allocation to satisfy certain individual and group interests. It, therefore, involves the contest for power and authority to attain or satisfy individual interest. Alfred de Grazia (1965, 21) thus argues that politics or the political comprises the events occurring around the decision-making centers of government.

Individuals struggle for power and authority to assume the control of governmental institutions to influence or manipulate the decision-making processes of such institutions so as to actualise their parochial interests or of the groups they represent. It is in this sense that one can situate the position of Wright (1955, 130) that politics speaks to the art of influencing, manipulating and controlling others. Dyke (1960, 134) puts it more bluntly by positing that politics is “the struggle among actors pursuing conflicting desires on public issues”.

The foregoing makes the conception of politics according to Lasswell compelling even though it was espoused over half a century ago. Lasswell (1958) posits that politics is the study of what an individual gets at a time in context. To him, studying politics is the “study of influence and the influential” and this definition remains central to the foregoing explanation. As observed by Guy

(2004, 23), it is often comparable to an exciting task wherein elections provide excitement and material for the media. What this simply suggests is that the study of elections takes into account an understanding of the role of influences and the influential. Accordingly, Dahl (1995, 21) defines influence as" a relation among actors such that the wants, desires, preferences or intentions of one or more actors affect the actions or predisposition to act of one or more actors". Anifowose (1999, 112-113) avers that "a person has influence over another within a given scope to the extent that the first without resulting to either a tacit or an overt threat of severe deprivations caused the second to change his course of action". To both Dahl and Anifowose, power and influence are almost synonymous in that both have the potential to cause changes or modifications in others' behaviour.

Perhaps, this explains the various controversies and irregularities that characterise election litigations in Nigeria's Fourth Republic. The elections, starting from the registration of voters' exercises, campaign issues management including media coverage by public broadcasting stations, the voting exercises, the collation and announcement of results, the processes of election petitions and the judgments arising therein have been tied in some instances to political forces (interest and influences) which suggest that certain influences and the influential determine the composition of election petition tribunals, the rules to be applied and the judgments that attend. The argument is sustained on the recurrence of different judgments that attended election petitions with similar cases and material facts. Conflicting judgments in cases of similar material facts can, therefore, be tied to the politics that characterise election litigations in Nigeria's Fourth Republic.

Accordingly, Zum (2014) views politicisation as the need or actual deliberate art of transmuting apolitical issues; that is, issues pertaining to other social subsystems, into the subsystem of politics, while further dichotomising the concept into two distinct but related categories for the purpose of a broader understanding. In the first category, he argues that issues are transported to the public sphere from the private sphere. In the second category, however unexpected this may seem, the reverse is not necessarily the case. Rather, issues are transported to the sphere of government from the sphere of the public. The attention of this research is neither on the first category nor on the second. However, these two categories are found instrumental in developing a third category of politicisation to meet the needs of this study. This idiosyncratic category of

politicisation is further diversified into two branches, namely the A politicisation and the B politicisation, respectively. While the A politicisation is about transporting issues from the syndicate sphere to the public sphere, the B politicisation coincides with transferring issues from the syndicate sphere to the government sphere. Clearly, the distinguishing factor between B politicisation here above and its first category counterpart proposed by Zürn is the private-syndicate divide. For the sake of clarity, it suffices to mention that the syndicate sphere is neither synonymous with the public sphere nor with the private sphere; rather, it is somewhere in between.

To narrow down the understanding followed here, political parties in a nascent democratic dispensation constitute a syndicate if consideration is given to their formations and modus operandi. The concept of syndicate, as employed here, differs from its definition in security sector where it is linked to organised crimes or officially-identified criminal groups, but as delineated by Dictionary.com as "a group of individuals or organizations combined or making a joint effort to undertake a specific duty or carry out specific transactions or negotiations" as corroborated by the Ninth Edition of *Oxford Advanced Learner's Dictionary* (2015, 1589): "a group of people or companies who work together and help each other in order to achieve a particular aim". In either category, the bedrock of politicisation is manipulation (Bar-Joseph 2013, 347) to ensure that the issue seems absolutely open to the assessment and decision of the public sphere whereas, in the actual sense, it is selectively open to them to reflect the preferences of the subjects of politicisation.

Drawing from the above, politicisation denotes subjecting to public and governmental debate a matter on which decision has already been, or is being, reached by a microscopic few group of people. In more specific terms, politicisation of electoral litigations connotes subjecting the legal process of deciding which individual or political party's election victory to be upheld to manipulation which involves making deliberate attempts to influence the decision of the judiciary. Put differently, it is the ensemble of moves to switch choice-based or justice-based criteria and politics-based criteria in leadership selection. In this sense, the objects of politicisation are the decision itself and the judiciary which is the decision-making institution while the subjects of politicisation are all those involved in the process of adjudication.

The truism that politicisation is a pejorative concept has been captured by Betts (2002, 1) where he contends that, although it appears to be a myth by many and a rare phenomenon by many others, there is hardly anyone from any quarters who believes that it is meant for the common good. This assertion is sustained on the view that politicisation, regarded as a face of corruption, manipulatively serves vested interests. Betts however postulates that the act is inevitable and necessary to an extent, depending on how it is conceptualised. For instance, in the intelligence sector, politicisation is sometimes believed to be a source of analytical strength and strategic inspiration.

### 1.8.2 Meaning and Context of Democracy

Three centuries after Webster defined democracy as "people's government, made for the people, made by the people, and answerable to the people", Abraham Lincoln, an erstwhile United States president, altered the definition by stating that democracy means "government of the people, by the people, and for the people". A gamut of definitions has, over time, been structured along these two colossal definitions. Onyeoziri (2000, 309) opines that democracy is "[…] a cluster of rules permitting the broadest and surest direct and indirect participation of majority of citizens in political decisions; that is, in decision affecting the whole collectively". This is only one of the many definitions of democracy interpretable from the earlier ones. Another would be from Guy (1991) who interprets democracy, first and foremost, as the presentation of real opportunity for people to peacefully enthrone or dethrone their rulers at regular intervals. However, democracy has been widely (mis)conceptualised by many who have managed to confuse it for republicanism, a situation that has commanded the expediency to categorise it into two distinct forms; namely, classical democracy which opened up involvement in the decision-making process to all except women, children and slaves and modern democracy which restricts decision-making practices to the elected.

According to Danjibo (2012, 303), classical democracy is geographically traceable to Greek city-states and temporally traceable to the classical epoch. Nevertheless, modern democracy owns its origin to Europe and North America particularly the United States and spread across the world. Adedayo (2011, 23) captures modern democracy in direct, indirect, participatory, consensus, consociation, representative and liberal forms, all of which are not necessarily mutually exclusive at all times. The basic tenet of the direct democracy calls for a political system that

allows for citizens' personal participation in decision-making rather than banking on representation which strips them of their power to alter their constitution and project productive and developmental ideas in a direct manner as provided by indirect democracy. In the case of participatory democracy, proportionality is favoured in that decisions are reached on the basis of the way and means peoples in different areas of the country are affected rather than on the basis of the majority-minority question. The emphasis of consensus democracy, as the term implies, is on applying consensus decision making to the processes of legislation to provide for a broad range of opinions in political agenda, as much as to inhibit domination in decision making by only one socio-cultural group.

The concern of consociation democratic practice favours a group decision-making process, sensitive of all forms of minority objections, as well as agreement by all participants. This process may rightly be adjudged highly effective in that it characterises cooperation and egalitarianism. The best gift offered by this form of democracy is its tendency to engender cooperation of leaders from different fragments of the populace. For its own part, representative democracy advocates selection of leaders or government officers by means of election, with emphasis on plurality of votes. In this instance, the people elect certain trusted individuals to represent and act for them, expectedly in their interest.

In contrast, by liberal democracy, allusion is made to a high degree of respect or the consent and participation of individuals, consideration being given to their natural rights. Here, an almost unlimited franchise comes into play through secret balloting, and "there is freedom of speech, religion, organization and a constitutional framework of law to which the government is subordinated and guarantees equal rights". The emphasis in this form of democracy is on guaranteeing individual liberties and consent as well as freedom and fairness in the process that brings leaders to power. Adedayo (2011) adds that one of the many features of democracy is to provide norms for political participation, thereby spurring in individual citizens of a nation the private and collective interest in the development of their country. Democracy thus thrives on popular participation of the citizens since the government is primarily for them and their choice is inalienable (Agbaje, 2006).

### 1.8.3 The Concept of Election/Electioneering

Owing to its indispensability to democracy, the concept of election has caught the attention of many scholars in the field of social sciences. Elections can be denoted as the hub of the legitimate process of making choices in a democratic system of government. They are also a means of selecting, among numerous alternatives, choice of people to control a state. They are processes of choosing especially by voting at regular time. The process of election is made possible by three parties; namely, the candidate-representatives also known as aspirants, the voters also known as electorate to which the aspirants also belong and, the umpire, that is the body, often independent of any government or popular influence, responsible for organising the election. With this political arrangement, aspirants are usually faced with the challenge of convincing the electorate that they are the best candidates for the job. The entirety of the moves to achieve this goal is what is known as electioneering. Salami (2004) notes that election transcends mere voting, and it is rather a process including delimitation of constituency, nomination, accreditation, actual voting, counting, collation and return or declaration of result (cited in Quadri 2012, 2). Thus, the utility of elections as a principle of liberal democracy lies in its capacity to appoint and sack a government. To this end, elections are means of transiting power from one government to another under a democratic setting. The legitimacy of any democratic government, it should be noted, can only be enhanced through the power of the ballot exercised by the citizenry. Elections thus confer authority and legitimacy on governments who use it as a means of attaining political power.

Instructively, democratic elections must conform to certain minimum requirements before they are deemed acceptable by the populace. For instance, to pass the democratic test, elections must not only be free, they are required to be fair and credible and eligible voters must as a matter of necessity be unhindered from exercising their electoral rights without fear of violence, intimidation, oppression and molestation. Requirements are also set for aspirants in terms of pre-electoral preconditions and post-electoral behaviours. It is only when elections satisfy these minimum requirements that they are seen as the cornerstone of democratic politics. Therefore, to ensure that these standards are followed, certain laws and regulations are usually developed as guide in the electoral process. Upon contravention of these standards, mayhem may be inevitable in society as dissatisfied candidates alongside their followers as well as party members exercise

the natural urge to fight for their right by contesting the process and outcome of elections. By the same token, voters who have taken it upon themselves to forgo their private businesses and engagements to elect their preferred candidates for the various leadership positions are bound to protest any form of perceived manipulation in the electoral process. Again, contestants to public offices who have spent a fortune canvassing for votes are hardly able to bear the loss of not just the office they were aspiring to, but also the huge sums they may have sunk into electioneering. In the most severe cases, those currently occupying elective offices may be reluctant to step down for the people's new choice either on the grounds of losing prestige and power associated with that office, or for fear of being probed by the incoming government. It is to this extent that Olaniyan (2011, 274) posits that "elections and electioneering processes are key sources of violent conflict, especially in democracies with low political culture, where competitive elections are not guaranteed".

### 1.8.4 The Concept of Election Petition/Litigation

An election is primarily a contest by aspirants for the votes of the electorate to gain a political office (Osipitan, 2004). Except an aspirant is returned unopposed, there are usually a minimum of two contestants for elective posts. The conduct of free and fair elections is guided by specified rules. Where the rules and regulations guiding the conduct of an election are deemed to have been compromised and election results rejected, candidates and/or their political parties have another lifeline through election petition. In Nigeria, election petition is the procedure of challenging the result of an election into the federal executive offices, legislative houses, state executive offices and houses of assembly or local government councils in Nigeria. What this suggests is that the only legal way aggrieved parties can register their displeasure and challenge the outcome of any election in Nigeria is that of election petition. Since the outcome of electoral contests remains acceptable to some and unacceptable to others, the party to which the outcome is unacceptable has another legal option of seeking redress through the election petition process.

To Ogala (2012), election petition is a proceeding *sui generis* and is considered distinct from other civil proceedings. It is time-bound and demands extreme urgency in the disposition of same by the election tribunals. Election petition proceedings, to Ogala (*ibid.*), are free of the procedural clogs of normal civil proceedings. Importantly, the sui generis nature of election petition constitutes it into a class of its own, and guided by its own rules and laws distinct from

those of civil and criminal laws.

Two factors are critical to election petition from the foregoing analysis. First are the rules and laws under which election petition is entertained and adjudicated. Fundamentally, election petition should not be viewed under the same laws that guide civil or criminal proceedings. This is to avoid unnecessary legal technicalities that could erupt if the same laws and rules that govern criminal and civil proceedings also govern election petition matters. Civil and criminal laws, in some situations, allow for the discretion of the judges in adjudicating in such matters; however, such discretion will be placed on the scale of political pendulum aimed at skewing the process and outcome toward certain interest if allowed in election petition cases. Therefore, election petition matter is resolved under distinct laws of its own. Second, election petition is time-bound and, hence, requires that petition arising from election conduct should be treated with urgency since occupiers of elective positions are tied to a specified number of years in various political offices they have vied for. Basically, removing these two important factors reduces election petitions to civil and criminal proceedings that have limited direct relations to democratic governance and democratic sustenance.

Election petition is a fundamental feature and requirement of democratic practice across the globe. It has also been enshrined and entrenched in national constitutions, international conventions, agreements, and so on. For instance, United Nations Protocol on Democracy and Good Governance provides for "responsibility of states to ensure that complaints relating to the electoral process are determined promptly within the time frame of the electoral process". Similarly, the ECOWAS Protocol on Democracy and Good Governance has made provisions on conduct of free and fair elections to include dispute resolution. Article 7 deals specifically with election dispute resolution by member-states. It provides that adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of the elections and announcement of results. Notably, as Kari (2017) posits:

> An election petition can only be filed by a candidate and political party who participated in an election. Accordingly, if a registered political party did not field a candidate for a particular election, it cannot challenge the results of that election. It also means that no matter the level of interest of groups and individuals in a particular candidate or election, they cannot file a petition before

any of the election tribunals if they were not candidates in the election and did not participate in the election.

Notably, an election petition is not a regular 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 (Ubanyionwu, 2011). Indeed, an election petition is not a usual legal dispute between individuals. Though it may involve a few parties, it is treated as a contest in which the interests and rights of the voters are concerned and, quite apart from the laws governing other kinds of legal disputes, special laws of procedure and substance apply to election petitions.

### 1.9 Structure of Dissertation

This study is presented in seven chapters which reinforce one another towards the realisation of the broad objective of the study.

**CHAPTER ONE**: is the "Introduction and Conceptual Clarifications", and gives overview. It captures the background to the research, the statement of the problem, research questions, research objectives, scope of the study and research methodology. It also provides conceptual understanding of the key words used in the study such as politics/politicisation, democracy, election/electioneering and election petition/litigation.

**CHAPTER TWO** dwells on the Literature Review. The chapter examines the literature on the paradox of election and democracy; elite and electoral politics, electoral democracy and electoral manipulation and the politicisation of the Judiciary.

**CHAPTER THREE** is a ''Reflection on Theoretical Framework''. The chapter provides an understanding of the Elite theory, state fragility theory and separation of powers principle as well as how the utilities of the theories enhanced the understanding of the theme of the study.

**CHAPTER FOUR** deals with the ''History and Dynamics of Court Contested Elections in Nigeria''. This chapter examines the historiography of electoral disputes that ended in courts in Nigeria from the First Republic to the aborted Third Republic and some other countries that share similar electoral experiences with Nigeria (Kenya was chosen for this purpose because it was observed that electoral outcomes also end up in the courts for review. The inclusion of

Kenya is also apt because of the need to interrogate substantive context of democratic practices as it applies not only to Nigeria but other countries that practice electoral democracy). This is with the aim of understanding the electoral processes and the manner in which they interface with the judicial processes. This provided useful understanding of the trends of electoral democracy in Nigeria and elsewhere.

**CHAPTER FIVE** examines ‘‘Electoral Manipulations and Nigeria’s General Elections, 1999-2007’’. It examines the conduct of the 1999, 2003 and the 2007 General Elections in Nigeria and the ensuing controversies/manipulations which triggered electoral disputes and how they were handled. It analyses the politicisation of the legal and constitutional frameworks for elections, election petitions and the role of the judiciary in the process. It examines the dynamics of the electoral laws and the manner they facilitate or hamper the constitutional role of the judiciary in the electoral process in Nigeria.

**CHAPTER SIX** speaks to the “Politics of Election Litigations in Nigeria’s Fourth Republic” using gubernatorial election litigations in Ekiti, Osun and Ondo states of Nigeria as case study. This chapter presents and discusses the findings of the study in a way that answers the research questions upon which the study is based. It adopted thematic method in addressing questions raised in the research instrument.

**CHAPTER SEVEN** dwells on the “Summary of Findings, Recommendations and Conclusion”. It summarises the major findings of the research work, draws the conclusion, argues for the originality of the study and makes discernible recommendations.

# CHAPTER TWO

# LITERATURE REVIEW

## 2.1 Introduction

Series of studies have been undertaken on the subject matter of electoral manipulations. This chapter extensively reviews related works that treat the concepts covered in this study. Thematic approach is adopted in reviewing relevant literatures on election and democracy, elite and electoral politics, electoral democracy and electoral manipulation as well as the politicisation of the judiciary.

## 2.2 Election and Democracy

Elections shape and facilitate the practice of democracy in a political system. In electoral democracy, what is done basically is the conduct of elections and choosing of political leaders. The role of election in democracy, therefore, cannot be overstated because it allows the people to express themselves by ensuring legitimacy and leadership succession. Although election is not the only feature of democracy, it is essentially the practical expression of democracy. Indeed, Schumpeter (1942) noted that election is central in democracy and empowers the people to accept or reject their rulers. On the contrary, some scholars are of the opinion that democracy is not limited to elections no matter how often they take place and the degree of contestation involving opposing parties (Schmitter and Karl 1991).

The position of leading scholars in this area is easily traceable to the famous critique in "*The End of the Transition Paradigm*" by Thomas Carothers (2002) who argued that democracy entails more than elections. Among consenting scholars, Brownlee (2007) in "*Authoritarianism in an Age of Democratization*" considered elections as "symptoms, not causes" whereas Levitsky and Way (2010) found out that "multiparty elections are not by themselves an independent cause of democratization" (Sandbrook, 1996; Teorell and Hadenius, 2009). Equally notable, empirical evidence outside Africa has proven that democratizing effects of elections is weak (Bogaard, 2014).

However, others believed that elections are the vehicle to democratisation of a state. These scholars strongly considered elections as the most vital element in advancing democracy. For

instance, Giovanni and Andrea (2016:36) posited that elections are significant components of democratic progress. Similarly, Lindberg's thesis on "*Democratization by Election: A New Mode of Transition*", found out that elections have strengthened democratisation in Africa. Accordingly, an election deepens democratic qualities in the society (Lindberg, 2006, 2009; Diamond, 2009; Bratton, 2013).

In addition, credible elections are key indicators of democratic system. An effort at improving a nation's democratic system allows elections to give room for participation and competition. While participation gives a sense of belonging to the political system, holding formal competitive elections is necessary in a representative democracy (Lindberg 2006). Elections aid peaceful democratic transition and peace while reducing the likelihood of democratic reversal. It also allows the elites to compete, and encourages the public in the selection of leaders (O'Neil 2007). Thus, participation and competition in line with democratic principles ensures elections' freeness and fairness which are for ensuring the survival of democracy. This is the democractic process ails where there is lack of free and fair elections and so there is need for an electoral framework that can guarantee credible, free and fair elections.

As stated, Patrick Merloe suggested that all stakeholders, namely political parties, civic groups and candidates, are beneficiaries of legal frameworks promoting elections. His study further suggested that political parties should be prepared to defend elements of the legal framework that works for fairness. It also advocated modification of the legal framework to combat opposition to fairness (Merloe 2008) because credible elections are indispensable to the establishment and maintenance of democracy (Adekunle and Florence, 2016).

Furthermore, the triumph of democracy as the third globalised language in tandem with money and the Internet (The U.S. State Department quoted in Diamond 2000) as against the reign of authoritarianism that engulfed the world before the 20$^{th}$ century has raised interest on how to build and practice it. As such, the study of Daniel Silander (2017) on building democracy identified factors favourable for building democracy. The study found out that a successful building of democracy lies in long-term structural factors. It also suggested that actor-oriented factors such as domestic elites and their perceptions are necessary to understanding the building

of democracy. He submitted that, for democracy building to be sustained, the national determinants of democratisation must be linked to international factors as actors.

Similarly, drawing on Daniel's notion on the need to sustain democracy especially in Africa where democratisation has been labeled a "protracted" process (Barkan 2000), the continent's leaders use democracy to gain access to political power in largely disputed electoral outcomes and protracted electoral violence. According to Abraham et al. (2005), after studying variables associated with democratic stability, when a country scores negatively on institutional variable, societal variables, mediating variables and extraneous variable (foreign involvement) it is doomed to collapsed. Besides, at the moment, it requires more than elections and majority rule to sustain democracy. In addition to the exercise of basic rights, democracy involves respects for other rights including the right to organise political movements of protests (Dreze and Sen, 2002) in the society.

Right from the twilight of the 1980s, many African countries have conducted several elections. According to Deegan (2003 cited in Teshome, 2008), between 1989 and 1994 almost 100 elections had taken place in Africa. Moreover, in the 1990s alone, 42 out of 48 African countries made democratic reforms and held elections (Eid 2002, cited in Teshome, 2008). It is therefore a cliché that democracy is inextricably intertwined with elections as aptly captured by Braton (1998, 52) who contended that one cannot exist without the other. Thus, to achieve the essence of democracy which aid good governance, elections unfortunately are yet to be credible, free and fair especially in Africa. Issues like colonial history, ethnicity, economy, leadership, protracted wars and corruption have greatly impeded the democratisation of the continent. While most countries in Africa are striving towards the consolidation of their democracy, starting mainly from achieving credible, free and fair elections like South Africa, Ghana, and of recent Nigeria, others are yet to consolidate on democracy, as the aforementioned factors that inhibit a nation's democratisation are still active and hold water in the nation's political life which by implications makes democracy a daunting task to consolidate. However, this challenge is not peculiar to African countries as some countries in Asia and Latin America also confront the challenge of scaling the hurdle of conducting credible elections (Wang and Kurzman, 2007; Lafargue, 2008).

Notwithstanding, some scholars are of the opinion that democratic gradualism in Africa will definitely take root with time. For instance, Diamond, a supporter of elections as the major hallmark of democracy argued that above all things African societies still have to imbibe the details required to strengthen democracy within the peculiarities of their society (Diamond, 1997). The assertion gives assurance to the continent that ideal modern democracy is attainable over time. Besides, the quest to consolidate democracy is continuous and complex (Teshome, 2008). This could be the reason for Sklar's (1987) observation that a *"whole cloth democracy" is a rarity* in developing countries while explaining that democracy can only be developed systematically and in bits.

From the above, among African countries that embrace democracy in its wake on the continent, only few are doing well. In fact, multiparty elections on the continent have been fraught with large scale irregularities where non-democratic governments are sought by the people as alternative to democracy (Afrobarometer, 2001; Barkan, 2002). As a matter of fact, the literature offers a bleak testimony on democratisation and elections in Africa in the late 1990s and early 2000 (Udogu, 1997; Ottaway, 1997; Gros, 1998; Herbst, 2001; Levitsky and Way, 2001; 2002) as African countries bore the stigma of "multiparty elections but no transfer of power." (Jeffrey Herbst, 2001)

Furthermore, ideally elections are not characterised by violence. However, for democracies in Africa, elections have remained one of the hallmarks of protracted violence and insecurity in the continent. In line with the above, Hounkpe and Gueye (2010) posited that elections could jeopardise democracy if mismanaged. However, such suggestion may be lacking as poor management of electoral process especially when compromise can be adduced for electoral violence. As captured by Jinadu in a 2011 work, titled *"Comparative Analysis of Security Challenges of Elections in Nigeria"*, he argued that "the increase in election violence in many African states is due, among other causes to the poor management of diversity, reflecting the mobilization of ethnic cleavages and repression of dissenting views".

Those negatives notwithstanding, Barkan (2002) found that there is a greater degree of tolerance among political gladiators in Africa and openness in terms of monitoring by observers has been incorporated into the electoral process. Bratton (1998) posited that voter turnout has increased

and more people have demonstrated faith in the electoral process. Similarly, the society is determined to disallow military rule (Gyekye-Jandoh, 2014:186). Thus, elections in Africa are a connotation of many tendencies (Gyekye-Jandoh, 2014:185).

Therefore, for the survival of democracy on the continent, it is pertinent for democratic consolidation to be imbibed so as to improve development and growth of dividends of democracy on the continent. This was rightly observed by Linze (1990) when he stated that:

> A consolidated democracy is one in which none of the major political actors, parties or organizations, interests, forces or institutions consider that there is not any alternative to the democratic process to gain power, and that no political institutions or group has a claim to veto the actions of democratically elected decision makers.

Thus, the work of Sadeeque et al. (2015) on democratic consolidation is peculiar as it accommodated interdisciplinary perspective by critically analysing the political cum economic issues of democratic consolidation in the nation's political system. Their finding is both unique and reassuring in the sense that it is difficult to achieve democratic consolidation in a nation where democracy is flawed and problematic fifteen years since the nation ushered herself to democratic milieu. However, it suggested that though the nation is still democratising at its pace, there is need to address the unfortunate reality confronting the economy which can also contribute to the nation's democratic consolidation. They concluded that the nation lacks good governance and poor leadership which, if gotten right, can aid in democratic consolidation as well as allow Nigerians enjoy dividends of democracy as government based on the people's consent.

Applied to Nigeria, the most populous black nation, democratic practice as a global phenomenon is not an exemption. Agu (2015) observed that several abnormalities associated with elections have engendered a continuous decrease in political involvement during elections. In the study, the abnormalities include the arbitrary imposition of candidates, violence, rigging, corruption, and desperation to win. He concluded that there is need to strengthen the nation's political institutions as well as seriously punishing electoral offenders as a panacea to the current decline in the nation's political participation.

The nation's decline in political participation can rightly be traced to many causes prominent among which is past election failures. As a matter of fact, failure to conduct elections in line with universal best practices remains a major challenge to the democratic process in Nigeria (Michael' 2010:43). The nation's elections in her current Fourth Republic is largely characterised by stealing of ballot boxes, multiple registration of voters, manipulation of electoral rules and processes, election rigging, vote buying, political assassinations, and the conniving actions of the nation's electoral body in Nigeria (Lucky, 2013; Sha, 2008; Animashaun, 2015; Danjibo and Oladeji, 2007; Ugoh, 2004; Alemika, 2007; Ojo, 2008), all of which are indeed problematic to her emerging democracy. In addition, other factors that hinder credible elections in Nigeria especially in her current republic's second decade of democratising have been hinged on faulty electoral system. Accordingly, Michael (2010) identified a major factor inhibiting the growth of the Nigerian democracy and the conduct of proper elections to the nation's "electoral system that is largely defective, weak, inefficient and unable to guarantee the conduct of credible elections". In short, the study submitted that the nation's democratic challenges are chiefly attributable to lack of credibility in the electoral process.

Again, the work of Adeagbo and Omodunbi (2019) on the nation's declining democracy resulting from electoral gifting is heart-warming as scholars in elections and democracy easily cite the country's leadership as the impediment to democratic consolidation and development in the state. The study argued that the citizens' (custodians of the political mandate in any democracy) actions through election gifting should be held accountable for the delay and slowness in the nation's democratisation. Indeed, it is gradually becoming a norm in each election year in Nigeria for majority of the people to sell their vote and conscience to politicians for money, an action that poses great implication for the nation's democracy. However, they concluded that engagement in a civil society is a key requirement for reviving the country's failing democracy.

Adeyinka and Emmanuel (2014) have also lent voice to the challenges of democracy in Nigeria. They identified "the country's colonial background interspersed by vagaries engendered by deep-rooted ethnicity; complacent and spendthrift leadership; incessant intervention of the military in the democratic process; electoral fraud; wide spread poverty and high illiteracy level" as the problems negatively affecting democratisation in Nigeria. They, however, argued strongly

that corruption is the major bane on which other problems of the nation's democratic development revolve. In line with the above, Ogundiya (2010) examined corruption as the bane to the sustainability of democracy in Nigeria, adding that the trend would continue if corruption remains unchecked in the nation's polity. This explained why the country's democracy has remained grossly unstable in the face of rampant systemic bureaucratic and political corruption. Such widespread corruption in the entire nation's political life is the reason Olu-Adeyemi (2004) argued that "in Nigeria, an understanding of what constitutes corruption transcends officialdom and discussing corruption broadly as a perversion or a change from good to bad". In fact, it is unfortunate that corruption permeates the entirety of the Nigerian society, and both the poor and rich are guilty of it. Regrettably, corruption thrives relentlessly among the elite and in the military who leverage their access to state power to loot the national treasury (Adeyemi, 2012:169).

Adeyemi (2012) concurred with the above aforementioned challenges to democratic governance in Nigeria by Adeyinka and Emmanuel, but identified inept leadership, graft and human rights, civil strife and electoral reforms as the most immediate and perennial pitfalls to democratic governance in Nigeria. He however concluded that, with accountability and ethical principles, the nation's democracy will blossom. In support of the urgent need for electoral reform in the nation's electoral system, Iwu (2008) argued for the need to reform the electoral system to make the public to have confidence in elections and the democratic process in Nigeria.

Furthermore, after many years of military junta in Nigeria, the return of the country to democratic rule was expected to facilitate development but this expectation has remained elusive, particularly in the realm of human development (Jamo, 2013:85). Indeed, Jamo (2013) examined the democracy-development nexus in Nigeria in his study on democracy and development in Nigeria. The study found out that, despite the country's economic wealth in the African continent as a major oil-exporting country, the country is yet to get rid of large-scale unemployment, corruption, poor governance and poverty that pervade the country, thus, democracy all these years did not improve development in Nigeria.

## 2.3 Elite and Electoral Politics

The classical elite theory articulates that every society has a ruling minority that controls power (Lopez, 2013). While modern elites subscribe to this assumption, their concern is its sustainability which is only achievable through new elite recruitment. The theory originates from works of sociologists such as Weber (1922), Michels (2009), Pareto (1935) and Mosca (1935). Thus, the elite have been defined as a distinct group with access to resources (Mosca, 1939; Scott, 2007). On the other hand, Soanes et al. (2006) conceive elite as "a group of people regarded as the best in a particular society or organization" (Soanes, Hawker, and Elliott, 2006: 288). They are small yet the most powerful people in a system (Hossain and Moore, 2002; Anna and Tom, 2006). Thus, access, control and dominance in virtually all spheres in the polity give rise to elite dominance and hegemony. It is, therefore, relevant to state here that political power wielded by the elites and any other power in any sphere of a nation's polity is derived from several sources.

There are two major positions in the literature on political elites. The liberal pluralists emphasise exclusive preservation of power for the elite. This school of research argues that changes are likely to happen over time. On the other hand, the Critical Elite Perspective focuses on "elite power concentration and cohesiveness, leading to resistance to change and limited openness and inclusiveness" (Olsen, 1993).

Despite the divergent views of the above perspectives of elite theory in political science palace, there is a convergence of interests as they all attempt to understand state outcomes through elite behaviour in the state. That is, a theory based on the assumption that elite action has a causal effect on state outcomes. Like most theories, the elite theory is not without criticism emanating from its tenets which claim that elite behaviour holds a causal effect on state outcomes suggest a voluntaristic argument, which overlooks structure (Cammack 1990; Collier1999). However, such criticism has been countered by scholars like De Swaan 1988, 2005; Domhoff, 2009; Mills 1956; Reis and Moore 2005; Lopez 2013). An instance is found in the works of Lopez (2013) who argued that "elite theory is deep-rooted in classical sociology; it is very much concerned with structures, especially authority structures". Notably, despite all the criticisms against the elite theory, it remains relevant in explaining not just power relations and control in a polity but also

helps to understand a country's leadership formation. However, for this work, we will focus on reviewing several authors' researches that use elite behaviour to explain political outcomes in a political system.

In line with the notion of elite inevitability in the political sphere, elitists claim that it is impossible to practise democracy in the state devoid of elite. That is, democracy is elite-driven where majority are ruled by a minority in an endless circle. This was captured by Pareto (1935) who stated in *Law of Elite Circulation* that modern democracies are synonymous with elite domination. In Mosca's (1939) notion of *Political Class,* Mosca averred that democracy could be government of the people, and "it might even be government for the people, but it could never be government by the people". Elite rule remains inevitable" (Haralambos, 1999: 109). In *Iron Law of Oligarchy* (Michel, 2009), elites wield and relinquish power as a result of peaceful or violent competition. For Pareto (1935), history is an account of elites and their activities. In the context of the political class notion, elites are political rulers in the sea of numerous followers. Finally, the iron law of oligarchy synthesises the notion of elite inevitability formulating it as a natural law. Also, despite this fact, some still view the elite theory as anti-democratic because of its belief in the law of the small number. Again, such argument has been answered by Sartori (1987) who contended that the elite theory is not asymmetric to democracy since both coexist in realism.

Drawing on the notion of political elite in political science parlance, elite theory's commonly-held view is that small groups of individuals in the state are both powerful and influential, and they rule the state. Thus, we can refer to them as political elites in this case by excluding other sphere in the society. That denotes a notion of elite as "the several thousand persons who hold top position in large or otherwise powerful organizations and movements and who participate in or directly influence national political decision-making" (Burton and Highley, 2001; Hoffmann-Lange, 2007; Putman, 1969). This notion of elite has been acknowledged by scholars in explaining political behaviour and outcome in the polity. In fact, for some scholars, the existence of elites are required to make democracy work (Dahl, 1973) and elites are more committed to democratic values than the rest of the society (Sullivan et al.., 1993; Stein, 1998).

Thus, the post-World War II ushered in the works of political scientists like Dahl (1971) who conceived elites as pluralistic in nature. He argued that democracy is a mix of elite bargaining,

dispositions toward conflict or agreement, and political culture. He posited further that what the elite believes and treasures are the core elements of democracy. On the other hand, the work of Wright Mills (1956) emphasised the existence of a powerful elite within the upper class. In defence of the elite, Mills (1956) contended that the role of state institutions in decision-making is less important to the contribution of elite entities. Notably, too, Putman (1976) discussed the role of the elite in contemporary democracies. The study stated that decision-making spreads into bureaucratic organisations within the state, as well as fractionalises power through the activities of the elites.

Also, drawing from Latin America, it is argued that the choices of the elite determine democratic stability in transiting political systems (O'Donnell and Schmitter 1986; Lopez-Pintor 1987; Malloy 1987). However, others tend to disagree in the mood of Rovira (2009) who examined how a group of elites upstages another while attempting to replace an existing system. They conceive democracy to be a two-edged sword that supports as well as is guilty of its success in practice. He submitted that, irrespective of the different approaches, the political setback in the region of study is traceable to the activities of the elite.

In addition, Higley and Burton (1989:17) have argued, that ‘‘democratic transitions and breakdowns can best be understood by studying basic continuities and changes in the internal relations of national elites’’. While the debate continues however, scholars largely support elites as a pivotal ingredient in democracy that creates the path that a country will follow (Corral 2011). In addition, the works of Saunders (2015) contend that the nature of democracy is understandable only in the context of elite political dynamics.

Applied to Africa, the study of elites within institutional settings can aid understanding the day-to-day realities of African politics (Lindberg, 2003). Scholars’ view on elite in democracy and their hold on political institutions have proved to have influential role in African state politics. Such linkage is found in the precincts of state (Anna and Tom, 2006: 7). An important area of elite power on the African continent has been their unquestioned and unrivalled role in the policy process. In the discussion on development strategies, among the three main perspectives on the role of elites in the policy process are donor dominance, political dominance over technocracy, and the emergence of non-state (economic and civil society) actors as players in the policy

process. On the role of elites in policy processes, by using the prevalence of Mozambique political elite system in the country's policy process, Macuane (2012) noted that despite the recruitment of new elites which cuts across societal, bureaucratic and economic circles as a result of political and economic freedom and as an aspect of policies towards lifting the poor, the differentiation between these elites is more apparent than real because of the tactics employed to consolidate their dominance in a context of increasing importance of electoral politics.

Again applied to Nigeria in particular, the elite system is not alien to Nigeria as a nation; in fact, early research of the 1960s on the nature of the elite in Nigeria adopted a Weberian legal-rational approach to political elite change (Smythe and Smythe, 1960 cited in Ani Kifordu, 2011). However, Ani Kifordu, not taking cognisance of huge literature on elite studies in Nigeria, posited that researchers had ignored features like ethnic manipulation, rent-seeking, patronage and corruption and their negative impact on the social order (Ani Kifordu 2011:16). Thus, Ani Kifordu (2011) on the characteristics and continuity of political elite in Nigeria argued that, irrespective of many structural changes in the nation's political system, individuals and the elite share a common background, thus promoting their cohesion and continuity. However, he adduced such formation and continuity of elite system in the nation's polity as the sole factor in the weakness of political institution in the nation's polity. Regarding the misconduct of elites in Nigeria's governance, Ibietan and Ajayi (2015) opined that successive governing elites in Nigeria assimilated the predatory and exploitative attributes of the colonial administrators and, therefore, fall short of providing democratic dividends through good governance.

Indeed, good governance in democracy which Aristotle conceives as the "good life" and now popularly denoted as dividend of democracy after six successive elections seems almost impossible to attain. Despite the fact that it is inconceivable to have democracy without elections, the nation's general elections after six attempts have not yielded needed result. Thus, the study of Sakariyau et al. (2017) on electoral politics in Nigerians' Fourth Republic found out that the inability of the nation's electoral umpire to conduct free, fair and credible elections has made it very easy for the political elites to forcefully impose incompetent candidates who now occupy the nation's leadership position. They concluded that this development has marred the country's democracy as well as caused incessant government legitimacy crises.

Furthermore, legitimacy crisis has been attributed to the nation's elections which are prone to violence that are easily orchestrated by elite in consolidation of their position in power. That is, instituting and cementing their existence in the nation's electoral system and polity at large in any electoral exercise. This is perhaps why Osaghae (2015:27) argued thus:

> in civilian dispensation, most business personalities join the party in power to gain access to contract and other forms of accumulation… all these explain the desperation and opportunism with which political power is sought and used… reliance on patronage networks for retention of political power and legitimacy means that any segment of the elite… which loses control of political power at the federal, state or local level, loses the wherewithal to compete for power. This is the major explanation for the warlike approach to election.

In the study of the electoral violence and the challenge of democratic consolidation in Nigeria, Ashindorbe (2018) found out that the division of the elite along ethno-religious and regional lines has led to questionable elections trailed by violence and fatalities, which have frequently threatened democratic consolidation in Nigeria. In a similar vein Alhaji Ali et al., in a study titled "*Determinant and Impacts of Politics of Godfatherism and Regionalism in Yobe State*" found out that the politics of godfather-godson of the elites have negatively affected the political development of the state. In the study, they concluded that such role has led to inter-party and intra-party carpet-crossing, decamping and conflicts among the party members (Alhaji Ali et al. 2019). Similarly, the study of Ohiole and Ojo (2016:10) showed that Nigerian politics in general has been characterised by elitism and godfatherism, religion and tribal politics, money-bag politics, regionalism, and party politics. In line with this, an assumption of elite theory that power can only be shared among the elites at the expense of the masses, whether they like it or not, resonates with the Nigerian experience. In fact, the configuration of political power in Nigeria has been distorted as the exclusive preserve of the elite, and not the people (Emecheta, 2016).

Notably, elite politics in Nigeria is replete with nefarious peculiarities. Prior to European contact, and in colonial times, elitism in Nigeria was predicated on monarchical system of government as found in the western part where power was arrogated to the monarch, usually a king and in the Northern part where the sultanate systems operated (Iweriebor, 1982). During this era, ownership of lands, large families, monies as well as close association with the throne determined

individual status as member of the elite. More specifically, nobility, trade and priesthood offered the status to individuals and groups in society. Thus, these were not just political but also economic elites. Right from the early years of independence, elitism sprang up with the propagation of Western education, and referent power became useful in crossing from the lower class to the ruling class at a time when traditional authority was adorned with the status of Western literacy. The gradual extension, if not complete shift of elitism from traditional authority to the Western educated class, became noticeable at this point. Nigeria's elite during the said period was, therefore, captured by Lloyd (1970, p.4) as persons with western education and relatively wealthier than the majority of the people. Unlike the elite of pre-colonial times, those of colonial and post-independence times stood out because their sphere of influence found primacy at national level, and not at state or village level.

The emergence of this category of elite in the country is traceable to independence struggles. Those at the forefront of agitations and those who spearheaded pro-independence campaigns earned themselves much credibility and legitimacy in the reckoning of colonial masters and the masses, a situation that established them firmly as members of the ruling class at the exit of the British. In the same vein, traditional rulers took to educating their children in the Western form with a view to equipping them for national leadership positions of which their ages and (il)literacy status had inadvertently deprived them in the new dispensation. With these events, politics increasingly became a highly-competitive zero-sum game which appeared to be free for all. For example, the senior members of the Nigerian Armed Forces gained admission into the political elite class, bringing in their ambitious, insatiable yearnings for power. What this suggests is, therefore, an obvious interaction between civilian and domineering military political elites (Amundsen, 2012, p.7). The military intrusion in the country's political process saw the collapse of periodic elections which Odubajo and Alabi (2014, p. 136) termed the only legitimate way of effecting good governmental process and establishing civil rule. The first strike of the iron-fisted military circle of the elite was the maiden military coup experienced by the country, the coup which usurped democratic politics in the nation in 1966. In subsequent years, the military elite held sway intermittently for several years until democracy was eventually institutionalised in the country in 1999.

## 2.4 Electoral Democracy and Electoral Manipulation

Studies on electoral democracy in Nigeria have received adequate and elaborate attention from pre-independence to post-independence era (Dudley, 1973, 1975; Cohen, 1983; Adejumobi, 2000; Agbaje & Adejumobi, 2006; Suberu, 2007; Sagay, 2006; Omotola, 2009; Animashaun, 2010). These studies have emphasised several aspects of the electoral system that have been politicised and manipulated by political elites with the view to shaping the outcome of the electoral process in their favour and/or their political parties. Literature is also replete with useful studies on electoral democracy across different regions and countries detailing the manifestation of politics and high menu of manipulations that characterised the process (Reynolds, 1993; Posada-Carbo, 2000; Lehoucq, 2003; Molina and Lehoucq, 1999; Phillips, 1979; Anderson, 2000; Ziblatt, 2000; Kornblith, 2005; Zafarullah and Akhter, 2001; Wang and Kurzman, 2007; Lafargue, 2008; Makumbe, 2002). What these studies hold in common is the notion that the electoral process is a tool in the hands of elites which is commonly used to appropriate political power, consolidate their parochial interest, and legitimise their democratic credentials not minding the credibility of the process. Reflecting on this, Schedler (2002, 36) avers that, as a tool, elections double as a weapon of control as well as part of the resources of democratic governance'.

In an attempt to achieve electoral democracy, elites resort to manipulations to gain control of the process and tilt the outcome in their favour without taking cognisance of the integrity and credibility of the process, thereby putting themselves in a nebulous zone of structural ambivalence (Schedler, 2002: 37). Researchers on electoral democracy have adopted several terminologies or nomenclature to identify, categorise and explain various irregularities usually observed in the electoral process to pre-determine its outcome. Commonest is the use of electoral fraud (Suberu, 2007; Onapajo and Ufodike, 2014), electoral manipulation (Schedler, 2002; 2006) and electoral malpractice (European Union Election Observation Mission EUEOM, 2003). Under whatever guise electoral manipulations come, at what point of the process they come, and what institution is captured to manipulate the process, they all serve the purpose of containing the troubling uncertainty of electoral outcomes (Schedler, 2006: 3). Useful studies on election manipulation have documented different patterns across different regions and countries including matured democracies of Britain, United States, France and Germany especially in their early

stages of democratic development, and in developing democracies of Latin America, Asia and Africa.

Ziblatt (2009) demonstrates through his study of electoral fraud in imperial Germany (1871-1912) that election disputes are results of election misconduct. His study showed clearly that the electoral fraud in imperial Germany was proportional to the society's level of prevailing inequality in the era. According to Ziblatt (2009, 2), electoral fraud generally comes in the form of political violence, vote-buying, influence and various forms of procedural vote-rigging. Though, not explicitly espoused, influence as used by Ziblatt could involve attempts by elites to manipulate electoral institutions including the judiciary to tilt election results in their favour. Ziblatt's study focuses on understanding the nexus between inequality and the incidence of electoral fraud in an age when land remained a major source of power in Germany. Measuring electoral fraud, Ziblatt noted that it comes through coercion in several forms including vote-buying and vote-rigging. In imperial Germany, ''the capture effect'' emerged as a dominant feature of electoral fraud. The process involved landed elites exerting influence indirectly via the capture of rural local public officials such as the Mayor tamper with elections to get predetermined results. Many studies conducted on elections in Germany showed similar mechanism of electoral manipulation as demonstrated by Ziblatt (Anderson, 2000; Lehoucq, 2003).

Similarly, Argensinger's robust research on the United States electoral system in the Gilded Age (1877-1893) significantly revealed that elections in the era was characterised by fraud and corruption largely involving, according to McSeveney (1972), a series of charges, and fraud (cited in Argensinger, 1986: 669). Electoral manipulations in the Gilded Age were more strategic "massive fraud" that could easily jeopardise the expected outcome. Fraudulent activity was only attractive where relatively minor changes in popular vote would change the electoral outcome. Thus, the highly-competitive nature of the political system permitted electoral fraud. Relatedly, the structure of the electoral process, in which open balloting was operational, encouraged electoral fraud. The practice subjected voters to various forms of intimidation and influence in facilitating vote buying. In a sense, this act violated the "rational will" of the voters. Allen and Allen (1981) emphasised that the act of violating voters' rational will, in the America's Gilded Age, included fraudulent vote count, voter intimidation, multiple voting and tampering with

ballots to void them (cited in Argensinger, 1986: 673).

The experience of electoral manipulation in Britain was not entirely different from those of United States and Germany. Discourse on the unreformed British electoral system usually revolves around three major concerns but of interest to the foregoing discussion is electoral corruption. Britain's early elections were denoted by political patronage because it protected the Commons from the whims of electioneering (Phillip, 1979, 77). The municipal corporations Report of 1835 confirmed allegations of electoral corruption in which the corporations tampered with the size and composition of their electorate by politically-motivated wholesale creations of freemen and honorary freemen. In a related manner, there were common practices such as "treating" and bribery usually before and sometimes during the polls. Treating involved excessive dispensation of food and drink to mobilise and reinforce favourable opinion. Even, after British Reform Act, incidence of widespread bribery was reported with unrestricted use of money in parliamentary elections. Voters during this period were labelled as "worse than the old" because they were "universally corrupt" (Phillip, 1997: 97). It is worth noting that electoral corruption was also a persistent problem of the electoral system in France between 1815 and 1914 in varying degrees over the years. Elections in Spain, particularly in the Restoration period (1875-1923) were merely dictated by government as massive fraud defined the process. Italy's elections were equally run on patronage system as voters were largely induced by the traditional incentive of the bank note.

In Posada-Carbo's useful comparative study of electoral practices in the history of Latin America (1830-1930), electoral corruption remained an albatross that significantly distorted vote. Corruption was reminiscent of the electoral systems of countries he examined though manifested in different ways. In sum, elections in Latin America appeared to be exclusively defined by fraud and violence, a situation that makes a bitter mockery of electoral institutions in the region (Arboleda cited in Posada-Carbo, 2000: 611). Notably, elections in Argentina were characterised by violence and intimidation, which are elements of electoral manipulation (Onapajo & Ufodike, 2014); manipulation of voter figure and stuffing of the ballot box (Botana, cited in Posada-Carbo, 2000: 634). The Chilean experience could be substantially linked to governmental intervention as a central feature of the electoral system. Principally, electoral manipulation was traceable to many procedural tricks employed to control access to the polls. Though electoral

reforms reduced the power of the President to interfere in electoral process, vote buying rather became predominant. The Colombian system in a way replicated electoral corrupt practices in Spain in which results were written by the governments. Furthermore, every party used every possible trick, including seduction and intimidation of the voters, to gain victory. In what was regarded as the worst-run election in Venezuela's long and varied experience and the most ominous in terms of voters' rights (Kornblith, 2005: 130), electoral malpractices such as re-assignment of voters' names away from their original polling centre without their consent, total striking out of voters' names from registration list presuming that they were deceased, the manipulation of the election time table and intimidation of voters were prevalent.

Electoral manipulation in Asia is manifestly endemic such that electoral processes became commercialised. In Thailand for instance, vote-buying marked the hallmark of the 1995 General Elections in which all the main political parties were complicit in vote-for-money syndrome (Callahan and McCargo, 1996). Elections in Thailand, 10 to 20 years before the 1995 General Elections, were only denoted for distribution of petty materials such as cigarettes or betel nut and this became symbolic in guaranteeing victory at the polls. Vote-buying in the 1995 election became classified; voters were grouped into three broad categories based on their educational level and social standing (Callahan and McCargo, 1996: 385). The lowest on the ladder collected cash payments; those at the intermediate level received ducks and the highest ranked received drinks and meals (ibid). It was estimated that to ensure victory in competitive areas such as northeast constituency, a candidate is constrained to spend much more than legally-allowed fund on candidates (Callahan and McCargo 1996: 386). This indicates that money politics is a feature of Thai's electoral behaviour and key determinant of electoral outcomes. Notably, influences on the electoral process focused on the electorate rather than on electoral institutions. In their study of electoral corruption in Pakistan and Bangladesh, Zafarullah and Akhter demonstrated how military regimes employed several ''tactics'' in civilianising their regimes and legitimation of same. Frequency of bogus voting by hired thugs, militarised voting atmosphere, intimidation of voters, massive vote rigging and manipulation of election results were reported in different elections (Zafarullah & Akhter 2001: 73-83). Electoral clientelism, vote-buying and coercion have been reported as effective manipulative tools of the electoral process in Taiwan (Wang and Kurzman, 2007).

The pervasiveness of illicit electoral behaviour with the predominance of voter intimidation, vote-buying and ballot fraud have been documented in many past and present elections in Africa (Collier and Vicente, 2012; Agbaje and Adejumobi, 2006; Suberu, 2007; Makumbe, 2002). The strategy in Zimbabwe's election of 2008 relates to the use of intimidation and outright repression of the opposition and their supporters to gain electoral victory. The use of bribery and vote-buying nosedived considerably due to the unfavourable economic situation and the strong support base of the opposition (Collier and Vicente, 2012, 138). However, Makumbe's study of the Zimbabwe's election of 2002 reported widespread out-and-out buying of votes, distribution of lands for Mugabe's supporters, cash distribution to the elderly and the distribution of funds for development projects by government Ministers. The study revealed that about $150 million was rolled out in a vote-buying spree in Zimbabwe's rural areas (Makumbe, 2002: 96). In Nigeria, a combination of high magnitude of violence and vote-buying coupled with ballot stuffing, ballot snatching, and fabrication of results were regarded as the main instruments of election manipulation (Collier and Vicente, 2012; Suberu, 2007; Rawlence and Albin-Lackey, 2007). Agbaje and Adejumobi (2006, 31-32) averred that the structure of the Election Management Body in Nigeria, the appointment of its members and the funding of the body, all of which are prerogatives of the President, erode the autonomy and efficiency of the body, thereby opening loopholes that facilitate electoral fraud or manipulation. Vote-buying and fraud were massively deployed in the Kenyan election of 2007 and the Angolan election of 2008 respectively (Collier and Vicente, 2012: 140-141).

The foregoing area or country study of election manipulation, types and procedure have only revealed influences on the voters and the election management bodies before, during and after elections. There were no sufficient studies to support elite pressure on the judicial process of challenging election results in order to gain electoral victory through the courts. For instance, Hartlyn (1994, 101) notes:

> In the Dominican Republic, elections are overseen by the Junta Central Election (JCE) or Central Election Board and Subsidiary Municipal Juntas. Tremendous pressures are brought to bear on the judges of the Junta Central Electoral Bodies and secondarily, on those of the Municipal Electoral Boards due to the fact that these agencies are responsible for a combination of administrative, regulatory and judicial functions. The JCE is responsible for managing the voter registration list,

> for regulating the campaign and for carrying out and overseeing the elections. It is also the final arbiter (with no right of appeal) of all disputes related to the elections, complaints being heard, in the first instance, by the municipal electoral boards.

From the above, though a mention was made about the exertion of pressure on electoral bodies, however there is no sufficient documentation of attempts to manipulate or influence the judicial aspect of the constitutional roles of the institutions to swing judicial outcomes in favour of any party and/or candidate. Similarly, Collier and Vicente (2012, 118) demonstrated that political elites- incumbents and their challengers use illicit strategies in the form of electoral manipulation or fraud to gain power in elections but their study does not espouse elite pressure or influence on the judicial process to gain electoral victory when election results are challenged in courts for irregularities.

### 2.5 The Politicisation of the Judiciary

Politicisation of the judiciary is not particular to Africa, nor is it limited to Nigeria. Many emerging and stable democracies of the world alike are known to be battling with the menace. In a huge number of cases, it is largely connected to collective or individual compromising of judicial independence and integrity. Basically, judicial independence signifies the production of verdicts which fail to reflect, in a systematic manner, the penchant of extrajudicial actors (Popova, 2012: 6). The research leading to this report was conducted with the aim of considering, among other things, the independence and integrity of the judiciary with regard to electoral participation leading to the appointment, retention and removal of judges, as well as the involvement of the Iowa State and the International Bar Associations in the process during and after the elections. Although the report does not directly hinge on electoral litigation which is the focus of this study, the study draws on the analysis in areas of independence/neutrality and politicisation of the judiciary in election matters.

The four-chapter document focussed on the methods of selection, retention and removal of judges to sustain independence and impartiality; the various methods of selecting/electing judges and other judicial members by means of popular election both at the state and federal levels; the (in)appropriateness of appointment, retention and removal of judges by means of election vis-à-vis the provisions of the basic principles of the independence of the judiciary, consideration

given to impartiality and jeopardising of the rule of law and; case studies from Iowa, of retention elections, with emphasis on the politicisation of the elections, among other factors.

As a way of assuring fair trial, justice and respect for human rights on any and every matter of adjudication brought before a court or tribunal, much sacredness has been placed on the independence of the judiciary. This position is captured in prominent international instruments which highlight the integrity of the judiciary.

According to the Office of the High Commissioner for Human Rights, independence of the judiciary presupposes that ‘‘the judiciary has to be independent of the other branches of government, namely the executive and parliament’’. What this means is that, globally, all cases presented to a court or tribunal at whatever level and irrespective of the calibre of the parties involved, the judicial process must be void of any form of external influence, yet the rule of law and the principles of human rights must be accorded priority. It must however be added that such independence is extendable to restricting powerful individuals and groups in society, as well as domineering individuals and caucuses within the judiciary itself.

According to the report, certain clear-cut basic principles of the independence of the judiciary, as adopted by the United Nations constitute a yardstick in the assessment of the independence of the judiciary on the global landscape which must be observed by governments while structuring their national laws. The judge and the judiciary in general must be free of inducement, threats, improper influences, restriction of any degree and manner, direct or indirect interference from any persons or groups and on whatever grounds. All these put together form what is known as and called the ‘‘non-interference provision’’. However, the International Commission of Jurists (1966) in Geneva is in doubt over the feasibility of the full actualisation of this provision in practice where judges are selected by popular election and thus recommends that qualified candidates should be considered first, based on possession of political controversy. In other words, those judges with limited political controversy should be given priority. The claim is that, where judges are elected by members of the society, the occurrence of two phenomena is possible. First, members of society may not know the judges and their pedigrees too well to reach their decision on them and, secondly, elected judges are much likely to pass judgments over cases in line with perceived or understood interest of the public rather than on the principle of impartiality, justice and fairness so as to retain the bench. The latter scenario reportedly

played out in places as Kansas, Colorado, and Illinois among other states in the US where individuals and groups alike had their reservations on rulings delivered by judges on issues of abortion, taxes, health reforms, and so on.

The disposition of the commission would appear to be the springboard for the politicisation of the judiciary and, by extension, of matters handled by courts and tribunals which in themselves arguably mark partiality and utter dependence. Here, a dilemma is apparent as the system of selection of judges by appointment becomes a competing one but not necessarily the bail-out option. In many countries, particularly in Africa, where appointment system is obtainable, it would appear that judges are appointed by the executive arm of government. This being the case, the issue of politicisation of, and by extension, interference in the judiciary seems stronger and deeper as appointment is most likely to follow some undercurrent agreements and loyalty to the appointer.

Whitehouse, (2015, 195) while indicating the politicisation of the United States judiciary stated that corruption has compromised the integrity of the judiciary and noted that ‘‘the court has exposed our elections to corruption and eroded fundamental protections, such as access to the ballot box’’. What has been said about the United States judiciary applies to the Nigerian judiciary and the judiciary of many African countries where democracy is yet to be fully consolidated. One of the many ways in which the judiciary affects elections negatively is by subjecting itself to external influence from political factors to upturn the victory of a candidate in an election. In some cases, victory at the polls is upheld by tribunals in spite of obvious electoral irregularities, fraud, rigging and so on. It is common to find that in either case, the incumbent government is at the favoured end. This assertion has some bearings with the argument of Popova (2012) whose research focused on *Politicized Justice in Emerging Democracies*. The speculation that politicians in Ukraine and Russia frequently rely on courts to give ruling in their favour in cases in which they have interest, and that judges in these countries are known for yielding to political pressures and bribes to ward them off in certain instances constituted the propellant for Popova’s research. It has been often held that Russian and Ukrainian judiciary lacked independence (ibid). Consequently, she sought to interrogate the difficulty of establishing the rule of law in spite of its universal consensus; the rarity of independent courts; the promoting and undermining factors of judicial independence in these countries between the later parts of

1990s and earlier parts of 2000s.

Eight hundred defamation lawsuits against media outlets and 252 electoral registration disputes were selected for comparative analysis through quantitative methods. Litigants, judges and lawyers in the selected cases as well as judicial administrators were interviewed to ascertain the likelihood of ‘‘victory in court for pro-government and opposition litigants’’. While discussing theoretical issues, the researcher postulates that structural insulation from other tiers of government account for judicial independence; that is, to say that the judiciary would be largely independent should politicians desist from interfering in judicial decisions. Another explanation offered for the low rate of judicial independence is what is described as ‘‘robust political competition’’ predicated on the power of incumbency. The explanation holds that uncertainty about possibility of being re-elected into office drives incumbent to institute independent courts or compromise existing ones to guard against persecution by would-be incumbents. Strategic Pressure is a third hypothesis on judicial independence tested by Popova who posits that:

> In new democracies, where crucial democratic institutions such as a free press and an institutionalized party system are underdeveloped, electoral insecurity creates negative, rather than positive, incentives for incumbents. Rather than refrain from leaning on the courts and buttressing judicial independence, incumbents who face intense political competition and a realistic chance of losing power lean forcefully on the courts. Electorally insecure, weak incumbents interfere not only in high-profile cases that may be crucial to their survival in power, but also in many less salient, but politically consequential cases. Thus, political competition results in a politicization of justice and a reduction in independent judicial output.

The first point to note in the foregoing extract is that the theory of Strategic Pressure provides explanation for any unconsolidated system of government, whether democracy or authoritarianism, rather than strictly tilting towards democracy, thereby rendering the theory rather universalist than parochial in nature. In other words, it is particularly interested in offering explanation for judicial independence in an emerging regime, that is to say that it is bothered about interrogating the stability or instability of the system of government as it relates to the independence of the judiciary rather than the system of government itself. It can therefore be safely asserted that the instability of government rather than the system thereof negatively affects the judicial independence of a country. This, she argues, is not necessarily the case in consolidated regimes, specifically in consolidated democracies. Thus, there is a relationship

between vulnerability of incumbency and independency of the judiciary in political competition. Here, the vulnerable incumbent government is known to mount pressure on courts. The consequences, in the words of Popova, are ‘‘the politicization of justice, the subordination of the courts to the executive, and the failure of the rule of law project’’, and the scenario is worse in a seemingly hybrid regime that is neither democratic nor authoritarian but mimicking democracy while operating quite distinctively. Without attempting to belabour the issue of judicial independence and its nefarious consequences on elections and democratic consolidation even though doing so would not be out of place, Popova’s study noted:

> The courts can be instrumental to the functioning of basic democratic institutions such as free and fair elections, a free press, and a competitive party system. The courts can either act as watchdogs that protect basic civil and political rights or become attack dogs that destroy any viable opposition at the behest of the incumbents. Independent courts can effectively constrain powerful political actors from imposing their preferences in any dispute where they have a stake. Dependent courts can facilitate or tighten incumbents’ undemocratic grip on power.

The above constitutes the basis for her investigation into the judicial independence or otherwise of the neighbouring countries of Russia and Ukraine within the timeframe earlier specified, a period when either country had yet to consolidate their regimes, either democratic or authoritarian, yet routine elections had been held a number of times (Popova, 2012). Presented in the example of Russia is the case Mikhail Khodorkovsky, the richest Man in Russia who, in 2005, was charged with fraud and evasion of taxes and convicted by the court and sentenced to nine years imprisonment and was, in addition, ordered to pay taxes and fines up to the tune of 613 million US dollars while his company was also legally disarticulated (Chance, 2010). Five years on, the same fellow got convicted afresh by another court for a new criminal case and, this time around, he would serve a 14-year jail term (ibid). What is glaring here is politicisation of the judiciary. It is noteworthy that this incident, much like its contemporaries, is reportedly attributable to the much trumpeted, choosy, punitive persecution of oligarchs identified to be President Putin’s renegades for having flouted his off-the-record prohibition of intruding in the politics of his administration (The Guardian, 2010).

Admittedly, the example presented above is not directly analogous to electoral litigation to which attention is given in the current study, but it goes a long way to spotlight the undue involvement

of the Russian judiciary in the politics of Russia at least within the studied period. Inversely, it unarguably serves the purpose of highlighting the unsolicited influence exerted by politicians in the other tiers of government on the judiciary. Despite chronometric limitations, we now perhaps know who the Russians are with regard to politico-judicial intrusion as presented by the author under review; but who are the Ukrainians? Popova presents them within perspective for the current study to draw on.

When President Kuchma's tenure of office was winding up, a routine presidential election was organised on November 21, 2004, in which his choice successor, Viktor Yanukovych, emerged winner. Consequently, his opposition, Viktor Yushchenko, sought redress in court where he challenged his opponent's victory at the polls. In less than two weeks, a verdict cancelling the results of the election on the grounds of significant and pervasive violation of electoral laws during the electioneering process as much as on the day of the election and ordering a rerun was reeled out by the Civil Collegium of the Supreme Court. This development has been largely construed by many as victory for the rule of law over the manipulative tendencies of politicians.

While this assertion may be worthy of scholarly and jurisprudent acclamation on the grounds that the case was lost by the incumbent regime which is supposed to be considered as one which would strive to hold on to power at all costs, there appears to be an insufficient basis for such justification in that although it is glaring that the incumbent was unable to influence the decision of the judges, it has yet to be proven that the ruling was not motivated by the opposition, his allies or other highly-placed individuals or groups who may be his supporters or even adversaries of Yanukovych and unprejudiced haters of his government. In a similar development in Africa, Azu (2015, 151) adjudges the electoral contest between Allasane Quattara and Laurent Gbagbo of Ivory Coast successful on the sole reason that the incumbent suffered defeat, a rare event in Africa and elsewhere. Yet, due consideration is not given to the influence of international politics and the yearnings of the people on the country's judiciary. Another author guilty of such hasty conclusions is Omotola (2008, 68) who, claiming that none of the eight cases that arose from the presidential election and the 105 which arose from gubernatorial elections across all the states of Nigeria can be considered to be a success, assumes that out of the 1,475 tribunal cases generated by the 2007 General Elections, only an insignificant number can be said to be a success. The

assumption further holds that only Edo State's Adams Oshiomole of the Action Congress (AC) has won in the final appellate court''.

This brings to the fore the complexities and particularities inherent in the deep-rooted issue of judicial independence when it comes to electoral litigation. Depending on either the provisions of the law, the interest of influencing parties or even internal actors of the judiciary, the outcome of electoral litigations revolves around four major possibilities indicated by Ekong (2011, 1) as (a) declaration of the election as void and ordering a re-run, (b) upturning of the return of the election and declaring the winner, loser and vice-versa, (c) upholding of the decision of the electoral commission and (d) withdrawal of petition from the court or tribunal by one or both parties in the conflict. Indeed, these have been the outcomes of election petitions in over 80 per cent of African countries where election has elicited judicial contestations since the 1990s when most African countries commenced or returned to democracy (Nkansah, 2015: 13).

In a study entitled "Dispute Resolution and Electoral Justice in Africa: the way Forward", Nkansah (2015) interrogates democratisation process and electoral adjudication in Africa while giving attention to tardiness and outcomes of such adjudications. Anchored by the interdisciplinary legal paradigm, major aspects of the outcomes of electoral adjudication processes considered include perceived or actual judicial bias, corruption and ''overwhelming political influence on the judiciary'' culminating in mistrust for not only the process of electoral adjudication but also the judiciary as a whole. The study relied on existing data from documents of electoral laws of studied countries, private documents, social science archives and the mass media. Having analysed the concept of electoral justice and adjudication generally and electoral adjudication in Africa; specifically, the study dwelled on the analysis of selected case studies of presidential election litigation in a theoretical foray to Kenya, Côte d'Ivoire, Ghana, Uganda, Democratic Republic of Congo, Zimbabwe and Malawi. While lamenting the inundation of courts and tribunals with electoral petitions as well as the politicisation of electoral litigation in Africa and even in developed countries of the world, Nkansah's observation submitted that:

> Election disputes are highly politicised and courts decisions on them no matter what, are met with scepticism and criticism by the losing party and its supporters. This is so even in advanced democracies like the US (Nkansah, 2015: 22)

The Kenyan case study depicts the litigation process between Raila Odinga and the Independent Electoral and Boundaries Commission, Uhuru Kenyatta and others where Odinga sought to contest the victory of Kenyatta at the polls in the 2012 presidential run-off. The claim of the plaintiff was that Kenyatta and his running mate, William Samoei Ruto, were not validly elected and declared winners of the presidential election. Another claim was that the said election was not free, fair and transparent, neither was it in conformity with the provisions of the constitution and electoral laws. In the end, these claims were answered in the affirmative; that is, in favour of Uhuru Kenyatta and his running mates whose return was upheld.

In Côte d'Ivoire, Laurent Gbagbo challenged the victory of Alassane Ouattara before the Constitutional Council when he prayed the council to nullify votes from nine regions of the country which were feared to be Ouattara's electoral stronghold and set aside the declaration of Ouattara as winner of the election. His prayer was granted and he was thus declared winner of the election since, without the cancelled votes from the nine regions, he defeated his opponent with 51 per cent (Aljazeera, 2010). All these events occurred in 2010. In 2011, the Constitutional Council, headed by Paul N'Dre, for some awkward reasons woke up from its slumber to pronounce Ouattara winner of the election. Ouattara took oath of office and forcefully ejected Gbagbo from office of the President of Côte d'Ivoire (BBC, 2011).

The Ghanaian experience was not so much a far cry from its African equivalents. Akuffo-Addo of the New Patriotic Party (NPP), having lost at the polls in 2012 presidential election, headed for the court to challenge the return of his opponent, John Mahama of the National Democratic Congress (NDC). Electoral irregularities such as voting inane of any biometric verification, over-voting, failure of a presiding officer to sign results, duplication of codes of polling stations, availability of ghost polling stations, among others, were the claim of irregularities with which the election was marred, and the plaintiff's prayer was for the court to set aside the results of the election as well as the declaration of Mahama as president-elect of the country. After hearing and several sittings, the Supreme Court of Ghana dismissed the claims and gave verdict that, overall, John Mahama was validly elected (Premium Times, 2013).

The situation in Uganda cannot be treated differently. Nkansah explains that Besigye, in 2006, filed a petition against Museveni who was declared winner of the Ugandan presidential election. Two prayer options were put forth by Besigye; namely, a rerun of the election or a recount of

votes on the grounds of contravention of constitutional provisions and electoral act, failure to comply with the provisions of presidential electoral act of the country, and other electoral offenses against him. Unlike in the other cases discussed above, the Supreme Court of Uganda ruled that it was convinced by the veracity of the claims of Besigye, but that it was not convinced that the reported electoral irregularities and malpractices in any way affected the results of the presidential election in a significant manner and, as such, dismissed Besigye's claim. Quoting Nkansah (2015):

> The Supreme Court of Uganda found that the Electoral Commission failed to comply with the Presidential Elections Act and the Electoral Commission Act in the conduct of the elections, in that people were disenfranchised; and in the counting and the tallying of the results. The Supreme Court also found that the election was not conducted on a free and fair basis because of the incidents of intimidation etc. However, the court in a majority of four against three ruled that - it was not proved to the satisfaction of the court that the failure to comply with the provisions and principles affected the results of the presidential election in a substantial manner.

The complexities of electoral litigation in Africa and, by extension, the rest of the world is undeniably glaring in the above extract and, as many have lamented, the court has for long been used as an instrument to retain power and elongate tenure of office alike. This calls to question the issue of playing by the rules and playing with the rules. Evidently, the court, in the last example, confirmed that Museveni, an incumbent leader, failed to play by the rules, yet, the court, for its own part decided to tamper with the rules by upholding his proven flawed victory at the polls on the grounds of unconvincing proof on the part of the plaintiff/opponent. Kabila was dragged to court by his opponent, Jean-Piere Demba, for alleged massive rigging and electoral irregularities following the 2006 presidential election outcome in Democratic Republic of Congo (DRC). Some of his claims are the complete absence of local and international observers at the polling stations, granting access to illegitimate voters to the polling stations and ballot boxes, intimidation of voters and unwarranted manipulation of the entire process and of voters. The accusations also included corruption of officers of the electoral body. The verdict of the court was a dismissal of the petition (Independent Online, 2006).

As Nkansah observes, the large majority of cases instituted in the courts or tribunals in Africa over election matters turn out in favour of the incumbent. The few cases which have turned out

otherwise did out of peculiarity or out of unavoidability, and legal complexities, which suggests that the outcome of electoral litigations in Africa is largely influenced by the power of incumbency. A dispassionate study of such cases would reveal that the trend is no coincidence. For instance, when, in Cote d'Ivoire, the Constitutional Council declared Gbagbo winner of the presidential election of the country, he was still firmly holding on to power as incumbent and obstinately refused to step aside in spite of pressure from the international community. However, the upturning of the decision by the same Council saw the light only when Gbagbo's power of incumbency was becoming increasingly weakened owing to the intervention of the international community. It could, therefore, be argued that the second decision of the Constitutional Council was nothing but an afterthought orchestrated by the dynamics of international politics as against their first decision apparently occasioned by threats from, and fear of, power of incumbency.

For reasons such as the foregoing and for other similar reasons, the judiciary in Africa and elsewhere has frequently been charged with indirect election rigging as well as unwholesome encouragement of electoral malpractices leading to lack of confidence in electoral adjudication processes in courts. Yet the large numbers of election petitions put a lot of strain on the judiciary (Nkansah, 2015: 1), a situation that suggests cynicism on the part of electoral management bodies who reportedly hinge on judicial provisions to perpetrate electoral misconducts while asking aggrieved parties to 'go to court to seek redress' even with the increased knowledge of judicial manipulations and politicization of electoral litigations. Election management bodies seem to be aware and take advantage of a certain trend either related to legal ethics or discretion of the judiciary if not altogether constitutional which restricts the judiciary from tampering with their electoral decisions particularly at the presidential level. As Nkansah (2015, 18) discovered from her study:

> […]in all the cases the decisions of the courts invariably upheld the outcome of the work of the Electoral Management Bodies even though they found evidence of malpractices and/or irregularities. The basis of their decision was that the irregularities did not substantially affect the outcome of the elections. The courts philosophy on presidential election petition seemed to be not to interfere even on the face of overwhelming irregularities […] as a matter of fact petitions on presidential elections not included in those selected for analyses took the same trend. In Nigeria for example all the petitions on presidential elections under Nigeria's Fourth Republic failed and the decision of the EMB prevailed.

This assertion is further underpinned by Onapajo and Uzodike (2014) in a study entitled "Rigging through the Courts: The Judiciary and Electoral Fraud in Nigeria". The duo's study relied on data sourced from interviews with top members of the political elite and members of the judiciary as well as newspapers, election observers, law and political parties' reports. Their argument is that, apart from the conventional forms of pre-election and election rigging, there is an increasingly developing pattern of election rigging identified as post-election rigging attributable to the judiciary. While decisively studying the formation of the Nigerian judiciary in relation to election litigation and other roles they play in the conduct of elections, they further argue that the judicial system in present-day Nigeria has been wired in an electoral fraud-promoting manner by the age-long contact with military rule in the country which largely placed decrees over and above the constitution and which has, for a long time, converted the judiciary into a government-perpetuation implement.

The tribunal phenomenon was also introduced by the military regime to adjudicate in certain matters considered serious, special or urgent out of regular Courtrooms among which are electoral matters. It is worthy of note that these tribunals in Nigeria have, over the years, been known to undermine regular courts and by-pass regular judicial processes. Additionally, officers of the judiciary have continued to undergo *taming* since the military era in Nigeria up until present. Thus was imposed on the judiciary a high degree of subservience to military government and later to subsequent civilian regimes, thereby increasingly incapacitating the country's judiciary for long years even in a democratic era. Additionally, it has been argued that the current constitution of the nation is a military document imposed on the people in a democratic dispensation, and that the document serves the military and the military-dominated democratic politics currently in operation. Citing Alubo (2006, 25), Onapajo and Uzodike (2014, 148) contend that:

> The Constitution empowers the President and the governors to appoint and dismiss judicial officers only with a commendation from the NJC, which is subject to acceptance or rejection by the executive (section 21 of the 3rd schedule, 1999 Constitution). In terms of this statutory condition, the executive could easily appoint or dismiss judicial officers on the basis of primordial and personal interests.

They further maintain that, of all motives for the appointment and dismissal of senior judicial officers, the parochial interests of the executive and legislative members as well as those of their allies and loyalists are not the least. The foregoing is further complicated by the issue of funding where the judiciary is constitutionally compelled to receive funds from the executive for the smooth running of its affairs, yet the constitution does not categorically stipulate the exact amount of money to be allocated to the judiciary and from what Federal Government vote it is expected to come. These developments have rendered the judiciary vulnerable to, and penetrable by, political elites who seek to advance their political interests.

In an attempt to buttress the complexities of the politicisation of electoral litigations in Nigeria, Omotola (2008, 52) shares the view of many scholars by observing the trends and developments of electoral violence and outcomes in Africa's nascent democracy that opportunities for democratic redress, including the judiciary and civil society, are also affected by contradictions of the state''. According to this scholar, the Constitution of Nigeria provides that the plaintiff in election litigation is saddled with the responsibility of proving his case beyond reasonable doubts such that the court or tribunal is convinced that election irregularities or malpractices in the disputed election are substantial enough for expediency of nullification or rerun as the case may be. First, the cost of electoral litigation at the governorship or presidential level is often too high for candidates/plaintiffs to afford. Second, the candidate declared winner of the election, having been sworn-in, has access to government apparatuses to use against the opposing party. This scenario makes it simpler for the party in possession of state resources to have easier, if not unhindered, access to a personally-generated electoral justice.

### 2.6 Gap in Literature

This study holds a special appeal in Nigeria where the viability of elections as means of gaining political power and control requires serious interrogation. From the start of the current democratic dispensation in 1999 uptill the 2019 general elections, the phenomenon of 'democracy by court order' in Nigeria is gaining momentum because increasingly, electoral outcomes are being decided by the courts often with enormous implications for political stability, national security and democratic governance. Ordinarily, post-election litigations are legal matters that should be decided on the basis of legal provisions and procedures. Disturbingly, experiences in Nigeria's Fourth Republic have shown situations where political undercurrents

influence the processes and outcomes of election litigations. Extant literature is replete with studies on the manipulation of electoral outcomes through activities relating to the casting and management of ballots including vote-buying, under-age voting, electoral violence, corruption of electoral officials, ballot stuffing and falsification of results in different regions of the world including Africa, Asia and Latin America. Nigeria is also not an exception. However, available studies have not sufficiently examined electoral fraud in the judiciary in a bid to influence electoral outcomes. The literature on electoral manipulation has not adequately looked into post-election activities. This gap, which will immensely benefit the disciplines of political science, peace and conflict studies and law, is expected to be filled by a robust discussion of the influence of politics on election litigation through the manipulation of the judicial process as an emergent phenomenon in securing electoral victory through the courts in Nigeria's contemporary democracy.

## 2.7 Conclusion

This chapter has provided a robust scholarly review of existing literature of the subject-matter of electoral politics and electoral manipulations across different geopolitical zones of the world. The review established that electoral and judicial manipulations are common phenomenon in democratic systems of both advanced and developing countries. Importantly, the chapter noted that different strategies and patterns of manipulation are employed across different parts of the world. It established the complicity of political elite in electoral fraud with the state directly involved in some instances. Conclusively, the chapter identified a gap in existing literature and discussed how this study fills the gaps. Chapter three, which is the next chapter dwells on examining the theoretical framework on which this study is anchored.

# CHAPTER THREE

# REFLECTIONS ON THEORETICAL FRAMEWORK

## 3.1 Introduction

Theory is the oxygen of research work. It provides the basis to review strategies and identify possible changes (Bunch, 2005). It incorporates concepts and principles for understanding issues under investigation (Sheila, 2001). It fosters understanding by giving clarification to ideas through a systematic explanation of their causes and evolution (Omotola, 2007). Adoption of a theory in a study helps in streamlining the area of focus (Goode and Hatt, 1952). The theoretical analytical framework adopted for this research is eclectic combining elite, state fragility and separation of powers theories. These theories are mutually-reinforcing because they provide holistic approach to the study. Elite theory explains the electoral behaviour of politicians usually implicated in electoral manipulation; state fragility theory espouses the conditions that surrender the electoral process to manipulation by the elite while separation of power theory, especially as it relates to the independence of the judiciary, explains what subsumes the former to political pressure.

## 3.2 Elite Theory

The concept of *elite* is anchored on the assumption that an influential minority wields the power that controls the state (Lopez, 2013: 1). The said elite strive for power through several mechanisms to secure their position (ibid). Accordingly, the elite theory explains the characteristics and behaviour of the elite and the intersection of these with state outcomes (Higley & Burton, 2006: López, 2013). In this connection, the conceptualisation of elite by Mills still retains currency. Elites are those political, economic, and military circles which, as an intricate set of overlapping small but dominant groups, share decisions having at least national consequence. Insofar as national events are concerned, decision issues from the power elite (Mills, 1952). There is a link between elite behaviour and regime change and this has often made most elite researchers to naturalise elite theory as ‘‘regime theory’’ (Higley & Burton, 2006; Dogan & Higley, 1998). Elite theory originates from classical sociology, especially the works of Michel (1915); Weber (1922); Pareto (1935) and Mosca (1939). These authors are usually

identified as classical elite theorists. Classical elitists explain state outcomes through elite behaviour.

Mosca, for instance, emphasised the ways in which minorities control the majorities, adding that "political classes"– Mosca's term for political elites – usually have "a certain material, intellectual, or even moral superiority" over those they govern (Higley, 2006). Pareto postulated that elites are often the most talented and outstanding individuals in the society as well as have the tendency to unleash coercion to control based on the advantage of their inherited wealth and family connections (Higley, 2007). Pareto compared them to lions and foxes. Michel stated that elites could evolve as a result of their leadership position in organisations which invariably imbues them with power (Linz, 2006). Emphasising the inescapability and also the relative autonomy of elites, the troika characterised aspirations to fully democratic and egalitarian societies as futile. The basic generalisations of elite theory are highlighted as follows:

- A minority must hold the reins of power, and thus be the rulers, in the society. This stands out in Michel's famous statement, "who says organisation says oligarchy". This implies that the oligarchy is a logical derivative of organisation. In addition, Pareto says that minority rule is the reality in all societies – developed, underdeveloped, simple or complex.
- This minority that rules derived its original power almost invariably from force or coercive services such as the monopoly of military function. But, over time, this coercive power is transformed into hegemony through routinisation. That is, mythical and ideological rationalisations.
- The minority ruling circle is composed of all those who occupy commanding political positions. It, over time, undergoes changes in different ways. At times, it is through a recruitment of people from the lower strata of society into the ruling elite group. At other times, a new group is incorporated into the governing elite or by a complete replacement by a "counter-elite" through a revolution. These changes in the composition of the elite group have been termed circulation of elite.
- The changes in the composition of the elite group affect the form of society (Kifordu, 2011; Bottomore, 1993).

Within the realms of sociology and political science, elite theory relates to the political, social and economic organisations which expounds on the power relationships in society. Bottomore (1993) explained that the elite theory denotes democracy as a Utopian ideal. It is also against state autonomy theory. This minority group, according to Mosca, "performs all political functions, monopolises power and enjoys the advantages that power brings".

Elite theory holds the assumption that elite action has a causal effect on the relationship between state and society (Lopez, 2013). The theory is desirably useful in understanding elite behaviour as a potent analytical tool in explaining political outcomes. The vitality of the notion of ''elite inevitability'' is often advanced by classical elitism which has been frequently traced to capitalism, a classist ideology strongly advancing social stratification at the expense of egalitarianism (Pareto, 1935; Mosca, 1939; Weber, 2005/1922; Michels, 2009/1915).

At first, the norm was seizure of communities by aristocratic rulers and later the societal differentiation by monarchical governments. The inevitability of elite has been used by classical elitists as a response to the arguments of political liberalism and Marxism (Lopez, 2013). The Marxist explanation stratifies the division of society into the bourgeoisies and the proletariat with the former constituting the ruling class while the latter is made up of the ruled or subordinate class (Pereira, 2013). The permanent domination of the proletariat by the bourgeoisie was encouraged by the state, thus the firm-up of unequal opportunities (ibid).

Theorists of the classical elite school argued that society is necessarily driven by elites hence democracy is unrealisable (Lopez, 2013, 2). The structure of the society in the view of the elitists is such that a minority rules the society, and elites cannot be upstaged by another group. This found expressions in the Pareto's ''law of elite circulation'' (1935); Mosca's ''notion of political class'' (1939) and Michel's ''iron law of oligarchy'' (1915). Contemporary elite theory draws from Weber who has done seminal work on elitism. Weber's theory of domination (1922, p.695), his concepts of power and domination as well as his theoretical framework on political parties are fundamental pillars of contemporary elite theory (Lopez, 2013, 2).

Thus, classical elitists define elites through capacity, personality and skills. Elites can be regarded as those in possession of material and/or symbolic resources, defined in the context of power or ability to actualise own will despite opposition (Weber, 1922, p.696). They are actors

that control resources, occupy key positions and relate through power networks (Yamokoski and Dubrow, 2008). The concept of ‘‘elite sector’’ suggests that there is more contestation among elites than with masses (Lopez, 2013, 3). This reflects in the allegations and counter-allegations of electoral rigging or irregularities as a means of gaining electoral victory by top political parties’ leaders and their candidates. Political elite which constitutes the most researched aspect of the elite sector is therefore synonymous with power dispute.

Current literature on elite theory focuses on theoretical efforts directed towards modelling regime change and democratisation, and this is now known as the new elite paradigm or new elitism. The works of Burton and Higley (1987); Higley *et al.* (1990); Dogan and Higley (1998); Higley and Burton (1989, 2006); Best and Higley (2010) and Field and Higley (2012) have been outstanding in this regard. While elite theories of democracy have concentrated on united and disunited typology, differentiated by their mode of power seizure, the manipulative tendencies of the two groups are never sources of debate. The postulations of elite theorists vividly explain the electoral and political processes in Nigeria. Studies have shown how political, business, and traditional elites, under the platforms of political parties in the present democratic dispensation in Nigeria, manipulate the sentiments of the masses for the selfish objective of acquiring economic base (Omodia, 2009, 36). In the words of Kifordu (2011, 29):

> The Nigerian political regime is characterized by a typical hybrid pattern of incomplete liberalization, lack of inclusiveness and deficient application of the rule of law. First, many groups have no voice in the authority structure despite the existence of a range of political institutions (such as political parties and periodic elections managed by a government-sponsored electoral commission) designed to stimulate contestation, co-operation and representation. Second, violent and fraudulent acts of political succession during elections signal authoritarian styles.

The author drives this point home by stressing that ‘‘the composition of the core political executive elite reflects the interests of the few who benefit from the exclusion of the majority of the population’’. Political elites in past and present democratic regimes in Nigeria have manipulated ethno-religious sentiments, cultural divides and social classes for the acquisition of political support. The imposition of candidate within political parties (a major source of intra party conflict), the politics of divide and rule among labour organisations and the politicisation

of military and security agencies including the bureaucracy are many of the manipulative devices of the elites that have defined the politics and governance of Nigeria's Fourth Republic.

Overall, one major feature of elite politics in Nigeria's Fourth Republic is perpetuation of their hold on political offices by means of inheritance. This is what Kifordu (2011, p.16) refers to as reproduction of political elite. In Nigeria, such elite regenerating phenomenon which runs contrary to the popular concept of elite circulation has played out in two forms. On the one hand, in the wake of the return to democratic politics in Nigeria in 1999, top ranking military officers who had previously held key positions under several military regimes resigned from the military to delve fully into partisan politics with the aim of regaining access to political power which they often believed rightfully belonged to them in perpetuity. A recent study (Kifordu, 2011, p.23) reveals retired military officers made up 17.5 per cent of members of the political elite between 1999 and 2007, a period of civilian/democratic rule in Nigeria. The study further shows that majority of these men have retired from active service, yet they stay closely associated with the country's Armed Forces to leverage military paraphernalia and tactics for political action and enhancement of political authority. This perhaps explains why politicians in Nigeria remain in office until old age.

On the other hand, there is a pattern of genealogical recycling of positions of authority among the elite, particularly at the federal level. Handing over of political offices and platforms to contest for same from parents to children, uncles to nephews/nieces and from cousins to cousins and to family friends as well as others with whom background and social networks are shared is rampant among Nigeria's political elite. As Kifordu (2011, p.16), while commenting on the elite rotation of Nigeria's power structure and its effects, observes in his study on political elite composition in Nigeria and how it affects the country's democracy thus:

> […] despite the many structural changes in the Nigerian polity, individual members and groups of the elite are drawn from similar and exclusive backgrounds. There is a certain relationship between historically entrenched values and interests that informs the political conduct of the core political executive elite and the denial of opportunities to new groups.

What this trend explains is that elitism in Nigeria is characterised by untold desperation to keep power within reach by any means whatsoever. It also suggests insensitivity of the elite to the

conditions of the lower classes of society which accords them legitimacy. Resultantly, an elite-masses divide is established owing to lack of circulation of elitism. Zartman (1982) has aptly conceptualised circulation as ‘‘the continual interaction between incumbent elites and contextual situation in generating and absorbing new elites or elite aspirants in varying degrees”. In the understanding of Kifordu (2011, 21), lack of circulation conjures “(re-)appearance in political executive positions of individuals or groups from similar social backgrounds” as against circulation which he says denotes the “outcome of processes of contestation and social inclusion that impact on the composition of the political elite, in relation to certain determining variables, such as differences in social structure, values and interests” (ibid). By this, the gap continues to widen in a threatening manner to the extent that governance in the country is now ‘an intra-elite competition’ and the masses are unduly deprived of their prospects of participating in the business of governance and their right to freely choose their trusted leaders as obvious in the long-invented trend of intra-elite negotiations of election outcomes and power sharing formula. Yet, the influence of the elite on the running of the government could possibly be channeled towards the yearnings of the people. Kifordu (2011, p.16) argues that the rights and freedom of members of society, comprehensiveness of political system, honesty and effectiveness of the rule of law are very likely to crack under the weight of influential dominance of a diminutive amount of persons or groups in society, and ineffective government.

Kifordu (2011, p.16), whose emphasis is on the executive arm of government avers that the historical and contemporary realities of the composition of Nigeria’s political elite reflect principles of inequality to the extent that they constrain the political system. Equality, in the inverse, enhances the political system towards developmental achievements. Verba (1978, 6) defines equality as some sort of ‘‘political ideal’’ developed to counteract inequality through the opening of ‘‘participatory opportunities’’ but streamlines his thought down to political equality which he describes as ‘‘the extent to which citizens have equal voice over governmental decisions’’ although not rowdily at once. This is, however, not the case with Nigeria’s elitism. As could be deduced from the analysis up to this point, the country possesses an anti-democratic elite system which makes it susceptible to electoral manipulations, judicial manipulations, oppression of the masses especially the minority, and so on. The military-civilian oligarchic network of elite continues to generate political, financial, electoral, judicial and other forms of malpractices, which although fortifies the power of the elite, diminishes all that the democratic

governance represents. This structure equally cripples the middle-class of the Nigerian society which is normally expected to be a force to reckon with in democratic politics. The repercussion, Kaufman warns, is the plummeting of democracy owing to poverty of the median voter, severity of redistributive pressure and likelihood of authoritarianism as orchestrated by the ‘‘wealth holders’’ of society. Remarkably, Nigeria’s case threatens to be more degrading as poor voters are additionally disenfranchised, directly and indirectly, while elections are manipulated by state apparatuses such as election management bodies and the judiciary working tirelessly for the elite.

This study, therefore, analyses the politicisation of election petition through the manipulation of judicial process from the prism of elite theory. A general theory of elites and politics might be derived from the paradigm shift presented in the writings of Mosca, Pareto, and Michels (Field and Higley, 1980). Political scientists and sociologists focus on the activities of elites and the roles they play in transitions to democracy or its breakdown (Higley, 2007). It is in this sense that this study examines the roles of key political elite in election litigation and the manipulations that characterise the process in Nigeria’s Fourth Republic. In Nigeria where the democratic praxis is governed by self-seeking and particularistic interests of the ruling elite, election is handled as a *do-or-die* affair through the manipulation of the electoral process to satisfy vested interests of the elite. This results in contested electoral outcomes and subsequent petitions in the courts to seek redress.

### 3.3 State Fragility Theory

There is no internationally-agreed definition of fragility. Scholars have only attempted to adapt the phenomenon to the study of diverse socio-economic and political issues including democratisation, conflict, poverty, and underdevelopment. States are considered fragile when their governments demonstrate weak capacity in delivering the core functions of government to its people (Vallings and Moreto-Torres 2005, 4). While fragility is essentially a dynamic process manifesting different signs in different climes and times, pressures and risk factors causing and sustaining it often point to common direction which comprises: weak political institutions, economic decline, poverty and violent conflict (Vallings and Moreto-Torres, 2005, 4).

From another dimension, fragility tends to indicate low capacity and bad performance by the state in terms of security and development. The affected state cannot supply basic human

security or requisite conditions for human development. Fragile states are different from captured states, such as Equatorial Guinea and Swaziland, where leadership debars the state from ensuring security. Poverty, among other factors, is the principal driver of fragility, and is much more responsible for the condition than weak governance (Cilliers & Sisk, 2013). For other scholars, fragility is driven more by intra-state conflict (Brinkerhoff, 2011).

The organization of political institutions could help in categorising form of government in a state. The consistency of state institutions is very important in guaranteeing political stability. Strong institutional arrangements ensure that entities in the society prevent internal perturbations in political institutions. In dynamic institutions, a structural weakness can instigate abuse by powerful groups in parts of the system. It is of importance to note that change itself does not trigger fragility but rather "the balance between a state's institutions which determines whether particular incidents or conditions destabilise the state" (Vallings and Moreto-Torres 2005, 9).

Yagboyaju (2011) linked the faltering democratisation in Nigeria's Fourth Republic to the incapacitation of the state by "officials in charge of various public institutions and their sponsors, the godfathers" using social closure and state capture as analytical framework. He situated state's incapacitation within an understanding of social closure and state capture, pointing out that elites-political and non-political seized the machinery of the state for their interest. The understanding of state capture as conceived by the World Bank is apt is this regard. State capture conjures:

> The actions of individuals, groups, or firms both in public and private sectors to influence the formation of laws, regulations, decrees and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials.(World Bank 2000, 15).

Yagboyaju (2011, p. 96) further asserted that state institutions such as the legislature, executive, judiciary and regulatory agencies represent state structures that are captured, the captors are private firms, political leaders, political parties and other minor interest groups. It was, therefore, not surprising to see high level bargaining among elites on the structure of political power in Nigeria's emergent democracy in 1999. Political institutions including political parties and the Independent National Electoral Commission (INEC), an institution saddled with the responsibility of conducting elections in Nigeria's Fourth Republic were captured to appropriate

power and state resources through the teleguided election of 1999. Kew aptly captured this in his submission that:

> No one had any illusion that anything but high-stake bargaining would determine the structures of power in the civilian government. Elections would influence this process to the extent that the crowd influences a soccer match (cited in Yagboyaju 2011, p. 97).

The foregoing analysis points to the connection between elite theory and state fragility in explaining electoral politics in Nigeria. While it may the argued and sustained that many factors including prolonged military rule, political violence and poverty have predisposed the Nigerian state to become fragile, the role political elite play in this cannot be exonerated. The disappointment of democratic practice in Nigeria, for instance, has been blamed on state fragility which is often revealed most during elections (Albert, 2011), the main architects of the failure remains the political elite. As noted by Edet (2011), democratization in Nigeria is suppressed by the electoral manipulation perpetrated by political elite in connivance with electoral bodies and security agencies including the Nigeria Police. Political elite in Nigeria are complicit in the processes of weakening state institutions because they capture the institutions and deploy them to consolidate their political and economic interests and those of their cronies. This practice is common in neopatrimonial state which is described by Max Weber (cited in Mcloughlin, 2009) as a system of patron-client rule in which elites exploit and appropriate public resources and distribute them to their political followers in exchange for loyalty. Elite corruption, which has been described as monumental in Nigeria (Okeke and Idike, 2016:57) establishes an inverse relationship between the institutions of the state and their usefulness.

What is deducible from the foregoing is that the privatisation of the Nigerian state and its dependence on the political class (Ukiwo, 2009, 129) symptomise the apparent weakness or fragility of the state and this, in a sense, cripples the functionality of its apparatuses. The weakness of the state and the loss of the regulatory role of its institutions have telling implications for democratisation process (Yagboyaju, 2008, 5). In their study of state weakness in developing countries, Khan and Gray (2006, 31) observed that fragmentation of the state institutions can engender predatory behaviour. In this sense, political corruption becomes pervasive and state institutions serve as conduit for primitive accumulation. They noted that the institutional fragmentation of the state occurs where factions have taken control of parts of the

state and conflicts must be resolved to ensure harmony (Khan and Gray 2006, p. 32). State fragility hypothesis seems to bear relevance to the understanding of elite capture of the judicial institution saddled with the constitutional role of resolving disputes arising from the conduct of elections in Nigeria.

### 3.4 Separation of Power Theory

It is a truism that separation of power is as "old as humanity". What this means is that it exists in every human society. Any country of the world practicing democracy and the rule of law cannot circumvent the application of the theory of separation of power, also nominally regarded in some quarters as division of labour. In the same vein, authoritarian regimes have, over time, found separation of power essential to a smooth and effortless running of government. The structure of the old Oyo Empire in Yorubaland, Nigeria, demonstrates the utility of separation of power in the establishment of Ogboni to check the excesses of the Alaafin (Morton, 2016). By implication, separation of power is temporally and geographically illimitable. However, slight distinctions or modifications are unavoidable as the theory and practice moves from culture to culture or from country to country.

The profound mistrust of government and human nature is reflected in separation of powers theory (Brown Cited in Redish and Cisar 1991, 455). The absence of trust and confidence in individual or body erodes the entrustment of unreviewable power of check on all organs of government in such individual or body. Instead, each organ of government is simultaneously granted its own limited authority and the means to check the potential excesses of governmental units under a separation-of-power arrangement. In other words, its aim is to avert all forms of tyranny and overstepping of political authority, for it is often said that absolute power corrupts absolutely. As a principle, the concept of separation of powers has been greatly linked to Montesquieu whose idea was also influenced by the ancient Greek and Roman theory of ''mixed government'' and the study of the 18$^{th}$ century English constitution. This explains the dubbing of the theory as ''Montesquieu's Tripartite System'' (MTS). In his days, and to an extent till date, absolutism was in practice in his country, France, where power was concentrated in the hands of just one body. Drawing on the writings of Locke, Montesquieu, advocating a replication of the English practice of separation of power, believes separation of power as antidote to power abuse. Notably, Locke declares that:

> It may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws; to have also in their hand the power to execute them, whereby they may exempt themselves from obedience to the laws they made and suit the law, both in its making and execution, to their own private advantage.

Montesquieu, equally noteworthy, is resolute that:

> Political Liberty is to be found only when there is no abuse of power. But constant experience shows every man invested with power is liable to abuse it, and carry his authority as far as it will go. To prevent this abuse; it is necessary from the nature of things that one power should be a check on another. [...]When the Legislative and Executive powers are united in the same person or body there can be no liberty. [...]Again there is no liberty if the judicial power is not separated from the legislative and executive. There would be an end of everything if the same person or body, whether of the nobles or the people, were to exercise all the three powers (www.parliament.uk/briefing-papers/sn06053).

The doctrine of separation of powers connotes a division of power between the three branches of government; namely, executive, legislature and the judiciary. The doctrine thrives on two fundamental assumptions. First, each branch of government is restricted to certain functions and powers and, second, an independent judiciary is established. Power and functional restriction of branches of government is intended to prevent concentration of powers in single governmental body which can ultimately lead to abuse of such powers and, in the extreme situation, can degenerate into tyranny. Simplifying this assertion, Bradley and Ewing (2011, 83) explain that ministers must not sit in parliament, executive has no business meddling in decisions of the judiciary and judicial powers must not be arrogated to ministers. The famous English philosopher, John Locke, posits that, where power is not separated, there is a high tendency of corruption particularly where the powers to make, interpret and execute laws rest at once in one body (Zuckert, 2004). Because the nature of government functions and powers is such that overlaps, friction is usually the attendant effect of such overlap and, accordingly, an independent judiciary resolves the conflicting interests.

In Nigeria, partisan interests have tended to define electoral administration at all levels. Similarly, the judiciary has often succumbed to political manipulation. Ruling parties have tended to appropriate the police to serve partisan interests at election time. In the First Republic,

ethnic parties made the census a part of their struggle for power. The 1979 Constitution established a Code of Conduct Bureau and Tribunal to deal with corruption in office, but it subjects the appointment of the members and the funding of the bodies to politicians with individual stakes in the process. Understandably, the bodies failed to function as desired (Diamond, 1987).

This development has made it imperative to seek new initiatives for power regulation mechanisms to check, balance and distribute power. The Constitution of the Second Republic attempted to ensure the independence of the bodies, including among others the judiciary, but it failed *ab initio*. The reason is that the power to appoint the members of the institution was reposed in the president and they were made dependent on legislative funding and review (1979 Constitution). Indeed, the judicial service commission is inundated with politicians and the judiciary is denied adequate funding (Fagbohun, 1986).

Due to the failure of the basic arms of the government to secure the integrity of the democratic process, Diamond suggested the need to establish an autonomous entity to oversee the appointment, funding and operation of crucial procedural institutions. This is expected to be operated absolutely independent of party control in order to make the democratic process work (Diamond, 1987).

However, when separation of power between the executive, legislative and judicial branches of government proves inadequate, the integrity of the democratic process hangs in the balance. Studies have shown that the structure of the judiciary in terms of its composition, appointment of its judges and finance can inadvertently affect the independence of that important branch of government (Sharp, 1935; Ladinsky and Silver, 1967; Diamond, 1987; Redish and Cisar, 1991; Baum, 2003; King, 2007 and Oko, 2009). Under this condition, judicial independence is undermined by political partisanship and ideology of the executive that has the prerogative of appointing judges.

The practice typically makes the judiciary highly permeable to partisan manipulation. In his study of the issues in the constitutional design of Nigeria's Third Republic, Diamond (1987, p. 216) affirmed that Nigeria's judiciary is weak and lacks independence and, hence, often succumbs to political pressures despite its rich human capital. The weakening of judicial

independence subjects judges to undue pressure and manipulation suffice to say that a judge whose decisions are influenced by politics is putting the independence of the courts at risk (Cox, 1996, p. 566). The real culprits in the attempt to weaken judicial independence are the elites "who may never willingly work for its restoration, as the weakening effects of their activities on the democratization process clearly shows" (Yagboyaju, 2008). Relatedly, in his assessment of the attitude of politicians towards the judiciary, Nwabueze (1985) pointed out that "politicians in this country are strongly inclined and prepared to use pressure of various kinds to try to influence in their favour the judges' decision- from lobbying to intimidation to outright bribery" (cited in Oko, 2009, p.1305). It will tend to constitute an immense scholarly contribution, through this study, to explore the interface of judicial independence weakness hypothesis and the vulnerability of the judiciary to electoral manipulation, especially as it relates to election litigation.

### 3.5 Table 3.1: Research Questions Matrix

The table below shows the research question matrix describing how the research questions align with the conceptual and theoretical tools adopted for this study.

| | **Research Questions** | **Conceptual/theoretical Tools** |
|---|---|---|
| 1. | What were the underlying interests and forces that determined the processes and outcomes of election litigations in Nigeria? | Elite theory and State fragility theory |
| 2. | What were the strategies employed by political and non-political elites in the manipulation of the judicial process in election litigation cases in Nigeria? | Elite theory |
| 3. | How can the processes and outcomes of the controversial election litigation cases in Ekiti, Osun and Ondo states be explained within the context of election manipulation in Nigeria? | Elite theory and Separation of power principle |
| 4. | In what ways does the structure of the Nigerian judicial system allow the manipulations of the processes and | State fragility theory and Separation of power principle |

| | | |
|---|---|---|
| | outcomes of election litigations in Nigeria? | |
| 5. | What are the implications of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic consolidation? | State fragility theory |

### 3.6 Conclusion

This chapter discussed elite, state fragility and separation of powers theories and how they mutually reinforce each other to offer holistic analytical framework for the study. Elite theory focused primarily on the explanation of the power relations in the polity within the minority elites, and between the ruling minority and the governed in our contemporary society. On the other hand, state fragility theory advances the fact that the ineffectiveness of public institutions of governance is often tied to the weakness of the state in performing its core functions. This has manifested in frequency of political violence and role capture by the elite. It is observed that the disappointment of democratic practice in Nigeria's current political dispensation which started on 29 May, 1999 has been adduced to state fragility and this manifests significantly during elections. The fragility of the Nigerian state therefore has imposed great challenges for the consolidation of democratic practice in contemporary Nigeria including the election litigation process.

Also, separation of power principle as espoused by Montesquieu holds basically that the three (3) organs of government should be independent and separate from one another in the dispensation of their duties. The principle posits that the concentration of power in a single person's hand or a group of people is dangerous, and may result in an authoritarian form of government. The theory argued that government works more efficiently and effectively when each of the organs exercises its own powers. Therefore, a clear-cut division of power into three organs of government – executive, legislative and judiciary – is favoured. However, the powers and functions of the tripartite arms of government overlap with evident attendant friction emanating due to such

overlaps in which it is expected that an independent judiciary resolves the conflicting interests accordingly. The motif of the doctrine is that the centre of authority must not be overly concentrated; accordingly, the principle is described as a doctrine of 'check and balance'.

Finally, the next chapter after the theoretical framework focuses on the history and dynamics of court contested elections in Nigeria. It examines the histography of electoral disputes that ended in courts in Nigeria and Kenya in comparison with the view to understanding the pattern of electoral processes and the manner in which they interfaced with the judicial processes. This will provide useful understanding of electoral democracy and electoral manipulations in the past and the impact such may have on the present.

# CHAPTER FOUR

# HISTORY AND DYNAMICS OF COURT-CONTESTED ELECTIONS IN NIGERIA

## 4.1 Introduction

This chapter examines the history and dynamics of court-contested elections in Nigeria's First, Second and the aborted Third Republics. It discusses the political intrigues involved in adjudicating electoral disputes brought to the courts. It also examines attempts at manipulating the judicial process of resolving disputes emanating from the conduct of elections within the period under review, and submitted that such maneuvering has had implications for Nigeria's Democracy.

## 4.2 Court-Contested Elections in Nigeria's First Republic, 1960-1966

Various events influenced elections in Nigeria's First Republic. Notably, before the First Republic, there were two elections; namely, the 1954 general elections and the 1959 general elections (Adamo, 2018). The 1954 election in Nigeria under colonial rule was the first federal general elections in Nigeria (ibid). It was under the Lyttleton Constitution which permitted different elections with different electoral laws in regional and central legislatures. The results of the election at different levels revealed that 92 seats were allocated to the North and the Northern peoples Congress (NPC) won 83; the National Convention of Nigerian Citizens (NCNC) won two and the Action Group (AG) won one seat. Altogether, 42 seats were allocated to the West, of which 18 were won by the AG; 22 by the NCNC, and one seat by the NCPL. The East was allocated 42 seats, of which the NCNC won 34; the United National Independence Party (UNIP) won four; the AG won three and an independent candidate won one seat (Nnadoze 2007, 54 cited in Adamo, 2018). Evidently, the North was allocated more seats in the parliament than both the East and West combined. This was a decision to further the politicisation of population figures in Nigeria with the North claiming to have over 50% of Nigeria's population (Yakasai, 2002 cited in Adele, 2009). The absence of a uniform electoral system further enhanced attempts to manipulate the electoral process to serve the whims of the north. To be sure, direct elections were held in Lagos province and in both the Western and Eastern regions while electoral colleges were used in the Northern region (Akinola, 2014). From the foregoing, there was evidence of the politicisation of the election in terms of ethnic dominance.

The 1959 federal general election was the second and last election under British colonialism in Nigeria. It also took the shape of the 1954 federal election in Nigeria. The Premiers in these regions made sure that, with religion and ethnic sentiment, Nigeria was dominated by three regional political parties. The NPC, which was Muslim dominated, won 134 seats in the federal House while the Southern Christian-dominated NCNC had 81 and the AG 73 seats respectively (Adamo, 2018). The NCNC became the party of the Igbos in the East, the NPC in the North and the AG in the West. The dominant political parties took hold of their respective regions in the elections of the First Republic (Omilusi and Adu, 2016). Despite the political parties' regional outlook in the 1959 general election, no single political party was strong enough to become a national political party (Olumide and Ekanade, 2011). Hence, the NCP and NCNC went into a coalition and formed the government of an independent Nigeria in1960.

Although the 1959 general election didn't end up in the court of law, there were pointers to the fact that the election was influenced to favour the northern region because the British was disposed to handing over power to the region to manage the post-colonial Nigerian state. Accordingly, the election was rigged by the British officials who were in charge of Nigeria's electoral machinery to back up the North's demand for 50% of the federal parliamentary seats (Dawodu, 2015). Writers on Nigerian government and politics have thus questioned the 1959 federal elections conducted by the British (Akinsanya, 2005). According to a participant's account who was in charge of statistics in the department of Labour's headquarters in Lagos, the then Governor-General Sir James Robertson ordered him to rig the elections (Dawodu, 2015). When he made attempts to ask the Governor-General why he had rigged the elections expected to usher in Nigeria's First Republic, he quietly replied "because it was necessary" (ibid). What is discernible from the foregoing revelations is that electoral outcomes are tied to the interest of political elite who determine the pattern of leadership rather than the electorate. This was evident in the action of Sir James Robertson in reappointing Sir Balewa as the Prime Minister while counting was still on-going in the 1959 elections (Akinsanya, 2005: 2: Omoruyi, 1999)

**Table 4.1**

**The Federal Election Results of 1959 in Nigeria**

| Regions | Action Group UMBC | NCNC NEPU | NPC | Others Independents |
|---|---|---|---|---|
| Northern Region | 25 | 8 | 134 | 7 |
| Eastern Region | 14 | 56 | - | 1 |
| Western Region | 33 | 21 | - | 8 |
| Federal Territory | 1 | 2 | - | - |
| Total No. of Seats 312 | 73 | 89 | 134 | 16 |

Source: Ikelegbe (1988:316).

In 1960, Abubakar Tafawa Balewa became the Prime Minister of Nigeria and exposed the Nigerian polity to inter-ethnic clashes and competition across the Nigerian federation. Hence, the coalition government, headed by Abubakar Tafawa Balewa, started to experience challenges which contributed to the demise of the First Republic. The NCNC did not see the party benefiting from the coalition because most of the projects and policies made were to the advantage of Northern Nigeria, and not to Eastern Nigeria which was the NCNC stronghold. Also, the NCNC and the NPC had different ideologies on series of issues. On the issue of alignment and non-alignment, the NCNC opposed the creation of a supranational regional government but favoured a policy of alignment with the Western capitalist bloc while the NPC was disposed to the idea of creating a United States of Africa, the establishment of a regional government and a non-alignment policy (Ojo, 2012).

The party politics that played out after independence was immense and it affected the polity. For example, the Action Group under Chief Obafemi Awolowo preferred to remain in the opposition controlling the Western Region. This decision resulted in the central government at that time creating the Mid-Western Region to reduce the power of the Action Group and the political influence of Chief Obafemi Awolowo (Ojo, 2012). In the words of Olumide and Ekanade (2011, 4):

> The Federal House of Representatives, in April 1961, passed a motion that a new Mid-Western Region be created and to be calved out of the Western Region. Obviously, this was a calculated attempt by the coalition government at the centre to wane and neutralize the overall socio-political and economic influence of the

AG in the Western Region without similar actions to their own regions which remained intact.

During the First Republic, there were problems arising from the national census of 1962/1963. The figures of the census were contentious because the NPC figures from the West and Eastern regions combined were higher than that of the North which accounted for only 30% of the Nigerian population and this resulted in the cancellation of the elections in 1963 on the order of the Prime Minister Tafawa Balewa (Ezeah, Iyanda and Nwangwu, 2013; Basil, 2017). And after a recount, the North accounted for 60% of the Nigerian population. The official figures of the census were: Eastern Region 12.3m; Northern Region 22.5m; Western Region 10.5m and Lagos 0.8m (Anifowose, 1982).

These political games between these regions reflected in the 1964 federal elections, the third in Nigeria after the 1954 and 1959 general elections. The 1964 elections in Nigeria were influenced by series of actions that took place after Nigeria's independence in 1960. Some of these actions that influenced the 1964 and subsequent elections in the Second and aborted Third Republics were the imprisonment of Chief Obafemi Awolowo and other prominent members of his party, the creation of the Mid-Western Region excised from the Western Region, the controversial census figures of 1962 and 1963, boycott of the election in the Eastern and Mid-Western Regions as well as in Lagos on allegations of rigging (Obiefuna-Oguejiofor, 2018). The 1964 federal parliamentary election in Nigeria was contested heavily by the two main political parties that formed alliances under the umbrella of Nigerian National Alliance (NNA) and United Progressives Grand Alliance (UPGA). These coalitions polarised the politics of the country into competition between two opposing alliances to influence policies to their various advantages. The two major political parties that contested the federal parliamentary elections showed the competition between the north and the south. At the centre of the Nigerian National Alliance (NNA) was the Northern People's Congress (NPC) while at the centre of the United Progressives Grand Alliance (UPGA) was the NCNC, and this greatly shaped the election (Osaghae, 2002).

During the elections, the electoral process witnessed massive violence, kidnappings, harassment, intimidation and killing of opposition party members by the ruling regional parties and there were series of plots to rig the election (Lawal, 2015Abah and Nwokwu, 2015). The electoral process during the 1964 general elections in Nigeria was manipulated to favour some regions of

the country (Anifowose, 1982). As a matter of fact, the elections saw 88 out of a total of 178 NNA candidates in the North with candidatures unopposed (Gberevbie and Oni, 2014). This resulted in the opposition party, the UPGA, boycotting the election to protest the unlawful arrest, persecution, kidnapping and in certain instances, killing of its members. In the same vein, some members in the Federal Electoral Commission resigned (Ogbeidi, 2010; Gberevbie and Oni, 2014).

The results of the election showed that the Nigerian National Alliance (NNA) won the elections with majority of the party candidates returned unopposed while the NCNC retained control of power in the East and Mid-West. NPC was also in a position to form the government at the federal level without a need for coalition. After negotiations, the President and Prime Minister reconstituted a new government which did not favour UPGA members (Ikelegbe, 2004). The 1965 western elections were keenly contested by the UPGA and NNA. The UPGA was an alliance between the Western Region-based Action Group and the NCNC. This was due to the reason that the NPC/NCNC alliance had broken down; hence, there was the need for the NCNC to form alliance with another political party.

From the foregoing, electoral disputes have become characteristic features of Nigeria's democratic trajectory (Isah, 2019). It should be mentioned that there were no election petition tribunals constituted to adjudicate election disputes in Nigeria's First Republic, and this encouraged many politicians to take recourse to self-help to outsmart one another in the political game (ibid). The trend came to a climax when Awolowo was accused of planning to overthrow the democratic government of Abubakar Tafawa Balewa for failing to form the government although his political party, Action Group (AG), won the majority of votes cast in the 1959 general elections. Balewa's Northern Peoples' Congress (NPC) was at a vantage position to form the government because more than half of the seats in the House of Representatives were allocated to the north. Awolowo's party polled 1,992,364 (26.1%) votes but won 73 out of a total of 312 seats while Balewa's party secured 1,992,179 (25.2%) votes but won 134 seats of the 312 seats (Isah, 2019). With this political logjam and imbalance and lack of constitutional avenue such as the election petition tribunal for Awolowo to ventilate his grievances, he was perhaps spurred into alleged attempt at overthrowing the government of the day. In 1962, Prime Minister Balewa informed the nation that his government was aware of the plans by certain

political actors to forcefully topple his legitimate government. He claimed that certain forces had been undergoing military training abroad for the same purpose. Based on these allegations, Awolowo was tried in the law court on thirty-three count charges including treason. Along 19 others, he was found guilty of all charges and was consequently sentenced to ten years imprisonment. Supporters of Awolowo and the AG believed that the trial and sentencing of their political leader was politically-masterminded to banish him from the political scene (Ojo, 2012).

### 4.3 Court-Contested Elections in the Second Republic of Nigeria, 1979-1983

After prolonged periods of military rule from 1966 to 1979 occasioned by an abrupt end of the First Republic, Nigeria again became a democratic state in 1979. The military, under the Murtala/Obasanjo administration, was committed to a transition to civil rule. Therefore, the Supreme Military Council (SMC) under the Murtala/Obasanjo government approved a five-stage programme to guarantee an easy transition to civil rule (Brown, 2013).

Nigeria's August 1979 elections were contested by the Unity Party of Nigeria (UPN), Nigerian Peoples Party (NPP), National Party of Nigeria (NPN), Great Nigeria Peoples Party (GNPP) and Peoples' Redemption Party (PRP) (Lawal, 2015). The election results showed that Alhaji Shehu Shagari of the NPN polled a total of 5,698, 857, Chief Obafemi Awolowo of the UPN 4,916, 651; Dr. Nnamdi Azikiwe of the NPP 2,822, 523; Alhaji Aminu Kano of PRP 1,732, 113; and Alhaji Waziri Ibrahim of the GNPP 1,686, 489 (Ogbeidi, 2010).

Alhaji Shehu Shagari, with a total number of 5,698, 857 and having obtained one-quarter of the votes cast in twelve states of the Nigerian federation, was declared the winner of the elections as his closest rival Chief Obafemi Awolowo who polled a total votes of 4,916, 651 questioned the decision of the electoral body. He argued that the winner was required by the electoral law to have, at least 25 percent of the votes in 13 out of the 19 states and not in 12 as announced by the electoral body. However, Alhaji Shehu Shagari obtained only 19.94 per cent of the votes cast in the thirteenth state. Therefore, the question arose as to what is two-thirds of nineteen states as required by the constitution. Unfortunately, this election was not different from the previous elections conducted in Nigeria. The military rigged the election and then enthroned their preferred candidate (Osinakachukwu, Jawan and Redzuan, 2011). The Olusegun Obasanjo

military regime transferred power to Alhaji Shehu Shagari and the Second Republic was inaugurated.

On the basis of this perceived electoral fraud, the victory of Alhaji Shehu Shagari in the polls was contested majorly by Chief Awolowo and other political parties. Chief Awolowo petitioned the outcome of the election on the premise that Alhaji Shehu Shagari was not duly elected by a majority of lawful votes in contravention of section 34A(i)(c) (ii) of the Electoral Decree 1977 and section 7 of the Electoral (Amendment) Decree 1978 (210). Specifically, the outcome of this election was controversial as there was the need to interpret the meaning of "12 2/3" of 19 states because the leading candidate got less than 25 per cent of votes in two-thirds of twelve states and two-thirds of the local governments of the thirteenth state (Obiefuna-Oguejiofor, 2018).

The election petition between Obafemi Awolowo and Alhaji Shehu Shagari was particularly important for the administration of justice under a new democratic government after long years of military rule. The case was popular and was handled by a team of thirty-nine lawyers in total: while Chief Obafemi Awolowo had twenty four lawyers appealing the case, Alhaji Shehu Shagari had twelve lawyers defending him. According to Adeniran:

> …The case was argued by a full strength of thirty nine lawyers where Mr.G.O.K. Ajayi SAN led a team of twenty-four lawyers for Chief Awolowo, the appellant while Chief R.O.A. Akinjide SAN led a team of twelve lawyers to argue for Alhaji Shehu Shagari, the first respondent (Adeniran, 1982:41)

The main contention of Chief Awolowo was that two-thirds of nineteen states is thirteen states. In the alternative based on the premise that two-thirds of nineteen states is twelve two-third states, only two-third of the votes received by Alhaji Shagari in his thirteenth state should be used in computing whether he had received one-fourth of two-third of all the votes cast in that state (Boparai, 1981). Chief Obafemi Awolowo and his legal team requested the expertise of Professor Ayodele Awojobi, a Professor of Engineering at the Lagos University and an Applied Mathematician as a witness who testified that there are 38,760 possible two-thirds of Kano State going by Local Government Area and that, in the absence of a computer, it would take not less than one year to declare the result in respect of two-thirds of Kano State (ibid). Exhibits were tendered to show the declaration of the result and analysis of votes cast for each candidate during

the election. The election tribunal, consisting of three eminent Justices, unanimously rejected the argument of Chief Awolowo's team and upheld the Election Commission's declaration.

Aggrieved by the judgment of the election tribunal, Chief Obafemi Awolowo appealed to the Supreme Court on the interpretation and application of Section 34A (1) (*c*) (ii) of the Electoral Decree on the grounds that:

> 1. The Election Tribunal erred in law in constructing two-thirds of 19 States
>
> as 12 instead of 13 States when in law and especially within the context of Section 34A(1)(*c*)(ii) of the Electoral Decree 1977 as amended, a State being a legal person or a corporate entity cannot be fractionalised.
>
> 2. The Election Tribunal erredwhen it held that the overiding requirement
>
> in the election is the number of votes cast in each of the States, "two-thirds State" would amount to two-thirds of the total votes cast in that State and not the territorial or physical area of such State.
>
> 3. The Election Tribunal misdirected itself when it took the total votes cast for the 1st respondent (Alhaji Shehu Shagari) in Kano State as 243,423 instead of two-thirds thereof viz, 162,282 to determine whether or not the first respondent scored at least a quarter or 25 per cent of the total votes cast in two-thirds of Kano State viz 203,460.

Source**:** Nigeria Legal Information Institute (1979).

The Supreme Court, on appeal, concurred and struct out the appeal by a majority of six Justices against one who had a contrary opinion (Nigeria Legal Information Institute, 1979). In a lead judgment delivered by Justice Obaseki, the appeal was dismissed on the following grounds:

> (1) It appears to me that when reference was made in Section 34A (1) (*c*) (ii) to one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation, the intention must be the votes cast within the geographical area set out under the Constitution and where Kano State is

concerned within the geographical area of Kano State. Moreover, registers of voters were compiled from a house to house registration of all eligible voters throughout the Federation unless a registered voter is within the proper geographical area, his vote will not be taken. I therefore find myself unable to accept the proposition that votes are synonymous with States or that two-thirds of a State can be ascertained by a calculation of what two-thirds of the total votes cast in the State is.

(2) The construction that two-thirds of 19 States in the Federation is 12 2/3 States may be correct in the abstract but within the context of the Constitution and the Electoral Decree, it is unfounded.

(3) Where there are two possible meanings a word of the Statute conveys, what should be adopted is the more reasonable one. Where the other meaning leads to absurdity or generates internal contradiction, that meaning should be dropped for the first as the legislature never contemplates absurdity or contradiction. The word "each" in the Sub-section (1) (*c*) (i) of Section 34A qualifies the entire State and not a portion or fraction of a State and to interpret it otherwise is to overlook the disharmony between the word "each" and the fraction "two-thirds". Two-thirds of nineteen, to avoid any contradiction gives thirteen.

(4) Arising from the interpretation that two-thirds of the 19 States in the Nigerian Federation refers to the land area and not the votes, the result of the voting in Kano State can only mean what is stated in Exhibit T1 and T2 and nothing else. This is so having regard also to the provision of Section 34 of Electoral Decree 1977 which provides that votes in any election to the office of Governor or President shall be given by ballot and the results shall be ascertained by counting the votes given to each candidate.

(5) Finally, the reference to "state" in sub-section 2 of the Section 34A when it is required to ascertain the second candidate for any possible Electoral College election to be held in each legislative House of the National Assembly and in the House of Assembly of every State under the provisions of Sub-section 3 and 4 of Section 34A of the Electoral Decree further lends support to the above view.

(6) As FEDECO appears to have regarded the number of States required by the 1st respondent to satisfy the requirement under Sub-section (1)(*c*)(ii) as 122/3 but on close and properexamination, the evidence shows that there was compliance with the provisions of Section 34 in respect of only 12 States.

(7) It might have been possible for the 1st respondent to receive all the votes he received in the whole of Kano State in the imaginary two-thirds State if it had been delimited, ascertained and identified but he was not given the opportunity by FEDECO and the fact that the Election Tribunal was left to the exercise of delimiting two-thirds of Kano State from the vote boldly testifies to this fact. I am firmly of the opinion that it is not the intention of those who promulgated the Electoral Decree that votes should be collected outside the area of each of two-thirds of 19 States to ensure the attainment of the qualifying percentage in each State.

(8) In my opinion, what the law has forbidden was what has been done to ascertain what percentage of votes received by the 1st respondent in two-thirds of Kano State is of the assumed total votes cast in two-thirds of Kano State. If that was the intention of the Supreme Military Council it would have been so expressed in the Decree in very clear words. I have looked in vain to find the words in any portion of the Statute-the Electoral Decree 1977 as amended.

(9) Once a petitioner makes allegationof a particular non-compliance and averred in his petition that it was significant, the onus rests on the petitioner so to satisfy the court or tribunal having cognizance of the question. The petitioner's witness-Professor Ayodele Awojobi's evidence in my view could not and did not help the tribunal to determine whether the non-compliance complained of affected the result.

(10) I reason that when the Decree talks of "affecting the result" it suggests tilting the result to favour the petitioner. The onus on the petitioner is enormous in the Presidential election where the entire country constitutes the constituency and in the absence of any alteration to the provision of Section III of the Electoral

Decree, no tribunal in any appeal filed by a weak presidential opponent can justifiably invalidate any election for non-compliance on a minimal scale.

(11) There is no proof that the non-compliance with Section 34A (1) (*c*) (ii)-one of the provisions of Part II, has any implication on the result (i.e. but for the non-compliance the appellant would have won) to enable the election petition tribunal to declare the result invalid. The petitioner has failed to satisfy the election tribunal and this court that the issue of non-compliance has affected the outcome of the election in a way that prevented a majority of votes in his favour.

Source**:** Nigeria Legal Information Institute (1979).

The decision by the Supreme Court to deliver the judgment in favour of Alhaji Shehu Shagari generated so many legal controversies as it was strange to constitutional provisions. According to Nwolise (2007; 146):

> The judgment attracted criticism as the Supreme Court gave a controversial decision in favour of the winner, based on a questionable mathematical 'theory' manufactured to determine the winner rather than the use of an Electoral College, as enshrined in the Constitution.

The 1979 presidential election petition case was a legal tussle which introduced new dimension of mathematical theory into Nigeria's electoral trajectories and legal administration. Legal complications set in when the Justices of the Supreme Court led by Justice Atanda Fatayi-Williams fractionalised 19 states of the Nigerian federation and agreed with the legal counsel of Shagari, led by Richard Akinjide, that 12 2/3 was the two-thirds of the 19 states in Nigeria. The Supreme Court justices save for Justice Kayode Eso who dissented the judgment, determined two-thirds of votes in Kano State which was the state in contention by dividing the 1,220,763 total votes cast in the state by two-third to arrive at 813, 842 and consequently declared that Shagari's votes of 243, 423 in Kano was greater than 25 percent of the total votes cast in Kano. It was on this legal contraption that Shehu Shagari was declared winner of the 1979 presidential election by the Federal Electoral Commission (FEDECO) and affirmed by both the presidential election petition tribunal and the Supreme Court (Awofeso, 2013; Isah, 2019).

The silence of the 1979 Constitution and the 1977 Electoral Decree or the 1978 Electoral Amendment Decree on what amounts to the two-thirds of 19 states of the Nigerian federation

must have been exploited by the politicians and justified by the judiciary even though the electoral law does not contemplate the fractionalisation of the states. This legal lacuna was manipulated as can be inferred from the submissions of the Chief Justice of Nigeria, Fatayi-Williams, while justifying the verdict of the Supreme Court thus:

> Where a provision of statute is capable of multiple valid interpretations, the Supreme Court is at liberty to pick and choose among which interpretation to adopt (Cited from Isah, 2019).

Having successfully defended the mathematical contraptions introduced into the electoral dispute, Shagari's lawyer Richard Akinjide was later rewarded with the attractive position of Minister of Justice and Attorney General of the Federation. Though declared president, Shagari was widely described as a president by mathematics (Bolaji, 1980) while the judiciary was seen to have hunkered down in defensive crouch to interpret a set of impossible facts, thus making the whole legal process described synonymous with the ''day the law died in Nigeria'' (Awofeso, 2013).

### 4.3.1 Court-Contested Elections arising from the 1983 General Elections

After the general elections of 1979 which ushered in the Second Republic, Nigeria was due for another election in 1983. The second republic was characterised by similar events of the First Republic and this had an impact on the 1983 elections. The period preceding the election witnessed a lot of political intrigues and jostle for power (Agbaje, 2005). After four years in office, Alhaji Shehu Shagari sought another four years in office despite series of opposition against his candidature. The NPN was determined to consolidate itself in power, while most Nigerians craved for a change in government as violence and insecurity was at its peak (Ogbeidi, 2010). Thus, the elections were rigged, even by Federal Electoral Commission of Nigeria officials, in connivance with the Police (Nwolise, 2007). Also, due to the fact that the ruling government wanted to retain political power by all means, various steps were put in place by the ruling party to stay in power. First was the appointment of FEDECO Chairman, Justice Ovie-Whiskey, whose appointment was viewed as political because it violated some sections of the 1979 constitution (Adesanya cited in Taiwo, 2009: 554). Justice Ovie-Whiskey was the Chief Judge of Bendel state as at the time of his appointment. Senator Adesanya approached the High Court in Lagos challenging Justice Whiskey's appointment as Fedeco chairman and secured a

favourable judgment which nullified the appointment. The High court affirmed that Justice Whiskey was not competent to be appointed under the 1979 constitution and consequently declared his appointment null and void (Taiwo, 2009; Oyewo, 2016). However, the appointment was sustained by the rulings of both the Court of Appeal and the Supreme Court based on a flimsy premise that Senator Adesanya lacked the locus standi to challenge Whiskey's Appointment (ibid). Additionally, there was the issue of outrageous inflation of figures of registered voters (Bariledum, Abang and Nwigbo, 2016). For instance, the old Rivers State which has a total population of between 1.5 and 2.5 million had over 3 million registered voters by 1983 with an illegal addition of one million votes (Bariledum, Abang and Nwigbo, 2016). This anomaly in the conduct of the 1983 elections was corroborated by Ogbedi (2010):

> The general election of 1983 was one of, if not, the most manipulated elections in Nigeria's electoral history in terms of the menu of electoral malpractices. The elections were bastardized by the misuse of incumbency power, money, and the politics of hatred, deep animosity and intolerance inherited from the First Republic. The rigging was very massive and open (Ogbedi, 2010: 48).

Due to the glaring irregularities that characterised the elections, there were several petitions against the electoral outcomes across various tiers of government. A number of these manipulated elections were upheld by the Courts based on technical grounds though in few cases the courts invalidated the election results. Some of these pronounced court cases are examined below.

***The Election Petition Case between Bola Ige and Omololu Olunloyo***

The 1983 gubernatorial election outcome in Oyo State was taken to court by Bola Ige who held sway as Oyo State governor from 1979 to 1983. The case was taken up to the Supreme court from the State High Court and the Court of Appeal. In each of the courts, the case failed and was thrown out due to lack of merit (Abdul-Razaq, 2005). After the failure of the petition at both the State High Court and Court of Appeal, Bola Ige filed a fresh case at the Supreme Court on six grounds but was limited to four. The four grounds were:

1. Lack of compliance with the Electoral Acts provisions.
2. Legitimacy of the Vote Certificate.

3. Error of the Court of Appeal in upholding the erroneous findings of the facts by the trial court.
4. The use of the register of voters for Oranmiyan North I constituency against an order of an Ibadan high court for the conduct of election.

Arguing on behalf of the appellant, the counsel insisted that the election should be voided because the court cannot sustain the return of Bola Ige or declare Omololu Olunloyo as winner, thus both parties would go back to the polls. On the second ground, the counsel to Bola Ige argued that the Certificate of Return given to Omololu be returned as the INEC Returning officer for the election announced falsified result which is a breach of section 105(1) of the electoral act. On the third ground, the appellant argued that the Appellate court erred in law for upholding findings of the High Court which held that Omololu Olunloyo was duly elected and returned as winner, based on the majority of votes cast. On the fourth ground, the appellant counsel submitted that it was wrong for the Federal Electoral Commission to have conducted election in Oranmiyan North 1 Constituency against the order of the High Court.

Based on the appeal of the appellant, the Supreme Court comprising Justice Ayo Irikefe, Mohammed Bello, Andrew Otutu Obaseki, Anthony Aniagolu, Augustine Nnamani and Mohammed Lawal gave a five-minute judgment dismissing the appeal on the claim of lack of merit affirming the judgment of the Court of Appeal (Abdul-Razaq, 2005). The panel also awarded a N300 cost each against Bola Ige in favour of Dr. Omololu Olunloyo, the Chief electoral officer and the returning officer. The Supreme Court's verdict on the appeal generated a lot of reaction from Nigerians as a justice of the Supreme court Justice Kayode Eso was excluded from the panel on the account of his Western origin as they claimed the case involves parties sharing the same ethnic origin with him. His exclusion was shrouded in controversies as Eso was seen as a pragmatic and radical judge and his inclusion in the panel could favour Bola Ige (Ibid).

***The Election Petition Case between Nwobodo and Onoh***

After the announcement of the 1983 gubernatorial election result in Anambra, Mr Nwobodo challenged the electoral outcome and appealed to the Supreme Court alleging result falsification by Mr. Chris Onoh based on sections 164(6) (a) and 164(6) (b) of the constitution of the Federal Republic of Nigeria. He alleged that his opponent ''stole'' the election through voter

suppression, voter fraud and super-imposing election figures and that such criminal activities helped tilt the election in favour of his opponent (Abdul-Razaq, 2005).

On 8 of October 1983, the Supreme Court dismissed the appeal because the case was not proved beyond reasonable doubt by the appellant (Akinsanya and Ayoade, 2005). It is worthy to note that the Supreme Court decision had an ethnic colouration. The decision was four judges against three against the appellant. Justice Sowemimo, Justice Mohammed Lawal Uwais, Justice Ayo Irikefe, and Justice Mohammed Bello all supported the lead judgment read by Justice Sowemimo. On the other side, Augustine Nnamani, Andrew Otutu Obaseki and Kayode Eso dissented. It remains questionable why all the justices who dissented the lead judgment were from the southern part of Nigeria. Furthermore, the tussle between Nwobodo and Onoh for the State House in Anambra State witnessed the use of diabolical methods to acquire political power and intimidate their opponent (Gudaku, 2019). Iroegbu (2010) asserted that Chief Jim Nwobodo and Chief C.C. Onoh both had magical and ritual clashes as to who should occupy the State House at Enugu during the NPP and NPN election litigation struggle in the 1980s.

***The Election Petition Case between Akin Omoboriowo/Chief Electoral Officer for Ondo State and Michael Adekunle Ajasin***

This election petition was a petition from the outcome of the governorship election held in Ondo State on 13 August 1983 between Chief Akin Omoboriowo, the gubernatorial candidate of the National Party of Nigeria and Chief Michael Ajasin, the gubernatorial candidate of the Unity party of Nigeria. Initially, Chief Akin Omoboriowo, the gubernatorial candidate of the National Party of Nigeria was announced as the winner of the election by the Electoral Commission with a total vote of 1,228,891 as against 1,015,385 votes of Chief Michael Ajasin. Chief Michael Ajasin disputed the result and challenged the results in the High Court of Ondo State sitting in Akure. After reviewing the case, the five judges of the High Court unanimously delivered judgment in favour of the petitioner (Michael Ajasin), declaring that Chief Omoboriowo was not duly elected.

Based on the election figures, the judgments from the Federal Court of Appeal and the Supreme Court, as evidenced in the certificates of results duly signed by the Assistant Returning Officers, party agents and oral witnesses from returning officers, it was evident that the actual result was

1,563,327 votes for Chief Ajasin while Chief Omoboriowo polled 703,592. Evidence from these judgments showed that Chief Omoboriowo's figures were fraudulently increased by 523.389 votes, leaving those of Chief Ajasin to decrease by 547,942 votes. Report revealed that the inflation of the scores was orchestrated by the deputy returning officer (Osinakachukwu and Jawan, 2011).

The case went to the Supreme Court and, Justice Andrew Otutu Obaseki on October 15 1983, dismissed the appeal and affirmed the decisions of the Federal Appeal Court, Benin Branch and the panel of the High Court of Justice of Ondo State after reading the proceedings in the High Court and the Federal Appeal Court together with the judgments of the two courts on the appeal, the briefs filed both in the Federal Appeal Court and in the Supreme Court, the notice and premise of appeal filed in the Supreme Court, and after hearing counsel's submissions at the oral hearing in the Supreme Court on the grounds of appeal and considering the questions for determination. In a well-considered judgment, the court of 5 judges unanimously found in favour of the petitioner as follows:

> "We therefore hold that the total votes received by the petitioner in the gubernatorial election for Ondo State held on 13th August, 1983 is 1,563,327 and that the total votes received by the 1st respondent is 703,592.
>
> We also find and hold that the petitioner obtained 25% or more of the total votes cast in 16 of the 17 local governments of Ondo State while the 1st respondent received 25% or more of the votes cast in 7 of the 17 local governments of the State.
>
> Accordingly, by virtue of the provisions of section 164(7) of the Constitution of the Federal Republic of Nigeria 1979 we hold that the petitioner, Chief M.A. Ajasin was duly elected and ought to have been returned. This petition succeeds and it is hereby declared that the first respondent Chief Akin Omoboriowo was not duly elected or returned and that the petitioner Chief M.A. Ajasin was duly elected and ought to have been returned and this determination shall be certified to the Federal Electoral Commission in accordance with section 149 of the Electoral Act 1982" (Nigeria Legal information Institute, 1984).

In other words, the court held that Chief Akin Omoboriowo was not duly elected or returned, and that Chief M.A. Ajasin was duly elected and was supposed to have been duly returned. This case

perhaps represented one of the few instances where the judiciary was not in the public glare for allegations of political manipulation in Nigeria's Second Republic.

**Table 4.2**

**Notable Election Petition Cases and Verdicts in Nigeria's Second Republic**

| **Political Party** | **Petitioner** | **Election Type** | **Year** | **Case to be decided by the Court** | **Court Judgment/ Verdict** |
|---|---|---|---|---|---|
| Unity Party of Nigeria | Chief Obafemi Awolowo | Presidential election | 1979 | The case to be decided by the court was to ascertain that Alhaji Shehu Shagari was duly elected by a majority of lawful votes in contravention of section 34A(i)(c) (ii) of the Electoral Decree 1977 and section 7 of the Electoral (Amendment) Decree 1978 (210) | dismissed the appeal of the petitioner and upheld the election of Alhaji Shehu Shagari |
| | | Presidential election | 1979 | To be specific, to interpret the meaning of "twelve-two-thirds" of nineteen states as the winner did not obtain 25 per cent of votes in two-thirds of twelve states and two-thirds of the local governments of the thirteenth state | |
| | **Bola Ige** | Oyo State Governorship | 1983 | That the election should be voided<br><br>That Certificate of Return given to Omololu be returned as the INEC Returning officer for the election was | Dismissed the appeal on the claim of lack of merit affirming the judgment of the Court of Appeal |

| | | | | | |
|---|---|---|---|---|---|
| | | | | announcing falsified result<br><br>The appellant erred in law for upholding findings of the High Court which held that OmololuOlunloyo was duly elected<br><br>That it was wrong for the Federal Electoral Commission to have conducted election in Oranmiyan North 1 Constituency against the order of the High Court. | |
| | Mr. Jim Nwododo | Anambra gubernatorial election | 1983 | Appealed to the Supreme Court alleging result falsification by Mr. Chris Onoh. | Dismissal of the appeal because the case was not proven beyond reasonable doubt by the appellant |
| National Party of Nigeria (NPN) | Chief Akin Omoboriowo | Ondo State Governorship election | 1983 | Appealing against the judgment of the of the High Court election Panel sitting in Akure which held that Chief Akin Omoboriowo was not duly elected. | Dismissal of the appeal and affirmed the decisions of the Federal Court of Appeal. |

Source: Author's Compilation.

### 4.4 Court-Contested Elections in Nigeria's Aborted Third Republic

General Ibrahim Babangida initiated a transition programme to transfer power back to a democratically-elected government. After many timetables and ground rules changes, election to the office of the president was conducted on June 12 1993 (Omotoso and Oyeranmi, 2014). Despite the fact that the presidential election was conducted and presumably won by Chief M. K. O. Abiola of the Social Democratic Party, the election was cancelled by the military government

headed by General Babangida (Adegoju, 2014). This action was strongly condemned by many Nigerians both home and abroad who have expected an end to the lengthy years of military rule dating back to 31 December, 1983. Because the election results were cancelled by the Federal Military Government, citing irregularities and manipulations and the subsequent suspension of the transition programme, the electoral outcome could not be challenged at a constituted election petition panel.

It is however important to note that, before the June 12 presidential election, there were several political intrigues culminating in a court petition by aggrieved politicians to stop the election from holding. The judiciary was employed to secure frivolous court injunctions to scuttle the transition and the electoral process either to prolong the military rule which was profiting some politicians who enjoyed patronage from the military elites or to achieve ethnic agenda, particularly by some south-eastern politicians who had vowed to jeopardise the Yoruba interest of becoming Nigeria's president in retaliation of the alleged role the Yoruba played in stopping Nnamdi Azikiwe from becoming the Premier of Western Nigeria in Nigeria's First Republic (Ojukwu and Oni, 2016). Notable was the role played by Chief Francis Arthur Nzeribe who used the services of Association for a Better Nigeria (ABN) to scuttle the June 12, 1993 election (Obi-Ani and Obi-Ani, 2010). This was captured in the words of Ojukwu and Oni (2016) thus:

> Some days before the presidential election, precisely on 10 June 1993, the Abuja High Court issued an injunction against the June 12 election in response to a suit filed in by the Association for Better Nigeria (ABN), a group led by Chief Arthur Nzeribe, an illustrious and noble son of Ndigbo (Ojuwu and Oni, 2016:17)

The judicialisation of the 1993 presidential election and the consequent intention of using same to nullify the political cum electoral exercise was an elite conspiracy at holding on to power at the centre and keep Nigeria under prolonged military rule which has not only denied Nigerians of their political rights of association and leadership choice but also battered the image of the nation in the international arena due to numerous records of human rights abuses and the muzzling of the civil society. Ojukwu and Oni (2016) noted that:

> Not only that the ABN succeeded with the assistance of the military government in power to frustrate and truncate the transition programme, it also championed the crusade for the extension of Babangida's tenure by another four years (ibid)

This fact was also corroborated by Obi-Ani and Obi-Ani, (2010) thus:

> Employing the services of Association for a Better Nigeria (ABN), Chief Nzeribe sought to scuttle the June 12, 1993 election. ABN filed a suit at an Abuja High Court on June 1, 1993, seeking an interlocutory injunction to restrain NEC from conducting the June 12, presidential election. On June 10, an Abuja High Court judge, Bassey Ikpeme, granted an *exparte* stopping NEC from conducting the election on June 12 (Obi-Ani and Obi-Ani, 2010:10)

Before the June 12 election proper, political intrigues were deployed to delay the transition from the military to civil rule in Nigeria; indeed, different tactics were deployed by the military to prolong their stay. And this laid the foundation of the subsequent cancellation of the June 12 presidential elections as captured by Akpan (1993 cited in Obi-Ani and Obi-Ani, 2010):

> Although the transition to civil rule programme was expected to terminate in October 1992 with the election of the president, General Babangida shifted the handing over date to January 2, 1993, and yet again to August 27, 1993. In November 1992, the military regime had had cause to cancel the presidential primaries of SDP and NRC and disqualified all the 23 presidential aspirants of both parties from further participation in the transition programme

After the presidential election was conducted, despite the pending court order preventing the conduct of the election, the ABN having failed at the first attempt to prevent the election, went to the court to prevent the announcement of the result (ibid). The injunction consequently resulted in the suspension of the announcement of the results on June 16. The judiciary became the means in the hands of political and military elites to obtain *ex parte* injunctions to achieve political ends.

### 4.5 Court-Contested Elections in Selected Country

***Kenya as a Case Study***

It is a global phenomenon that electoral outcomes are challenged through appropriate legally-established process, usually the courts, and Africa has had its fair share of this trend. Kenya is one of the African countries that share similar experiences with Nigeria in this regard. It has had series of court-disputed cases. Unlike Ghana where electoral process rarely ends up in the courts since the return of the nation to democracy in 1992, Nigeria and Kenya share experiences in judicialising elections, especially through petitions that often attend electoral outcomes. Though legal and constitutional, the process rather than correct the ills associated with electoral conducts

in these countries, often throws the electoral process into more contradictions and controversies, leaving room for elite manipulations. This section, therefore, examines election litigation cases arising from the 2013 and 2017 presidential elections in Kenya with the view to establishing the trends of political manipulations that characterise court process, a phenomenon that is fast gaining ground in African political and democratic processes.

***Constitutional Framework of Election Petition in Kenya***

Before the adoption of the 2010 constitution in Kenya, previous constitutions did not provide for an elaborate electoral management process and system in respect to election petition. Thus, courts lacked a strong institutional independence that could adequately aid them to address grievances arising from the electoral system. The judicial system also suffered from the inadequacies emanating from the absence of standards on enforcement of the already deficient framework, most especially for aggrieved parties during election petitions.

Furthermore, the prior constitution did not provide for an elaborate electoral system with provisions for elaborate dispute-resolution mechanism. The general framework for elections and dispute resolution had been provided in the National Assembly and Presidential Elections Act which was not comprehensive enough (Kenya Human Rights Commission, 2013). Previous constitution does not elaborate on how the electoral body is to facilitate dispute resolution.

The resolution of electoral disputes arising from electoral grievances, whether relating to election of the President or Members of the National Assembly, was a preserve of the High Court which was vested with the jurisdiction to hear and determine election disputes (Sections 10 and 44, Constitution of Kenya, Revised Edition 2008). This is clearly different from what is obtainable in Nigeria where a special election petition tribunal is established shortly after electoral conduct to hear, investigate and adjudicate on matters arising from the election conduct. The point of convergence is that the election petition tribunal in Nigeria is equivalent to a High Court in Kenya. With respect to presidential elections, no timeline was set as to when the dispute would be heard and determined. Such a petition proceeds to the appellate system if a party to the High Court case was dissatisfied with the outcome of the Court. As a result, an appeal could take as long as two years. It was against this backdrop that a new constitution was enacted to address these gaps found in previous constitutions (Murray, 2013).

The 2010 constitution in Kenya created so many changes in respect to election litigation. First, it introduced a justiciable right to make political choices (Constitution of Kenya, 2010). Second, it recognises democracy as an essential value and asserts that Kenyans have a right to determine the form of governance of the country (Constitution of Kenya, 2010). The constitution also went further to address other principles that will foster the democratic principles in Kenya. Section 87 of the 2010 constitution in Kenya provided the constitutional framework to determine election petition cases titled "Elections disputes". Article 87 of the constitution states that:

> 87. (1) Parliament shall enact laws to establish processes for timely resolution of electoral disputes.
>
> (2) Complaints concerning an election, other than a presidential election, shall be filed within twenty-eight days after the announcement of the election results by the Independent Electoral and Boundaries Commission.
>
> (3) Service of a complaint may be direct or indirect which may be by advertisement in a newspaper with national coverage (Constitution of Kenya, 2010).

Under this article, processes for timely resolution of electoral disputes and other procedures have been guaranteed. It should be noted that contrary to the provisions in 87(2) above, election petition disputing electoral outcomes in Nigeria must be filed within 21 days after the declaration of election results (Electoral Act, 2006).

The jurisdiction of the Supreme Court to hear election disputes is set out under the constitution as follows:

> 163. (3) The Supreme Court shall have (a) Exclusive original jurisdiction to hear and determine complaints and petitions relating to the elections to the office of President arising under Article 140

This article implies that presidential election disputes be resolved quickly without any delay after the conduct of election. It is not required that a case should be filed in the High Court as had been the procedure in the erstwhile regime (Murray, 2013). Notably, the new constitution suspends the swearing-in of the president, pending the hearing and determination of the petition

challenging a presidential election. This is however against the provisions in Nigeria's electoral system where the candidate declared as winner can be sworn in while petitions challenging his/her victory are still being entertained in the courts.

Article 140 of the Constitution which concerns itself with the question as to the validity of presidential elections provides as follows:

> 140. (1) A person may file a complaint in the Supreme Court to challenge the election of the President-elect within seven days after the date of the announcement of the results of the presidential election.
>
> (2) Within fourteen days after the filing of a complaint under clause (1), the Supreme Court shall hear and determine the complaint and its verdict shall be final.

The Constitution is keen on expediency hence it requires election petitions to be heard and determined within a short period of time (Constitution of Kenya, 2010). For that reason, it requires that a petition on the validity of a presidential election be filed within no more than seven days and its determination within fourteen days which is a huge difference from previous election petition which took a longer time.

Article 105 (1) of the Constitution vested in the High Court the jurisdiction to hear electoral disputes in the following way:

> 105. (1) The High Court shall hear and determine any question whether:
>
> (a) an individual has been duly elected as a member of Parliament; or
>
> (b) the position of a member has become vacant.
>
> (2) A complaint under clause (1) shall be heard and determined within six months of the date of filing the petition.
>
> (3) Parliament shall make laws to give full effect to this Article.

***Election Petition Case in Kenya arising from the 2013 General Elections***

Following the announcement of Uhuru Kenyatta as the President-elect of Kenya, three petitions challenging the outcomes of the presidential elections as announced by the Independent Electoral

and Boundaries Commission (IEBC) were filed at the Supreme Court in accordance with the law (European Union Election Observation Mission to Kenya, 2013; Judiciary Working Committee on Election Preparations, 2013). The petitions contained allegations of impropriety and breach of both the Constitution and electoral laws by the IEBC. The first petition was by Flowrence Jematiah Sergon, Denis Njue Itumbi and Moses Kiarie Kuria and they filed the first petition against the IEBC as the 1st respondent, and argued that "the respondent's" decision to include rejected votes in the final figures of the election result had a prejudicial effect on the total votes won by Mr. Kenyatta, the President-elect.

The second complaint by Zahid Rajan and Gladwell Wathoni Otieno contended that the election was not conducted largely in accordance with the Constitution, or the Elections Act and the governing rules. In specific terms, the appellants averred that the IEBC failed to establish and maintain an accurate, publicly available, verifiable and credible voter register as required by Articles 38(3), 81(d), 83(2), 86 and 88(4) of the Constitution, sections 3, 4, 5, 6, 7 and 8 of the Elections Act, 2011 and the Elections (Registration of Voters) Regulations, 2012.

Furthermore, the third complaint was filed by Mr. Raila Odinga on 16th March, 2013 against the IEBC as the 1st Respondent, Isaack Hassan as the 2nd Respondent, Uhuru Kenyatta as the 3rd Respondent and Mr. William Ruto as the 4th Respondent. Odinga's case was that "the electoral process was so fundamentally flawed that it precluded the possibility of discerning whether the presidential results declared were lawful." Therefore, the presidential election results declared should be annulled due to the flawed electoral process. The basis of Raila Odinga's petition was that, the electoral process was fundamentally flawed. He based his arguments on three claims. The first was that the IEBC and its Chairman failed to carry out a valid voter registration, as required by the constitution and electoral Act. This made the official figures of registered voters change several times, which consequently resulted in the final total number of registered voters being different from what was contained in the main published register.

Second, he averred that the IEBC did not carry out an accurate, transparent, verifiable, and accountable election as required by the Constitution. He further claimed that there several irregularities during manual counting, which resulted in the total votes cast in many polling units exceeding the number of registered voters; hence, there were discrepancies between results posted and the results released by IEBC. Third and lastly, Raila Odinga argued that the electronic

systems acquired and adopted by IEBC to prosecute the General Election were poorly-designed and implemented, and thus inadvertently failed.

**Table 4.3**

**2013 Kenyan Presidential Election Results**

| **Candidates** | **Party** | **Total Votes** | **% of Votes cast by the Electorates** | **% of Valid Votes** |
|---|---|---|---|---|
| Uhuru Kenyatta | The National Alliance | 6,173,433 | 50.07% | 50.51% |
| Raila Odinga | Orange Democratic Movement | 5,340,546 | 43.31% | 43.70% |
| Musalia Mudavadi | United Democratic Forum | 483,981 | 3.93% | 3.96% |
| Peter Kenneth | Kenya National Congress | 72,786 | 0.59% | 0.60% |
| Mohammed AbdubaDida | Alliance for Real Change | 52,848 | 0.43% | 0.43% |
| Martha Karua | National Rainbow Coalition-Kenya | 43,881 | 0.36% | 0.36% |
| James Ole | Kiyiapi Restore and Build Kenya | 40,998 | 0.33% | 0.34% |
| Paul Muite | Safina Party | 12,580 | 0.10% | 0.10% |
| Votes Cast | | | 12,330,028 | 100.00% |
| Valid votes | | | 12,221,053 | 99.12% |
| Rejected votes | | | 108,975 | 0.88% |

Source: International Crisis Group, 2013.

Criticisms trailed the results declared. As a matter of fact, prior to the announcement of Uhuru Kenyatta as the elected President, the Electoral and Boundaries Commission (IEBC) when streaming the result did not include invalid votes. But in the compilation of the final results, the Electoral and Boundaries Commission (IEBC) decided to include the rejected votes in the total votes cast and that had a predetermined effect on the total votes won by each of the candidates including Uhuru Kenyatta (Away, 2016). This was the crux of petition by Florence Sergon, Moses Kuria and Dennis Itumbi.

Before delivering judgment, four issues were agreed for determination namely:

1. whether the third and fourth Respondents were duly elected and announced as President-elect and Deputy President-elect respectively in the presidential election held on March 4, 2013.
2. the Court was to determine whether the presidential election held on March 4, 2013 was conducted in compliance with the provisions of the Constitution and whether it can be adjudged as free, fair, transparent and credible .
3. whether the Second Respondent ought to have included rejected votes in determining the final tally of votes in favour of each of the presidential candidates.
4. the Court was to grant such attendant declarations, orders and reliefs based on the determination of the petition.

Source: Supreme Court of Kenya: Raila Odinga & 5 Others *v* IEBC & 3 Others Election Petition No. 5 of 2013 (2013).

After considering these petitions, on 30th March 2013, the Supreme Court unanimously held that Hon. Kenyatta was duly elected and that the presidential election was conducted in substantial compliance with the Constitution. The Supreme Court gave its reasons for disallowing the petitions thus:

> Regarding the issue pertaining the validity of the announcement of Hon. Kenyatta and Hon. Ruto as President-elect and Deputy President-elect respectively in the presidential election, first, the general approach to the petition was limited in many ramifications and does not warrant a total annulment of the election.
>
> Second, the Court declared that the voter registration process was, generally transparent, accurate, and verifiable; and the voter register compiled from this process did serve to ensure the conduct of free, fair and transparent elections and the result was not tampered with as claimed by the petitioners.
>
> Third, the Supreme Court held that the presidential election was adjudged free, fair, transparent and credible and was conducted in compliance with the provisions of the Constitution.

> Fourth, on the question of the inclusion of invalid votes in the total votes, the Supreme Court held that they found no merit in including rejected ballots in the total tally.

Source: Raila Odinga & 5 others v IEBC & 3 Others Election Petition No. 5, Supreme Court of Kenya (2013).

There were different political undercurrents that shaped and influenced the 2013 elections and the election petition case afterwards. First, it is important to note that the 2013 general election was the first election under the new constitution and electoral law (Majanja, 2016). This was coupled with the fact that the election was conducted without the incumbent president (President Kibaki of the Party of National Unity (PNU) contesting due to constitutional limitations of two terms in office (Institute for Security Studies, 2015).

Second, and major important political undercurrent that directly or indirectly had an impact on the election petition was the fact that Kenyatta and Ruto ran for the office of the president and deputy president respectively while under indictment by the International Criminal Court (ICC) for crimes committed during the electoral violence of 2007–2008 ( The Carter Center, 2013). Surprisingly, majority of the witnesses against Kenyatta have withdrawn their testimony against him, leaving the judiciary as the only gap between the duo of Kenyatta and Ruto and the presidency. Consequently, there were pressures on the judiciary in determining the 2013 presidential election petition case as the outcome will determine the fate of Kenyatta and Ruto appearing in The Hague (Freytas-Tamura, 2017). Although, there were no open attempts of elite manipulations of the 2013 election litigations in Kenya but certain instances were suggestive of such moves given the nature of the Kenya judiciary as a safe haven for corruption prior to the 2013 general elections (Murray, 2013: 33). Judicial corruption in Kenya has been attributed to many identifiable factors key among which are the president's manipulations of judicial appointments and control over the judiciary (ibid). In 2013, the security of lives of judges hearing election petitions was at stake. At different points in time, five attacks were carried out on High Court judges and a letter of threat sent to the Chief Justice (Majanja, 2016: 35). This may not be unconnected with attempts to subject judicial officers to doing the bidding of certain politicians who were out to influence court decisions in their favour and/or those of their candidates.

***Election Petition Cases in Kenya arising from the 2017 General Elections***

The second general election of Kenya under the 2010 Constitution took place on 8 August 2017. The Independent Electoral and Boundaries Commission (IEBC), on 11 August 2017, declared the incumbent president, Uhuru Kenyatta with total votes of 8,203,290, as the outright winner defeating his closest rival, Raila Odinga, who garnered 6,762,224 votes (Institute for Security Studies, 2015; European Union Election Observation Mission to Kenya, 2013). .

**Table 4.4**

**2017 Presidential Election Results in Kenya**

| Name of Candidate | Votes Obtained |
|---|---|
| John Longoggy Ekuru Aukot | 21,333 |
| Mohamed Abduba Dida | 14,107 |
| Shakhalaga Khwa Jirongo | 3,832 |
| Japeth Kavinga Kaluyu | 8,261 |
| Uhuru Muigai Kenyatta | 7,483,895 |
| Michael Wainaina Mwaura | 6,007 |
| Joseph William Nthiga Nyagah | 5,554 |
| Raila Amolo Odinga | 73,228 |
| Total Valid Votes | 7,616,217 |
| Rejected Ballots | 37,713 |
| Total Number of Registered Voters | 19,611,423 |

Source: Supreme Court of Kenya, 2017

Dissatisfied with the results, Odinga filed a complaint challenging the election of Kenyatta in the Supreme Court of Kenya. According to Kaaba (2018), the main issues for determination by the Supreme Court in Kenya were as follows:

a) Whether the 2017 presidential election was conducted in accordance with the provisions of the Constitution and the laws guiding the conduct of elections;

b) Whether there were malpractices and illegalities in the conduct of the 2017 presidential poll;

c) If ascertained that there were irregularities and malpractices, what impact, if any, these had on the credibility of the election; and

d) What consequential orders, declarations and relief the Court should grant, if any.

In a landmark judgment delivered on 1 September 2017, the Supreme Court annulled the presidential election and directed the Independent Electoral and Boundaries Commission (IEBC) to plan and conduct a fresh presidential election in strict compliance with the constitution and the electoral laws within sixty days of the determination. The Supreme Court gave three reasons for the nullification, namely that:

a. The Independent Electoral and Boundaries Commission (IEBC) did not conduct the Presidential Election in a way that conforms to the dictates of the Constitution and among others the Elections Act, Chapter 7 of the Laws of Kenya 2017;
b. The Independent Electoral and Boundaries Commission (IEBC) was guilty of irregularities and illegalities in relation to the transmission of results, particulars and the substance of which were given in the detailed and reasoned verdict of the court;
c. The irregularities and illegalities substantially affected and consequently dented the integrity and credibility of the entire Presidential Election.

Source: Kaaba (2018).

The incumbent president, President Uhuru Kenyatta, was visibly angry on hearing the judgment of the Supreme Court on the petition. He had expected the challenge of his victory to be a routine ritual that would rehash the 2013 episode (Freytas-Tamura, 2017). Due to this annulment, there were occasions of threats from the president. In the words of the Kenyan Section of the International Commission of Jurist (ICJ Kenya) and Journalists for Justice (JFJ) (2019): … "He called the judges crooks and warned the Chief Justice that now that his victory had been invalidated, he would be dealing with a President and not a mere President-elect". Also, there was a surge of attacks on the judiciary instigated by President Uhuru Kenyatta (ibid). Public demonstrations against the Supreme Court judges were held in different parts of Kenya most especially in Nyeri, Eldoret and Nairobi. The demonstrations were mostly targeted at the Chief Justice in particular and were believed to have been orchestrated by the President and his political cronies (ICJ Kenya, 2019). The intimidation by the executive on the Kenyan Judiciary

resulted in the slashing of the budget of the Judiciary. The Judiciary budget had been slashed by Sh1.95 billion or 11.1 per cent against the previous period. In the words of the Kenyan Section of the International Commission of Jurist (ICJ Kenya) and Journalists for Justice (JFJ):

> The judiciary's budget had previously been increasing progressively from Sh3 billion in 2009/2010 to Sh7.5 billion in 2011/2012 before reaching a high of Sh16 billion in 2015/2016. As other sectors continued to receive increased budgetary allocations, the judiciary's Sh31 billion was slashed and was instead allocated Sh17.3 billion (ICJ Kenya and JFI, 2019:12).

Furthermore, there were also alleged cases of bribery and corruption levelled against President Uhuru Kenyatta striving to influence the outcome of the election petition. Rumours of an attempt to compromise the Chief Justice with a Sh500 million bank transfer ahead of the petition was made known (International Commission of Jurist Kenya, 2019). What this suggests is that the favourable court judgment over the 2013 presidential election petition secured by the President and his political party could have been possible due to financial inducement or the influence the Executive enjoys over the judiciary while similar attempts in 2017 were unsuccessful. The resistance from the Chief Justice may have been connected to the judiciary's commitment to enforce constitutional standards (Shiundu, 2018) Perhaps, the expectations of Kenyatta over the presidential election petition case were high given the control Kenya's Executive enjoys over the Judiciary. In Kenya, the appointment of Supreme Court Justices follows a political process starting from the nominations of the Judges by the National Judicial Service Commission of Kenya. The confirmation of the nominations is subject to legislative approval by the Kenyan National Assembly and presidential assent (Bingham Centre for the Rule of Law, 2015). Kenyatta's response to his loss at the presidential election petition tribunal was not unexpected since the only expected outcome by an average African politician is to secure victory. The same judiciary that Kenyatta applauded for being firm and courageous after his victory at the Supreme Court in 2013 became object of attack and castigation, having lost in 2017. The same scenario obtains in Nigeria where politicians salute the courage, fairness and decisiveness of the courts whenever they win election litigation cases while they turn around to castigate the same judiciary whenever they lose out in any other electoral dispute in court.

### 4.6 Implications of Politicising Elections and Electoral Disputes for Nigeria's Democratic Experiments

Since the inception of Nigeria's democracy from the 1960s till date, there have been a lot of court-contested elections. These court-contested elections are due to shortfalls in Nigeria's electoral system which has had, and is still having, a huge impact on Nigeria's democracy. The essence of resorting to the judiciary to resolve skirmishes that characterise elections are simply to ensure that the course of justice is served as I define in the following terms: that agreed general principles guiding electoral conduct have been duly followed in conducting elections; that arbitrariness of any form is removed; that errors of commission or omission by the electoral management agency is checked and by affirming the fairness, freeness and credibility of the overall electoral process. In Nigeria's First Republic, there were issues with elections conducted both at the central and regional levels and this resulted in political violence which arguably facilitated the collapse of Nigeria's first democratic experiment from 1960 to 1966. For example, the 1964 federal parliamentary election in Nigeria experienced massive intimidation of rivals by the ruling regional governments all aimed at rigging the elections (Gberevbie and Oni, 2014). The electoral process during the 1964 general elections in Nigeria was manipulated to favour some regions of the country (ibid). Therefore, these elections in the First Republic were the forerunner that laid the foundation of electoral fraud and litigation in Nigeria.

The Second Republic in Nigeria was an offshoot of the First Republic hence the Second Republic election was in no way different and, in fact, was redolent of the First Republic in terms of regionalising political parties and their affiliations. In both Nigeria's First and Second Republics, there was the dearth of truly national political party that could galvanise national identity and orientation of Nigerians away from the regional and sectional outlook that was prevalent. And this dealt a serious blow on the nation's electoral process, making it more confrontational as every ethnic party sort to first protect its electoral jurisdiction and then pull strings in other regions to secure the needed figures to form the national government. After prolonged periods of military interregnum in Nigeria from 1966 to 1979, the military returned power to the civilians, leading to the conduct of elections in August1979. Elections were conducted at both the federal and state levels with attendant litigations owing to the shortcomings of the electoral process. The role of the judiciary in the second democratic

experience which culminated in Nigeria's Second Republic (1979-1983) was partly responsible for the democratic reversal the nation experienced during the period (Aguda, 1984: 6; Enweremadu, 2011). The politicisation of election litigation cases after both the 1979 and 1983 general elections led to many legal crises which eventually led to many issues which invited the military to take over political power. The wrongful interpretation of what constituted the 12 2/3 of 19 states to determine the eventual winner of the 1979 presidential election had serious implications for the legitimacy of the government of Shehu Shagari, hence his government could not be said to have enjoyed popular support across the length and breadth of Nigeria.

Again, the resort to technicalities in deciding election petition cases which characterised election litigations after the 1983 general elections inflamed passions in the polity because the substance of the cases was not examined. The courts, rather than leaning heavily on the side of doing justice by considering the substance of election petition cases rather than their forms, relied on technicalities which are often laden with injustices (Chime *v.* Onyia, 2009 cited in Adeleke and Oni, 2020). Arguably, the legitimacy crisis that underlined Shagari's government as a result of legal controversies that surrounded his victories both in 1979 and 1983 negatively impacted the political economy of Nigeria which eventually led to the fall of Nigeria's Second Republic (Joseph, 1991). Judicial manipulations were part of the mechanisms used to achieve the electoral victories and the judges that participated in the post-electoral dispute-resolution processes became complicit in crushing the democratic order of the Second Republic. The foregoing receives credence from the comments of an eminent jurist in Nigeria, Justice Aguda:

> It is of course a matter of common knowledge that the manner in which some of the judges especially at the High Court level dealt with election petition was one of the causes of the demise of the Second Republic (Aguda, 1984: 6)

The point that is being emphasised here is that, rather than do justice to the enormous complaints arising from the two general elections at that time, the judiciary appeared insistent on maintaining the status quo and not altering the political power equation among the various contenders (Unobe, 1990). Many politicians were disappointed by the judgments of the courts, making several of them to resort to inciting the military to strike as the only panacea for ensuring justice (Enweremadu, 2011: 117) since the military would be deemed as politically-neutral. The

military eventually heeded the call on 31 December 1983, putting an abrupt end to the Second Republic.

Similarly, the politicisation of the June 12 1993 presidential election that was intended to conclude the process of transiting to Nigeria's Third Republic enhanced the demise of the democratic transition programmes (Ojukwu and Oni, 2016). The questionable role of the judiciary in the transition process began with a drama when Justice Ikpeme of the Abuja High Court issued an *ex parte*, purportedly stopping the conduct of the June 12 1993 presidential election two days to the elections despite a subsisting Electoral Decree which barred all court rulings regarding the conduct of an election (Enweremadu, 2011). Although the National Electoral Commission (NEC) discountenanced the interim court order stopping the election and went ahead to conduct the polls, the military ruler, General Ibrahim Badamasi Babangida, later annulled the polls, citing the ruling of the Abuja High Court as sufficient reasons coupled with allegations of widespread electoral manipulations for his actions (Agbo, 2008). The present Fourth Republic is nothing different from the past with new trends of challenges arising from the politicisation of election petition cases. This shall be the crux of subsequent chapters. Observably, the politics of election litigations has continued to reinforce the prebendal character of the Nigerian state with attendant implications of weakening the institutionalisation of democratic culture and political institutions (Omotola, 2007). The net effect has always been the collapse of emerging and enduring democratic experiments.

### 4.7 Conclusion

This chapter has attempted a historiography of electoral disputes which ended in courts in Nigeria. It observed that the judicialisation of electoral matters did not begin in Nigeria until the Second Republic as there were no provisions for independent election petition tribunals specifically established to resolve grievances emanating from electoral contests in Nigeria's First Republic. Observably, the politics that character the conduct of elections in the period under review also manifested significantly in the judicial processes of resolving disputed electoral outcomes. The chapter also examined election manipulations and election litigation in Kenya which share similar electoral and democratic experiences with Nigeria. Chapter five that follows this chapter will examine the manifestations of electoral irregularities and fraud in Nigeria from 1999 to 2007 and how that exacerbated incidences of election litigations.

# CHAPTER FIVE

# ELECTORAL MANIPULATIONS AND ELECTION LITIGATION IN NIGERIA, 1999-2007

## 5.1 Introduction

This chapter examines electoral manipulations in the general elections held in Nigeria from the inception of the present Fourth Republic and establishes its linkage with increased number of election litigations witnessed during this period. It examines how the political class with or without the collaboration of electoral officers manipulated the electoral process including the constitutional and legal frameworks for conducting elections to secure electoral victory. It offers an analysis of factors that predispose Nigeria's electoral process to manipulations. Specifically, this chapter examines the patterns of electoral manipulations in the general elections of 1999, 2003 and 2007 and established that there were similarities in the strategies employed to rig elections ranging from ballot stuffing, underage voting, ballot hijack, falsification of results to corruption and bribery of electoral and security officials. It also reviewed selected election petition cases handled by the courts to examine how the judiciary performed its constitutional duties of settling electoral disputes.

## 5.2 Electoral Manipulations and the General Elections of 1999

Nigeria's elections from independence have been tumultuous and contentious. Violent election rigging has characterised Nigerian elections, making free and fair elections impossible until recently (Ojo, 2014). After many years under military rule, Nigeria once again became democratic with the conduct of the 1999 general elections. There were series of events that influenced the 1999 general elections even before the elections were conducted. The 1993 general elections that were conducted under the guidance of General Ibrahim Babangida, the then military President were annulled, thereby abruptly terminating the Third Republic which started with the conduct of local government elections in 1989. Babangida disallowed multi-party electoral politics and was only disposed tong the formation and registration of two political parties to contest the general elections, thus making Nigeria a two-party system. The two political parties were the National Republican Convention (NRC) widely believed to be rightist and the Social Democratic Party (SDP) widely seen as leftist. The elections conducted during

this transition period were adjudged the freest and fairest elections the country ever witnessed in history, but to the dismay of Nigerians, the military nullified the presidential election. After much pressure from the civil society for failing to implement scheduled transition programme, General Ibrahim Babangida transferred power to an interim government headed by Chief Ernest Shonekan. Months after, Ernest Shonekan was overthrown in another military adventure by General Sani Abacha. General Sani Abacha ruled as a dictator and wanted to prolong his leadership by attempting to transmute to a democratically-elected president without opposition before his demise on June 8, 1998, and succession by General Abdulsalami Abubakar. The death of General Sani Abacha stalled the use of election as a means to perpetuate authoritarian rule. In the words of Omotola (2010), "Elections can also be used to disguise authoritarian rule". The new leader, General Abdulsalami Abubakar effected the transition from military to democratic rule in less than a year. He announced the immediate termination of the defective transition process put in place by the late maximum ruler General Sani Abacha and created the Independent National Electoral Commission (INEC) to set guidelines for the registration of political parties to participate in the new electoral process expected to usher in the Fourth Republic in Nigeria (Ogbeidi, 2010).

Many factors, including ethnicity, combined to determine the outcome of the 1999 general elections. After the cancellation of the 1993 presidential poll by the northern military General, Ibrahim Babangida, an election widely acclaimed to have been won by MKO Abiola from the South-west of Nigeria, it was believed that the north made an arrangement to appease the Southwest for the annulment (Nwozor, 2014). Hence, the dominant political parties fielded their presidential candidates from the southwest region. Olusegun Obasanjo, the eventual winner of the presidential election, contested under the auspices of the Peoples' Democratic Party while his major challenger Samuel Oluyemisi Falae, contested under the alliance between the Alliance for Democracy (AD) and the All Nigeria Peoples Party (ANPP) (Nwosu and Ugwuerua, 2014). The outcome of this negotiated agreement between the Northern and Southwestern regions was that political power would return to the north after the completion of a successful tenure of office by the Yoruba Southwest. Yagboyaju (2003) corroborated this view and attested that decisions about the region where the next president would emerge from was made by the military, including former military heads of state, top retired generals and former police chiefs. He captured the foregoing thus:

> The Nigerian example, in this case, was uniquely characterized by ethnic factor, in which the then Abdulsalami Abubakar military regime needed to address the logjam in the aftermath of the nullified 12 June 1993 presidential poll results, by ensuring that a particular geographical zone presented the next president of Nigeria in the 1999 elections… The decision to adopt a particular candidate was probably thought out and formulated at the private luncheon parley held by General Abubakar with most of the country's former military heads of state, top retired generals and former police chiefs (Yagboyaju, 2013:170).

This selection by the military in determining who becomes the next president of Nigeria and the region which produces it directly influenced the political party primaries conducted and the eventual winner of the electoral contest (Yagboyaju, 2003). The elections of 1999 were received with mixed reactions by Nigerians as they were tired of the prolonged military rule. Hence, there was little electoral violence that characterised the electoral process (Nwolise, 2007). Therefore, election rigging was not pronounced though it existed. Issues such as snatching of ballot boxes, voters' intimidation and manipulation of figures were pronounced during the elections. This was aptly captured by Omotola (2010) thus:

> Founding elections in Africa, commonly the first in a democratic transition process, have been observed to manifest certain features that tend to hinder the democratization process. These features include the phenomenon of landslide victory, rejection of results by losers, and poor election administration. The 1999 Nigerian elections no doubt shared all these disturbing features…

This view was corroborated by The Carter Center (1999):

> Members of the election observation team also observed a number of serious irregularities in certain places. These included: inflated vote returns, ballot box stuffing, falsified results and outright disenfranchisement of voters…

There were obvious cases of electoral fraud during the elections, most especially vote buying and bribing of electoral officials. Sha (2008) noted this in some local governments in Nigeria:

> In Oshimili North LGA of Delta State, a certain political party bankrolled the money that facilitated the sharing of ballot papers among the contesting parties, and consequently, that party had 75% of ballot thumb print, while the other two political parties shared the rest of the ballot papers (Sha, 2008: 127).

While the above occurred in the southern part of Nigeria, similar situations were recorded in the north. For instance, there were prevalent cases of vote buying and underage voting. Sha noted further that:

> In Kano, malpractices were widespread. While in Gaya Local Government Area (LGA) some voters were seen offering their votes for sale for as low as N10.00, in other areas, such as Madobi, the electoral officials and party agents were involved in bribery and rigging. The aftermath of bribery at SabonGari ward, Magami polling station in Zamfara State…. Attempts at underage voting were also a common feature in this state, for instance, at Dambawa 5B polling stations in Tsafe Ward, ten underage boys were brought to cast vote, but were detected (Sha, 2008: 127).

Malpractices during the 1999 elections featured unanimously in the reports of election observers. The international monitoring groups and observers estimated the voter turnout at 20% while the election results as announced by the electoral body estimated the voters' turnout to be about 30-40%. Accordingly, there was a massive discrepancy between the number of voters observed at the polling stations and the final result declared from several states in the federation. Despite these pronounced cases of electoral malpractices, Olusegun Obasanjo of the Peoples' Democratic Party was announced by the electoral body as the winner (Mgba, 2017).

### 5.3 Electoral Manipulations and the General Elections of 2003

The 2003 general elections were crucial in the history of the Fourth Republic. It was the first election organised under the supervision of the newly-elected democratic government in the Fourth Republic after over twenty years of military rule (Ogbeidi, 2010). For the second time, Nigerians went to the polls in April 2003, under a civilian government after many years under military rule. The presidential election contest featured the incumbent President Olusegun Obasanjo of the PDP, a former military head of state, General Muhammadu Buhari, former secession leader, Ojukwu, and a former External Affairs Minister General Ike Nwachukwu. Eventually and expectedly, Obasanjo was declared winner, while his party the PDP also won massively in governorship and legislative electoral contests (Iyayi, 2005).

The elections were supposed to be an improvement over the 1999 general elections but it turned out to be the contrary. According to Jega (2015), the 2003 general elections were not transparent in all ramifications. He instructively observed that:

> Unfortunately, the 2003 elections did not represent a substantive improvement over what was observed in the 1999 elections, in terms of credibility and transparency. Instead, the elections at best represented "business as usual", in terms of the use of armed thugs to disenfranchise voters and cart away election materials, inflation of votes, fraudulent declaration of results, and many other irregularities and illegalities, which were committed with impunity… (Jega, 2015: 2).

The 2003 elections conducted by the PDP administration of Olusegun Obasanjo reignited electoral violence all over the country which was reminiscent of the First and Second Republics (Ojo, 2014). The elections were manipulated with the connivance of the Nigerian security officials (Nwolise, 2007). Because of this, there were various forms of electoral violence which attended the announcement of the election results in the country.

The elections shared same features with the 1999 general elections in many respects. There were widespread rigging, ballot box snatching and alteration of election results (Ajayi, 2006). The election was labelled a huge failure by the Human Rights Watch (2004). Due to the desperation of the incumbents to retain political power, series of irregularities made the elections more contentious than the 1999 elections. Also, the Transition Monitoring Group (TMG) in its detailed report on the election stated that the 2003 elections fell below international standards and did not reflect who the people wanted to govern them. In their words, "the presidential and gubernatorial elections in some states fell short of international and regional standards and did not in the main reflect the voting pattern of the Nigerian people" (TMG, 2003). Also, voter registration for the 2003 elections was done in an incomplete and incompetent manner and, as a result, many citizens' names were not on the voters' registration list.

The general elections of 2003 were conducted as planned by the electoral umpire, the Independent National Electoral Commission (INEC). The declaration of the result by the INEC showed that the incumbent party won all the major seats from the presidential, governorship and parliamentary elections (Ajayi, 2006). The presidential poll result published by the electoral body revealed that the sitting President, Olusegun Obasanjo, of the People's Democratic Party

(PDP) won the election with of 24,456,140 (61.94%) of the total votes cast and more than 25% in 32 states of the Nigerian federation. The incumbent's closest challenger, Muhammadu Buhari of the All Nigeria People's Party (ANPP) scored 12,710,022 (32.19%) of total votes cast, and this was not enough for him to be declared winner of the election (Awopeju, 2011). The result made him to refer to the 2003 election as "a dark period in Nigeria's history" (Animashaun, 2010).

Furthermore, in the other levels of government, the incumbent political party, the People's Democratic Party (PDP) recorded overwhelming victories (Azeez, 2016). Many attributed the problems witnessed in the elections to the incompetence of the Independent National Electoral Commission (INEC) as they falter in meeting their responsibilities. In the report of the International Republican Institute on the 2003 general election, INEC, a constitutionally-mandated federal agency responsible for conducting the elections, failed in its responsibilities. According to IRI:

> A flawed voter registration exercise, associated failures to meet statutorily set deadlines, and controversies concerning the certification of candidates and the design of the voting ballot eroded confidence in the process before the two elections (IRI Report, 2003).

The organisation further noted that:

> INEC also failed in its management of election related logistical preparations. Adequate preparations were not made at the voting stations throughout the country to receive voters on April 12 for the National Assembly elections. Both elections had significant procedural irregularities as electoral officials failed to deploy critical balloting materials which was fallout of inadequate workers training. Procedural laxities in certain instances facilitated deliberate electoral abuses (IRI Report, 2003).

At the state government level, the PDP won massively. For example, in the Upper House of the legislature the Senate, the party secured 73 seats out of the available 109 seats, while ANPP secured 28 seats and Alliance for Democracy (AD) won 6 seats. The remaining 27 political parties did not win any seat. The same situation also played out in the Lower Chamber the House of Representatives. In the Lower chamber of the National Assembly, PDP secured 213 seats of the 360 seats. Figures from the elections showed that the ANPP and AD won 95 and 31 seats

respectively which constituted a small number compared to the 213 of the PDP. In the governorship elections, the election results revealed that the PDP recorded victories in twenty-eight states while the ANPP was victorious in seven states and AD, in one state (The Editor, 2003: 1-2).

Domestic and international observers reported that the polls were rigged while politicians used state security apparatus to control the elections. For example, the European Union (EU), American and the Commonwealth observer teams noted in their respective submissions that the election was massively rigged and the state security helped to perpetuate the riggings (Alli et al., 2003). The European Union (EU) observers noted serious malpractices and fraud, which eroded the credibility and integrity of the electoral process in many states of the federation (Alli et al., 2003: 1-2). Also, the Commonwealth observers noted that, in certain states, the elections did not go as planned. They cited some places in Enugu and Rivers states as areas where electoral processes broke down and elections were rigged. In the words of the European Union, "the extent of irregularities in the 2003 general elections as observed suggests that the whole process compromised the integrity of the elections where they occurred" (EU Report, 2003).

The ruling political party (PDP) did all it could to manipulate the elections in its favour by appointing Prof. Maurice Iwu to oversee the Independent National Electoral Commission (INEC) to conduct the 2003 elections (Nwagboso, 2011). Similarly, Tosanwumi (2009) acknowledged that the 2003 and 2007 general elections witnessed cases of electoral malpractices and numerous cases of reversal of declared result under the watch of INEC'S boss, Prof. Maurice Iwu. Power of incumbency was also deployed as it was alleged that the ruling party headed by President Olusegun Obasanjo had meetings with the Independent National Electoral Commission (INEC), a week to the election without the presence of the opposition political parties (International Republican Institute, 2003). This tends to speak of an attempt by the ruling party to influence the outcomes of the elections. The incumbency factor also ensured that state security apparatuses were co-opted into the plot to manipulate the electoral process. The chaotic nature of the 2003 general election, the second election in Nigeria's Fourth Republic, and the attempt to secure victory by all means resulted in the assassination of some notable political gladiators before the elections. Examples were the killings of Dr. Harry Marshall, a regional campaign coordinator for the ANPP in Nigeria's South-South, Ayo Daramola in Ekiti State, Dipo Dina in Ogun State,

Funso Williams in Lagos State and the gruesome murder of the Attorney General of the Federation and the Minister of Justice, Bola Ige (Oni, 2014: 196).

### 5.4 Electoral Manipulations and the Nigerian General Elections of 2007

The elections of 2007 in made it the first time Nigeria had conducted three consecutive elections (1999, 2003 and 2007) without interruption by the military institution since independence from British colonial administration in 1960 (International Crisis Group, 2007). The 2007 general elections were conducted in April 2007 amid widespread allegations of electoral maladministration on the part of the electoral body (INEC), fraud and violence by the ruling political party. Again, the 2007 general election was not different from the previously conducted elections of 1999 and 2003 in Nigeria (Yagboyaju, 2011). The election was adjudged worse than the 1999 and 2003 episodes (Suberu, 2007; Omotola, 2010). During the elections, there were massive rigging, violence, arson, and voters' intimidation all over the country but predominantly visible in the northern part of the Nigeria where the two major contestants Umaru Musa Yar'adua of the People's Democratic Party (PDP) and General Muhammadu Buhari of Congress for Progressive Change (CPC) are indigenes. Before the 2007 general election, the incumbent President Obasanjo tested the idea of running for a third time in office but it was aborted by the Senate despite allegations of huge sum of money spent to manipulate the process of constitutional change (Isike and Idoniboye (2011: 149-154).

Various occurrences in the ruling party influenced the 2007 general elections. First, there was a political feud between the outgoing President Obasanjo and the Vice-President Atiku Abubakar, who wanted to succeed his outgoing principal. Correspondingly, there were issues of alleged corruption leveled against Atiku Abubakar by the Economic and Financial Crimes Commission (EFCC). To be specific, the EFCC accused him of using £64 million of public funds for his personal business interests, an allegation which he denied (Tayo, 2007). Second were several boycott threats, lawsuits, and shifting alliances between political parties, politicians and political aspirants, all of which created a chaotic atmosphere before the elections (Transition Monitoring Group, 2007).

Towards the completion of his tenure in 2007, Olusegun Obasanjo wanted a third term and tried to influence the Senate to change the constitution to elongate his rule (Olaiya, Apeloko and

Ayeni, 2013). This quest was allegedly spearheaded by Senator Ibrahim Mantu, a former Deputy President of the Senate and the Chairman of the National Assembly Constitutional Review Committee (ibid). The third term bid of President Olusegun Obasanjo failed after widespread public outrage and the National Assembly annulled the entire process of amending the Constitution. This was the prelude to the 2007 general elections which President Obasanjo termed a "do or die affair" (Tenuche, 2009: 50; Oni, 2014: 196), thereby subjecting the electoral process to massive rigging beyond the level previously observed (Omotola, 2010).

Furthermore, the political feud between President Obasanjo and his vice Alhaji Atiku Abubakar spurred the latter to cross-carpet to the Action Congress (AC) from the Peoples' Democratic Party (PDP) to realise his presidential ambition, having been denied the opportunity by his erstwhile party. Subsequently, he was disqualified from contesting the 2007 general elections by INEC due to alleged corrupt practices but this decision was later overturned by the Supreme Court five days before the elections (Odusote, 2014). The political crisis between the president and his vice made the elections chaotic and arguably laid the foundation for massive irregularities and violence witnessed in the elections.

Having lost out of the third-term agenda, President Obasanjo later declared support for the then Governor of Katsina State, Umaru Musa Yar'Adua, as the ruling party's presidential candidate. Yar'Adua's vice-presidential candidate was Goodluck Jonathan who had previously served as a deputy Governor and Governor of Bayelsa State in the Niger Delta area of Nigeria between 1999 and 2007. The ruling party's presidential candidate was announced winner of the election with over 70% of the votes cast. The two largest opposition parties in the country, the All Nigeria Peoples Party (ANPP) and the Action Congress (AC), rejected the election outcomes. The scale of violence was said to have been unprecedented (Albert et Al., 2011). A research conducted by the International Federation of Electoral Studies (IFES-Nigeria), while reporting cases of electoral violence in Nigeria, noted a total of 967 cases of electoral violence during the 2007 general elections (IFES-NIGERIA, 2007).

Reports from international election observers show that the elections fell below national, regional and international standards of democratic elections. The International Crisis Group (2007) in its observation of the elections noted that 'high rigging" characterised the elections; it noted, inter alia, voters' intimidation and incidences of voting by ineligible persons, mostly

under-aged voters, improper usage of ballot papers and election materials (such as election results sheets) by electoral officials, theft of ballots papers and ballot boxes, violation of guidelines on conferring with party representatives, and deliberate withholding of voting materials in some units. It also observed and reported partisan behaviour by INEC officials and personnel of security agencies especially of the Nigeria Police (International Crisis Group, 2007).

The European Union Observer Mission also corroborated this submission. For them, several problems undermined the 2007 general elections:

> The voter registration exercise organised by INEC was characterised by delays as a result of absence of available Direct Data Capturing Machines, technical breakdowns and creation of illegal voter registration stations. The quality of the final voter register was unimpressive and included the capturing of under age voters, double registration entries, missing and blurred pictures of electorate. Contrary to requirement of the electoral laws, the voter register was not displayed at the local level and was partly displayed prior to Election Day for orientation purposes only. Permanent voter registration cards were not distributed to registered voters due to late publication of the final register.

From the above observations by the European Union mission, it can be argued that the electoral commission in Nigeria has so far tended to serve the interests of the ruling party in power (PDP) and has thus, become part of the election challenges in Nigeria. These repeated flaws caused series of violence during the elections, hence the high level of killings and voters intimidation (IFES-Nigeria, 2007). Also, many parts of Nigeria were beset with bombings during the elections while armed clashes between supporters of opposition political factions were also noticeable (Human Rights Watch, 2007).

The Transition Monitoring Group (2007) reported that the 2007 electoral process witnessed several events that led to the rigging. The first of the lot was the registration of voters' exercise which was commenced in special centres across Nigeria in October 2006. Another; the introduction of the Direct Data Capture (DDC) machine which contained the personal data of registered individuals including their passport pictures and the controversies generated by the contractors to supply the requested adequate number of machines required for the exercise in the

entire country. Cases of failure or malfunctioning of these machines were also reported due to series of mechanical, human and environmental factors.

The manipulations of the elections were also in the form of harassment of political aspirants by the EFCC and law-enforcements agencies. TMG (2007) observed that:

> The irregularities in this election included the late arrival of electoral officials and voting materials, stealing of ballot papers, harassment, vote buying, , chanting, taunting and shooting of voters, absence of secret voting, police interference, ballot stuffing and snatching, voters' intimidation and political violence, denial of access to polling centers, partiality of electoral and security officials particularly the police, improper voting process, late commencement of voting, and underage voting (TMG 2007:132)

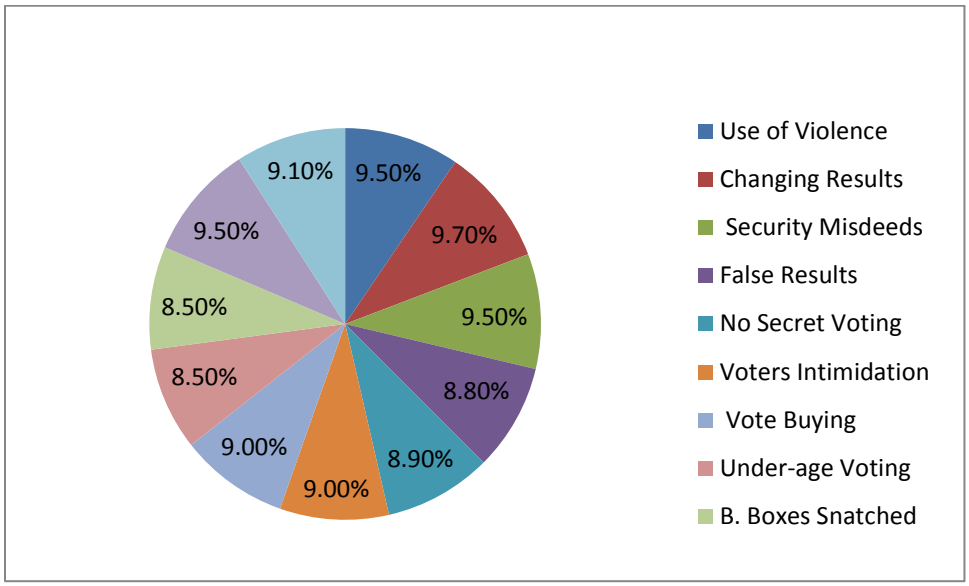
Before the 2007 elections, huge sums of money were raised by some political parties and their financiers to facilitate the manipulation of the electoral process. It was reported that business tycoons, including Femi Otedola and Aliko Dangote, contributed N1billion and N3 billion respectively for the ruling PDP (Aluaigba, 2016). What these monies were meant for can easily be deduced. Bratton (2008) gave a leading insight in his submission on vote-buying during the 2007 elections:

> In vote-buying business in Nigeria, electorates are usually offered money (68 percent of all reported attempts in 2007), commodities items (such as clothing and food, 26 percent) or offer of jobs (6 percent). In the current and previous Nigerian elections, the modal (i.e., most common) financial inducement was 500 naira, an equivalent of about US$4. But the median price of a vote payment increased between 2003 and 2007, from 1,750 naira to 2,250 naira, largely because the proportion of large payments (10,000 naira or more per vote) increased over time (Bratton, 2008: 4)

From a study of the 2007 general elections, Aluaigba (2009a) highlighted the forms of electoral malpractices witnessed during the elections as presented in the table below.

**Table 5.1**

**Forms of Electoral Malpractices in the 2007 General Elections**




Source: Aluaigba 2009a, p. 28.

## 5.5 Legal and Constitutional Frameworks of Elections and Election Litigation in Nigeria, 1999-2007

Electoral democracy in the Fourth Republic of Nigeria was predicated on the legal frameworks as enshrined in the 1999 constitution. Notably, there was no Electoral Act hence the 1999 constitution served as the backbone of both electoral conduct and electoral disputes resolution.

### 5.5.1 *The 1999 Constitution and Electoral Frameworks*

In any democracy, legal framework for conducting elections includes provisions of the constitutional and the Electoral Acts (Akpotor, 2019). There have been series of legal and constitutional frameworks of elections in post-independent Nigeria. Akpotor (2019) highlighted them as follows:

> Legislative enactments guiding elections in Post-independent Nigeria are the 1979 Electoral Decree, Electoral Act of 1982, Presidential Election Decree No.13 of 1993 (Basic constitutional and Transitional), Electoral Act of 2001, Electoral Act of 2002, 2006 Electoral Act , and the 2010 Electoral Act…

Elections remain a fundamental feature of liberal democracy in any polity (Oni, et.al, 2017). They consist of complex set of activities with different variables that reinforce one another (Alao, et al, 2013). After long years under military rule, Nigeria conducted elections that ushered in the Fourth Republic which began on the 29th May, 1999 thus changing the baton of governance and leadershipin Nigeria from military rule to civil administration (Egbe, 2014). The 1999 general election was conducted by the military following the enactment of the 1999 Constitution. Thus, governance by military decree was replaced by a democratic form of government with emphasis on constitutionality, legitimacy, justice, fair play and freedom.

Election framework under the present democratic dispensation was laid down by the military government of General Abubarkar and this started with the process of engineering a new constitutional arrangement which would lay the foundation for the emerging democratic system. The 1999 Constitution was based on the 1995 draft constitution midwifed by General Abacha's military regime. General Abubakar announced the setting up of the Constitutional Debate Coordinating Committee (CDCC) to organise public debate and recommend a new constitution (Carter Center, 1999). The CDCC, headed by Justice Niki Tobi, recommended the adoption of the 1979 Constitution with some changes in line with the 1995 draft constitution (Agbu, 2016). Based on the recommendations of the CDCC, in August 1998, General Abubakar issued Decree No. 17, which provided for the establishment of the Independent National Electoral Commission (INEC) to organise and oversee voter registration for elections in Nigeria under the headship of Retired Justice Ephraim Akpata as the chair of the Commission (The Carter Center, 1999). According to Omotola (2009:45), what the CDCC produced as a draft constitution was far from being the peoples' Constitution.

The 1999 Nigerian Constitution stipulated frameworks for conducting elections in Nigeria. The rules, regulations and institutional frameworks for conducting elections in Nigeria are contained in Part 1 of the Third Schedule of the 1999 Constitution as vested in INEC thus:

- Organize, conduct, and supervise all elections and matters relating to elections into all elective offices provided in the 1999 Constitution of the Federal Republic of Nigeria.

- Carry out registration of political parties in line with the provision of the relevant legislation or law.
- Monitor and supervise the organization and activities of the political parties, their finances inclusive.
- Arrange for the yearly examination and auditing of thefinance and accounts of political parties and make public the report of such examination and audit.
- Conduct voters' registration exercises and ensure the continous preparation, maintenance and revision of the voters' register for the purpose of any election.
- provide rules and regulations, which shall govern the political parties and ensure the monitoring of political campaigns.
- Ensure that all Commissioners and Electoral Returning Officers responsible for conducting all elections take and subscribe to the oath of office provided by the law.
- Appropriately delegate any power to any Resident Electoral Commissioner.
- Carry out any other responsibilities as may be conferred upon it by any other enactment of law.
- Delimit the area of the Federation or as the case may be, the area of a state, local government or area council into such number of electoral units as may be prescribed by law, for the reason of elections to be conducted by the Commission

Source: 1999 Constitution of the Federal Republic of Nigeria.

The electoral commission was created in reference to section 153 (f) of the Constitution of the Federal Republic of Nigeria1999 with the following guiding principles:

- Transparency: that INEC will be transparent and open in all its activities and in its relations with relevant political stakeholders, media agencies, INEC service providers and the generality of Nigerians. INEC will endeavour to be truthful and honest in all its relations with people and its political stakeholders.

- Credibility: that INEC will do all that is required to ensure that the people of Nigeria particularly the political stakeholders will readily accept all its actions.
- Impartiality: that INEC will ensure that a level playing field is created for all political actors.
- Dedication: that INEC will be committed to ensuring that highest quality election services are provided to the people of Nigeria and will also strive to ensure that merit continues to be the basis for the recruitment, compensation and promotion of staff.

Furthermore, the 1999 Constitution vested on the Nigerian President the powers to appoint the headship and membership of the Independent National Electoral Commission (INEC). Section 154 (1) of the 1999 Constitution of the Federal Republic of Nigeria vests these powers on him (FGN, 1999) and the arrangement allows the Commission to get its funds from the Presidency. With this framework, the electoral framework is faulty from the onset. This is because the commission, its chairman and members are allowed to operate at the mercy of the presidency having tied their appointment and funding to the political interest and influence of the President. The implication is that the commission's independence, impartiality and neutrality have been put into jeopardy, thus opening it to political manipulation especially if its officials intend to keep their jobs.

All local and international observers reported widespread irregularities that are traceable to the lapses in the 1999 constitution during the elections. This included a surprising 100percent voter's turnout in Rivers State for the February 27 presidential election (The Carter Center cited in Omotola, 2010). There were reported cases of prevalent ballot box stuffing, altered results, inflated voter turnout, disenfranchisement of voter and more worrisome, the inconsistent application of INEC's procedures all over the country (The Carter Center, 1999). The transitional military regime in active connivance with INEC allegedly manipulated the presidential election to favour the eventual winner Olusegun Obasanjo ostensibly in demonstration of military solidarity (Kew, 1999). Specifically, INEC officials, aided by party agents were cited thumb printing and stuffing ballot boxes in favour of the candidate of the PDP (ibid). This raises

fundamental questions regarding the 'independence' in INEC's name and the integrity of the institution to conduct free and fair elections devoid of impartiality and partisanship.

The susceptibility of INEC to political corruption and manipulation cannot be divorced from its lack of financial and institutional autonomy. Section 154 of the 1999 constitution vested the powers to appoint the INEC chairman, the National Electoral Commissioners and Resident Electoral Commissioners on the President (FGN, 1999). This places the burden of loyalty to the presidency and the president on INEC for its actions and inactions (Omotola, 2010: 10). Another fallout of constitutional lapses related to the lack of institutional powers for INEC to regulate party finances which was exploited by political entrepreneurs and 'money bags' to hijack the electoral process. The process became highly monetized thereby resulting in vote buying across the country (Ojo, 2006). Based on these lapses which significantly manifested during the 1999 general elections, international election observers rated the credibility of the elections low. According to Aluko (1999),

> The monitors of the 1999 elections were unanimous in their verdict that there were large scale irregularities in all the elections. The international monitors put the voters turn out to be 20 percent while the election results indicated 30-40 percent (Aluko, 1999: 2).

He further stated that:

> President Carter, though a personal friend of Obasanjo, refused to accept the credibility of the presidential poll – 'There was a huge discrepancy between the number of voters observed at the polling centers and the final results that was reported from several states (Aluko, 1999)

The foregoing casts aspersion on the 1999 elections and raises serious doubts on the credibility of the elections and the neutrality of the INEC and its principal officers in the conduct of the elections.

### *5.5.2 The 1999 Constitution and Election Litigation Framework*

The election litigation framework, pertaining to grievances resulting from the result of the 1999 general elections, is located within the sixth schedule of the 1999 Constitution of the Federal Republic of Nigeria. The schedule has two sections with sub-sections. The first is on National

Assembly election tribunals and the second is on the constitution of legislative Houses and governorship election tribunal.

On the National Assembly Election Tribunal, Section (1) specifically provides that:

(1) A National Assembly Election Petition Tribunal shall be composed of a Chairman and four other members.

(2) The Chairman shall mandatorily be a Judge of a High Court while the four other members shall also be appointed from among Judges of a High Court, Judges of a Customary Court of Appeal, Kadis of a Sharia Court of Appeal, or other members of the judiciary that are not below the rank of a Chief Magistrate.

(3) The Chairman and other members of the Tribunal shall be appointees of the President of the Court of Appeal in consultation with the Chief Judge of the State, the President of the Customary Court of Appeal of the State or the Grand Kadi of the Sharia Court of Appeal of the State, as the case may be.

On the Legislative Houses and Governorship Election Tribunal, Section (2) provides that:

(1) Legislative Houses and Governorship Election Tribunal shall be composed of a Chairman and four other members.

(2) The Chairman shall statutorily be a Judge of a High Court while the four other members shall be appointed from among Judges of a High Court, Judges of a Customary Court of Appeal, Kadis of a Sharia Court of Appeal, or members of the judiciary that are not below the rank of a Chief Magistrate.

(3) The Chairman and other members of the Tribunal shall be appointees of the President of the Court of Appeal in consultation with the Chief Judge of the State, the President of the Customary Court of Appeal of the State

or the Grand Kadi of the Sharia Court of Appeal of the State, as the case may be.

It is important to note that the election petition system in Nigeria is guided by the provisions of the constitution and the Electoral Act. To be specific, the constitution mainly provides for and gives legal backing for the creation of election tribunals and allocates those tribunals and their jurisdiction to adjudicate electoral disputes whereas the Electoral Act outlines detailed rules and guidelines governing the election petition process (Goitom, 2011). The frameworks that governed election dispute resolution processes regarding the 1999 general election were fused into the 1999 constitution as opposed to what was obtainable in the Second and Aborted Third Republics. It was also different from the experiences of subsequent elections under the present Fourth Republic because both constitutional and Electoral Acts provisions governed the administration of elections and the ensuing litigations. The inability of the drafters of the 1999 constitution and INEC which conducted the election to evolve an Electoral Act separate from the constitution did not attract much attention from election stakeholders in Nigeria since the 1999 election was essentially targeted at disengaging the military from the body politic of Nigeria (Omotola, 2010: 10).

### *5.5.3 The 2002 Electoral Act, Electoral and Election Litigation Frameworks*

The 2002 Electoral Act was meant to regulate the conduct of the 2003 general elections. This act repealed the 2001 Electoral Act due to certain limitations. In 2001, INEC forwarded a proposed Bill on electoral matters to the National Assembly for consideration and passage into law apparently to serve as the electoral guidelines for the 2003 general elections. The bill was controversial and attracted diverse criticisms particularly from the civil society. Surprisingly, INEC did not make any consultations with civil society organisations and other relevant stakeholders in the electoral process before proposing the Electoral Bill (Agbaje and Adejumobi, 2006). The 2001 Electoral Act became a political weapon in the hands of the incumbent President Obasanjo who unilaterally changed the order of elections from the bottom to the upper levels- local, state, National Assembly and presidential elections respectively as arranged in the 1999 general elections (Agbaje and Adejumobi, 2006; Omotola, 2010). It was specified in the 2001 Electoral Act that the presidential election would be conducted first obviously to enhance a

bandwagon effect on other elections that will follow should President Obasanjo and his party be victorious in the first election. As noted by Agbaje and Adejumobi (2006):

> The politics behind this decision was that both the President and the National Assembly members wanted to ensure they secure their re-election before the turn of the governors; because the state Chief executives have become very powerful and if elected first, they might use their local political machinery to scuttle the political ambitions particularly the re-election of the National Assembly members and the President.

Another controversial matter in the 2001 Electoral Act bothered on section 80(1). This clause was aimed at limiting the space for party registration thereby narrowing the chances for political competition. The Electoral Bill 2001 initially proposed that 'no political party will participate in general election if… they fail to field at least fifteen percent of the candidates for the councillorship, council chairmen, and state Houses of Assembly respectively across the federation which must be spread across two-thirds of the states of the federation and the Federal Capital Territory' (Agbaje and Adejumobi, 2006: 33). This provision itself was undemocratic but was made worse when the President single-handedly altered it before signing it into law to read as follows: 'to participate in general elections, a registered political party must secure at least fifteen percent win out of the chairmanship and councillorship positions in the federation, and this must be spread among two thirds of the states and federal capital territory' (ibid). By this provision, the rigid conditions to participate in general elections would virtually disqualify the registration of new political parties. It set performance standard as condition to participate in upper level elections (State House of Assembly, Governorship, National Assembly and Presidential) since local government elections would come last.

This strategically disqualified most of the new political parties from participating in the general elections of 2003. It was for the intervention of a judgment from the highest court of the land in October 2002 that the political space was freed for the registration of new political parties and this immediately facilitated the registration of twenty-seven new political parties (ibid). Apparently, particularist interests of political elites dictated the passage of the 2001 Electoral Act. The Electoral Act 2002 therefore accommodated amendments made to the repealed Electoral Act 2001 with further provisions to improve the credibility of the electoral process.

The 2002 Electoral Act consists of eight parts and two schedules. Each of the parts consists of different electoral regulations. Part I of the 2002 Electoral Act under the title *National Register of Voters and Voters' Registration* lay down rules and regulations on voter's registration before elections (See Appendix IV). Furthermore, the 2002 Electoral Act has a section on election petitions which is a process of challenging the outcomes of an election at an election petition tribunal established for such purposes. The first schedule of the 2002 Electoral Act contains the procedures for election petitions in Nigeria (Also see Appendix IV).

### *5.5.4 The 2006 Electoral Act and Election Litigation Frameworks*

The Electoral Act 2006 was an amended version of the 2002 Electoral Act. The 2006 Electoral Act had many changes which represented improvement on the previous Electoral Acts in Nigeria. It is noteworthy that no changes were made to the election litigation frameworks as contained in the 2002 Electoral Act, except that the 2006 Electoral Act gave more responsibilities and powers to the Independent National Electoral Commission (INEC) in the conduct of elections in Nigeria. According to Aiyede (2007):

> The Electoral Act 2006 which extensively draws on Sections 226 and 227 of the 1999 Constitution, expands the roles of INEC to accommodate the (a) conduct of 'civic and voter'education', (b) promotion of 'knowledge of impactful democratic election processes', and (c) conduct of 'any referendum needed to be conducted in pursuance of the provisions of the 1999 Constitution or any other legislation of the National Assembly' (Aiyede, 2007: 39).

He went further to mention other functions expanded by the Electoral Act for the management of elections in Nigeria:

> The Electoral Act 2006 further gives INEC the power to appoint its own Scribe, who doubles as the Head of Administration. It also makes it cumbersome for the President to unilaterally remove a Resident Electoral Commissioner in any state. The Act prescribes that a Resident Electoral Commissioner may only be removed by the President if requested to do so by a two-thirds majority of members of the Senate on the basis of inability to discharge the duties of his or her office or for misdemeanors. The President has in the past been able to remove or redeploy these officers at will (Aiyede, 2007: 39).

It is evident that from the 2002 Electoral Act, INEC had limited and specific tasks and powers. However, this changed in the 2006 Electoral Act with the addition of new functions which

broadened the scope and powers of the institution. The importance of the changes made to the 2002 Electoral Act as captured in the 2006 Electoral Act can be appreciated from two standpoints. First, by expanding the duties of INEC to include the conduct of civic education and promotion of knowledge of sound democratic election processes, the institution possessed the opportunity to bridge the gap created by the failure of political parties in Nigeria to serve as a veritable source of citizens' mobilization for popular political participation (Agbaje, 1999). It filled the gap of sensitizing citizens and creating awareness toward effective citizen engagement in state affairs including the need to participate in regular voter registration exercise and the imperative of voting and protecting the votes to ensure that the votes count. Thus, INEC had a good platform to have increased interaction and relation with the electorate more than ever before. Secondly, the legislative control over the powers of the President to unilaterally remove Resident Electoral Commissioners or redeploy them provides for a check and balance system between the legislature and the executive. It reduced executive control and influence over the operations of INEC. It also addresses the Master-servant relationship between the executive and key appointees of INEC. The insertion of legislative control into the 2006 Electoral Act did not only protect the security of tenure of office of Resident Electoral Commissioners, it also enhanced their ability to perform their constitutional duties without fair or favour. This was a huge improvement from the previous election frameworks as it strengthened INEC to become more independent and free from political control.

### 5.6 Election Manipulations and the Rising Cases of Election Litigation in Nigeria's Fourth Republic

From the preceding sections, it is evident that there has been rising cases of election manipulations in Nigeria's Fourth Republic. This has led to increase in the number of election petition tribunals established to receive complaints over elections conducted. In 1999, despite the fact that Nigeria had just come out of a prolonged military rule, there were still cases of election manipulations by desperate politicians to gain political power and thereby control the economic resources of the nation (Sha, 2008). Subsequent elections in 2003, 2007, 2011, 2015 and 2019 witnessed manipulations of large proportions through various means (Agbaje and Adejumobi, 2006; Suberu, 2007; Yagboyaju, 2011; Owen and Usman, 2015; Onimisi and Omolegbe, 2019). This has inadvertently increased the number of election petition cases. The scale of electoral

malpractices observed since Nigeria's first general elections under the current political dispensation in 1999 was confirmed by the number of petitions to the election petition tribunals after results are declared by the INEC (Enweremadu, 2011: 123).

The polity also witnessed many court cases regarding the processes and guidelines for the impeachment of elected state executives, in several key states in the bid to give electoral fraud in those states more potency (ibid). It is important to note that only on rare situations would politicians not petition electoral outcomes even when they have no good cases to present at the law courts. On many instances, cases are thrown out by the courts for lack of merit and inability to present evidence that proves alleged cases of electoral malpractices (The Guardian, 10 July 2004). This is not to say that many other cases have not been proved beyond reasonable doubts before electoral courts, that malpractices actually took place, thus making the judiciary an instrument of democratic advancement (Enweremadu, 2011). Perhaps, the intention of politicians with bad cases before the election petitions tribunals is to explore the judiciary as an avenue to rig, buy favourable judgments and secure electoral victories through the courts since the judiciary in Nigeria was once noted for selling judgment to the highest bidder or to the powers that be (ibid, 123). This is evident in the manner Justice Bassey Ikpeme of the High Court of Abuja gave an excruciating *ex parte* injunction to stop the June 12 1993 presidential election only two days to the election, despite existing Decree 37 of the Transition to Civil Rule which ousted all court verdicts relating to the conduct of elections (ibid, 117). It was on this legal contraption that the Federal Military Government, headed by General Babangida, nullified the outcome of the elections adjudged the freest and fairest in Nigeria's electoral history (Ojukwu and Oni, 2016; Agbo, 2008).

The desperation of politicians, especially the incumbent political office holders and their cronies to hold on to power and the equal desperation of the opposition to unseat them, makes the judiciary another avenue to slug it out when their efforts at the polling booths yield undesirable outcomes, thus exacerbating election litigations after every general election. This assertion received credence in the observations and report of the Justice Muhammed Lawal Uwais Political and Electoral Reforms Committee established by President Yar'adua. The President admitted on his inauguration day that the 2007 presidential elections that enthroned him were fraudulent hence the constitution of an electoral reform committee (Saharareporters, 2010). In

the report of the committee on the negative electoral culture in Nigeria's political history, it was noted inter alia that:

> The basic reason for this has been the attempts by political elite to perpetuate their grip on political power by all means. Over the years, political elite have become more desperate and daring in securing and consolidating political power; more greedy and reckless in the way they use and misuse power; and more intolerant of political rivalry, criticism and attempts at replacing them (Justice Uwais Committee on Electoral Reform, 2008: 19).

The result of this power play was an unprecedented number of petitions filed to challenge the outcomes of the 2007 general elections. To be specific, there were 1,475 cases before the courts of law resulting from the 2007 general elections (Electoral Reform Committee, 2008). The rising cases of election litigations is also traceable to the upsurge in Nigeria's oil revenue which consequently occasioned jumbo pay for politicians at all levels, thus making political offices very attractive for both incumbents as well as aspiring ones. The effect of this is a highly-monetised electoral process which opens doors for the corruption of the electorate, election management officials including security agencies (Mgba, 2017) and the judiciary.

Similarly, the manner in which the election management body in Nigeria compromises the electoral process arms politicians to seek justice in the courts of law against the electoral process and its outcomes. This inglorious posture of the election management body is not in tandem with its expected role in a democratic system. As averred by Jinanu (1997: 1), in a democracy, the "organization and conduct of elections, who does this and how it is done, the structure and process for doing it, are all of paramount importance". An impartial electoral administration is therefore *sine qua non* for promoting credible elections. Credible elections are also not achievable without effective electoral administration (Mozaffar and Schedler, 2002; Oni, Erameh and Oladejo, 2017). Various post-election reports have indicted the election management body and its allied organisations, especially security agencies assigned to provide adequate protection for both electoral personnel and election materials, of complicity in manipulating and weakening political structures. Giving specific details on this, some reports noted inter alia:

> In Enugu state, it was observed that voting officials in many stations stamped and released bundles of ballot papers to agents of a particular party which they thumb printed in the presence of security agents before stuffing them in the ballot boxes. In Imo state, some voting officials connived with agents of one of the political

> parties and carted ballot boxes away to Owerri Plaza where they were stuffed with already thumb printed ballot papers. The same was in Taraba. In Emekuku, thugs were said to have to assume the position of electoral officers……. At polling centre 008 in Yenogoa Local Government Council Area of Bayelsa state, agents were said to have bribed the Presiding Officer. Indeed, the list is endless (TMG Report, 2003/2004; Vanguard May, 26, 2003)

The brazenness with which the election management body and security agencies compromise their constitutional positions; namely, impartiality, neutrality, openness, transparency and accountability during elections have become potent bases of argument for politicians who lose elections at the ballot in challenging electoral outcomes in courts, thereby exacerbating the number of election litigations. The menu of electoral fraud and manipulations in Nigeria reached its climax during the 2007 general elections, owing to the threat of a *do-or-die* election by the outgoing President Obasanjo who had earlier boasted that his political party would rule Nigeria for at least 60 years (Tenuche, 2009: 50; Oni, 2014: 190).

Earlier election petition figures did not raise alarm about the rot in Nigeria's electoral process. Very insignificant number of petitions was filed against the 1999 general elections, the only notable one being Chief Olu Falae's petition against the election of President Obasanjo. The 2003 general elections yielded 574 petitions (Sagay, 2012). Election petition cases resulting from the 2011, 2015 and 2019 general elections have drastically reduced, though still fluctuating due to many reforms introduced into the electoral system. This fluctuation in the number of post-election litigations poses a big question to the electoral process in Nigeria despite series of reforms and money spent on the process.

**Table 5.2**

**A Description of Election Petitions filed after General Elections in Nigeria's Fourth Republic**

| Years | No. of Constituencies | No. of Petitions |
|---|---|---|
| 1999 | 1,497 | N/A* |
| 2003 | 1,497 | 574 |
| 2007 | 1,496** | 1475 |
| 2011 | 1,487*** | 500 |
| 2015 | | 581 |
| 2019 | | 786 |
| Total of election litigation cases | | 4147 |

| | | |
|---|---|---|
| from 1999 till 2019 | | |

Sources: Report of Electoral Reform Committee, 2008, p. 123; Report of INEC on the 2011General Elections, p. 36; Sagay, 2012: xiv; INEC Committee Report on the Review of Judgments on Election Cases (COREC), 2013, p. 93; Channels TV News 22:00hr on Election Petitions Tribunals, April 20 2019.

*In 1999, there were few cases of election petition because Nigeria had just transited to democracy after many years under the military. The only notable election petition case was between Olu Falae and President Olusegun Obasanjo

**The figure reduced from a total of 1,497 constituencies where elections were conducted in the Nigerian federation to 1,496 constituencies because governorship election did not hold in Anambra State on 14 April 2007.

***The figures reduced from a total of 1,497 constituencies where elections were held in the Nigerian federation to 1,487 constituencies because gubernatorial elections did not occur in 10 states.

### 5.7 The Judiciary and the Handling of Election Litigation Cases in Nigeria's Fourth Republic

Disputes are part of any electoral process since all political actors are pursuing similar interests. Such disputes can arise before or after the conduct of elections. Disputes emanating before the conduct of general elections often arise from the way and means political parties conduct the process of nominating their candidates. At this level, many party aspirants feel aggrieved for being schemed out of the political equation to clinch party tickets for certain elective positions, thus generating pre-election litigation. Disputes can also emanate after conducting general elections in which case political parties and/or their candidates challenge the results of the elections or the processes leading to the conduct of the elections. In other words, disputes are inevitable in electoral democracy. In the light of this, it is the role of the judiciary to settle these disputes by applying the facts of the law.

Because of the highly competitive and winner-takes-all syndrome of Nigeria's political system, the position and role of the judiciary in the democratisation process has assumed that of a referee who moderates the political games of Nigerian politicians (Adeleke and Oni, 2020). Nigerian politics, over time, has been unduly affected by neo-patrimonial practices (Joseph, 1991; Omotola, 2010) which are irreconcilable with democratic aspirations, profoundly undemocratic

in spirit and runs in collision with both political competition and participation (Van de Walle, 1999: 95-118). To therefore leave such political system unregulated is an invitation to direct assaults on democratic governments (ibid). The status of law can be interpreted as both an accelerator which propels and a brake which saves developmental process from derailing (Ocran, 1978: 17). It is in this regard that judicial intervention becomes a constitutional responsibility when democratic and electoral processes are undermined in any manner.

The 1999 general elections recorded few number of election litigation (Omenma, Ibeanu and Onyishi, 2017). This was due to the fact that the country was just coming out of a prolonged military rule hence the outcomes of the flawed 1999 elections were tolerated by Nigerians simply to allow the military vacate the political scene and enthrone democracy. The drafters of the 1999 Constitution envisaged disputes could arise from the conduct of elections in the newly-emerged democracy and thus provided for the creation of special tribunals on elections known as the Election Petition Tribunals to accommodate all issues relating to disputes emanating from the elections. In the words of Onapajo and Uzodike (2014):

> Section 285 of the Constitution of Nigeria 1999 provides for the creation of special election tribunals to deal with complaints relating to the legislative (federal and state) and gubernatorial elections. However, section 239(1) provides that the Court of Appeal has sole jurisdiction over complaints relating to the presidential election (Onapajo and Uzodike, 2014: 152).

Since the laws governing electoral conduct are formulated by the legislature and the laws are applied by the INEC, a public institution under the executive arm of government, the polity thus requires a neutral and impartial judiciary to adjudicate on matters bothering on the application of laws. Despite the fact that the 1999 Constitution ensures the independence of the judiciary, the judiciary has witnessed a lot of control from the executive at both the state and federal levels. This is compounded by the fact that the 1999 Constitution empowers the Governors and the President e to appoint and remove judicial officers based on the recommendation of the National Judicial Commission (NJC) (Onapajo and Uzodike, 2014). Therefore, there have always been cases of the President and Governors having a strong influence on the judiciary. Despite the strong influence of the executive over the judiciary, the judiciary has, in some instances, demonstrated courage to be impartial in adjudicating election petition cases. This is evident in

several rigged election cases being overturned in favour of the opposition political parties (Enweremadu, 2009).

Following the conduct of the 2003 general elections in Nigeria, both at the federal and state levels, the judiciary had to handle many election petition cases (Hassan, 2019). As a matter of fact, 527 complaints were filed in respect of the 2003 elections (The Punch, 10 February 2009 cited in Enweremadu, 2009). Most of these cases were thrown out by various tribunals, mainly due to lack of evidence on the part of the petitioners (Hassan, 2019). There were prominent election petition cases emanating from the conduct of the 2003 general elections which can be used as *locus classicus* in evaluating the manner in which the judiciary performed its constitutional roles of dispensing justice and ensuring stability in a democratic system. They include the governorship election petition case in Anambra State between Governor Chris Ngige and Peter Obi, the JKN Waku and Joshua Adagba case over the Benue South Senatorial District election and the 2003 presidential election petition case between President Olusegun Obasanjo and retired General Mohammadu Buhari.

### 5.7.1 *The 2003 Governorship Election Petition Case in Anambra State*

The election petition case in Anambra State between incumbent Governor Chris Ngige and Peter Obi was a well-pronounced and popular case. Governor Chris Ngige won the 2003 governorship elections on the People's Democratic Party platform (PDP) with sponsorship by multi-billionaire business man Chris Uba (Enweremadu, 2009). After the election, Chris Ngige's closest rival in the gubernatorial race, Peter Obi of the All Progressives Grand Alliance (APGA) challenged his victory in the election and lodged a complaint with the Anambra State Elections Petition Tribunal sitting in Akwa. After nearly three years of hearing the case brought to it by Peter Obi, the Anambra State Elections Petition Tribunal, on the 12$^{th}$ of August 2005, annulled the victory of Chris Ngige and declared Peter Obi as the winner of the 2003 Anambra gubernatorial election (Iguh, 2016). The Tribunal's verdict was upheld by the Court of Appeal in March 2006 hence, Peter Obi took Oath of office on March 17 2006. The petitioner (Peter Obi) waited for almost 3 years (35 months) out of a mandate of 4 years to obtain justice. Peter Obi also went to court to determine his tenure in office (Oni, 2013) when the Independent National Electoral Commission (INEC) conducted elections for all elective offices nationwide including Anambra State when Peter Obi was just a year in office. The Supreme Court, in a landmark judgment delivered on the

14th of June 2007, pronounced that an elected political office holder starts his or her tenure of office when he or she takes the oath of office and is consequently sworn in, therefore, Peter Obi's tenure of office as the Governor of Anambra State was to count from 17 March 2006 till 17 March 2010 (Iguh, 2016). This case betrayed the spirit of election petitions which has a unique feature of speedy proceedings and this accounts for the application of front-loading of all court processes involved in each petition (Adeleke and Oni, 2020). In the case of *Olawepo v. Saraki* (2009) 45 WRN 80 at 145), the Court of Appeal per Owoade JCA espoused the vivid picture behind the spirit of speedy trial inherent in election petition thus:

> The spirit of the law relating to election petition is that as much as possible, petitions should be given expeditious adjudication to enable the parties to know the result of the election in which they participated. And compliance with legal provision as to time within which to lodge an election petition is a basic pre-condition a violation of which is incurable and inability to comply with the legal provision is fatal, in such a case the court has no jurisdiction to entertain the petition or cause (cited in Adeleke and Oni, 2020).

It is important to note that the spirit behind the quick delivery of justice in election petition is to protect the interest of the parties and the electorates with respect to their electoral rights. This right was betrayed as Peter Obi had to wait for almost three years to reclaim his mandate. This unnecessary delay in trial portrays the judiciary in the eye of the public as a complicit institution in attempts at manipulating and rigging elections through the courts.

### 5.7.2 *The 2003 Benue South Senatorial District Election Petition Case*

The result of the 2003 Benue South Senatorial election was contested in court between JKN Waku and Joshua Adagba. The petition by Waku against Joshua Adagba was thrown out in court on frivolous grounds based on improper filling of the case (Kari, 2017), stating that there was discrepancy between the person who filed the case and the person who contested for election. In the words of Kari (2017),

> The petition was dismissed because, in the words of the tribunal, the individual who contested the election was Chief J.K.N. Waku, whereas the person who filed the complaint was Senator J. K. N. Waku. "Chief" and "Senator" turned out to become the issue for determination while the substance of the complaint of the petitioner was overlooked (Kari, 2017: 78)

It is inglorious that the election petition tribunal dismissed a case even without hearing the substance of the petition. Justice was therefore sacrificed on the altar of technicalities. Again, this is contrary to the second feature of election petition which is avoidance of technicalities. Technicality in election petitions has a close link with speedy trial especially when parties to the petition raise a new cause of action not pleaded and different from allegations in the statement of claim and, if allowed, the first feature of speedy proceeding will lose its meaning (Adeleke and Oni, 2020). However, the summary dismissal of the petition in the case of Waku and Adagba amounted to technicality in law which denied the petitioner the right of fair hearing. The importance of the foregoing in election petition which is *sui generis* in nature was implicit in the message passed by a foremost Jurist in Nigeria Kayode Eso JSC who held in *Chiwendu v. Mbamali* (1980)3-4 SC 31) that "Care must be taken not to sacrifice justice on the altar of technicalities. The time is no more when disputes are dealt with rather on technicalities, not on law". Likewise, Justice Uwais JSC in *Jim Nwobodo v. C.C. Onoh* (1984) 1 SC 1 at P. 195) expressed similar views thus: "Election petitions are by their nature peculiar from the point of view of public policy, it is the duty of the courts therefore to endeavour to hear them without allowing technicalities to unduly fetter their jurisdiction" (cited in Adeleke and Oni, 2020).

### 5.7.3 *The 2003 Presidential Election Petition Case in Nigeria*

Muhammadu Buhari, who was the presidential candidate of the All Nigeria Peoples Party (ANPP) challenged the 2003 re-election of President Olusegun Obasanjo as the President of Nigeria under the People's Democratic Party platform during the April 19 2003 presidential poll. The petitioner, Muhammadu Buhari filed a petition in the Court of Appeal claiming that the poll was not conducted properly in compliance with the electoral act and that the process was marred by electoral malpractices. His main arguments were that:

> the poll was not conducted in compliance with substantial guidelines of the Electoral Act, 2002; that it was fraught with malpractices, violence and corruption and that at the time of the election, the 1st respondent/cross-appellant was not eligible to vie for the post of the President having occupied that position twice and thus contrary to the provisions of section 137(1) (b) of the 1999 Constitution (Supreme Court of Nigeria, 2005).

The Court of Appeal which is the court of first call in a presidential election litigation in Nigeria, in determining the case, nullified the results of the presidential election in Ogun State and results

in some local government areas in some states of the federation but declined to nullify the whole election on the grounds that the non-compliance complained of by the petitioners was not substantial enough to cause such total nullification (The Supreme Court of Nigeria, 2005). Citing the provisions of section 135(1) of the 2002 Electoral Act, the Court of Appeal dismissed the petition of Mohammadu Buhari for lack of merit (News24, 2005). Not satisfied with the ruling of the Appeal Court, Mohammadu Buhari approached the Supreme Court, seeking the court to nullify the majority judgment of the Appeal Court and to order the Independent National Electoral Commission (INEC) to organise fresh elections in Nigeria.

After a prolonged legal tussle that lasted over two years, the re-election of President Obasanjo was approved by the verdicts of the Supreme Court. The legal victory does not however go without underground political pressure on the judiciary by the presidency. Allegations of attempts to bribe Justices of the Supreme Court and deposit huge sums of money in their individual bank accounts prior to the delivery of the judgment were rife. To be specific, the then Chief Justice of Nigeria, Justice Lawal Uwais confirmed the undue pressure from the presidency in a private meeting purportedly held with the United States' Ambassador to Nigeria, John Campbell (Sahara Reporters, 2011). Justice Uwais raised alarm over attempts by the executive to manipulate the judiciary through harassments and bribery of Judges including moves to deposit huge sums of money into his personal accounts all in the bid to compromise the judiciary on the 2003 presidential election petition (ibid). Although these allegations were not confirmed, they were equally not denied by any source from the presidency. This clearly speaks to the political behaviour of politicians who do whatever it takes to promote and protect their interests since politics, according to Lasswell (1977) and Danziger (1985), is the process through which power and influence are used in the promotion of certain values and interests.

### 5.8 Conclusion

This chapter has elaborated on electoral manipulations in Nigeria's Fourth Republic particularly from 1999 to 2007 and noted that political elite often perfect their acts of manipulating the electoral process to gain political power and control of government. From the transitional election of 1999 to the 2007 elections, electoral malpractices including manipulation of voters' register, under-age voting, ballot stuffing, ballot snatching, vote buying, falsification of results and bribing of electoral officials including security agents remain significant and this accounted

for increased election petitions after each round of general elections in which the 2007 election petition cases remained unprecedented. The chapter also undertook a review of constitutional provisions guiding electoral conduct and electoral disputes in Nigeria and how they facilitate or hamper electoral manipulations. It further briefly reviewed the way and manner the judiciary handled selected election petition cases during the period under review and noted that various manipulative attempts characterised the discharge of the duties of judges that sat on the cases. The next chapter after this will elaborately discuss the manifestations of political influences and manipulative strategies on election litigation processes in Nigeria's Fourth Republic.

# CHAPTER SIX

# THE POLITICS OF ELECTION LITIGATION IN NIGERIA'S FOURTH REPUBLIC

## 6.1 Introduction

Thus far, this study has engaged political actors and the judiciary in an attempt to gain more insight into Nigeria's Fourth Republic with special interest in the 2007 electoral process and the ensuing election litigation process. Of interest are the strategies and patterns political elites use in manipulating the judiciary to secure electoral victory through the courts and the practices that subject the judicial process to manipulation.

This chapter undertakes the presentation and discussion of findings of the study in a way that addresses the research questions on which the study is based. Forty-five (45) key relevant stakeholders in the 2007 electoral litigation process were interviewed from the three selected states. The researcher interviewed 15 respondents in each state (45 in the three states) and these included the Chairmen of the political parties involved in the court cases, the Directors-General of the candidates' campaign organisations, the Media Directors of the candidates' campaign organisations and the candidates who contested the elections (all of whom are politicians, thereby categorised into the political class); the lawyers who represented the political parties and their candidates in courts and judges who had presided over election petition cases (categorised as members of the judiciary); senior academic members of departments of Political Science and Law in identified universities who had, over time, developed expertise in this field of research through scholarly writings (categorised into the academia) and Executive Directors of Non-Governmental Organisations monitoring election petitions and tribunals in each state (categorised into the civil society organisations). Data generated from the above respondents formed the basis for this discussion of findings. Data presentation and discussion were done simultaneously, according to each study objective, to enhance comprehension.

## 6.2 The Underlying Interests and Forces that Determine the Processes and Outcomes of Election Litigations in Nigeria

There are several interests and factors underlying the processes and outcomes of election litigations in Nigeria. The aim of a political party that contests in an election and the party's standard bearer is to win the election. When the attainment of that political objective is uncertain, both the standard bearer of a political party and the party itself can strive to be declared the winner at all costs. One of the respondents contended that:

> In every human society, there is one overriding interest in everything one does, and that is self. On the average, most political gladiators in Nigeria are most of the time after self-interest than the populace or common wealth interest, so we say that, politics in Nigeria calls for a lot of resources, physical, financial, emotional, communal and all the rest. So for anybody to have gone into an election in Nigeria to have expended all those available resources, and maybe he sees himself as having some little chance of becoming the winner and that being taken away from him. If they have the opportunity, there is no way they will not be interested in pursuing it at the judiciary end of the government for as long as it could take them to their endpoint, but while they are doing this, we should not mistake it for populace interest.
>
> ***In-depth Interview 13/September 04, 2017***

The above shows that "self-interest" is one of the underlying forces that determine the processes and outcomes of election litigation in Nigeria. Politicians want to remain in power for self-aggrandisement while opposition parties also intend to have a taste of power hence they engage in election litigation manipulations. Similarly, members of a political party and public officials who benefit from the political party in power will endeavour to make the party remain in power by all means. Political parties and their candidate will engage in election litigation process to ensure they consolidate themselves in power and continue benefiting from the system. Another respondent commented on the underlying interests and forces that determine the processes and outcome of election litigations in Nigeria:

> The body language of the President matters a lot. We are running a style that we can say is based on, whichever side the President or the Leadership wakes up from, it's going to determine our fate for that season. When late President Musa Yar'adua came into power, he made it clear that he will not meddle in the issue of

> Judiciary. He tried as much as possible not to allow his aides, because his aids tried, especially in Anambra State to push him into meddling into the affairs of the judiciary to favour them. Although PDP was declared winner in Ondo State, Governor Olusegun Agagu was returned, but Labour Party under the leadership of Governor Olusegun Mimiko went to court because they felt it was rigged and the President did not interfere the court returned Mimiko as governor.
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> ***In-depth Interview 02/June16, 2017***

From the above assertion, the disposition of the president of the country, especially in Nigeria with a growing democracy, substantially determines the process and outcome of election litigations. For instance, Musa Yar'adua who was Nigeria's President in 2007 did not interfere in the judiciary judging by his actions and utterances. He publicly declared on his inauguration day that the election that brought him to political power as president was a sham thus setting up the Justice Lawal Uwais political and electoral reforms committee to make recommendations aimed at improving Nigeria's electoral process. He regarded the judiciary as an independent body and should be treated as such. It was perhaps because of this disposition that opposition political parties won many election litigation cases between 2007 and 2010

President Yar'adua's political behaviour considerably determined the process and outcome of the election litigations in that era even though one may not be able to say same for his political aides and associates. Although the scope of this study is 2007 election, it is relevant to observe that the current president's (President Muhammed Buhari) "body language" is directly or indirectly influencing the judicial proceedings and outcomes. For instance, the president's culture of disobeying and disrespecting court orders and judgments with impunity is a demonstration of executive rascality and lawlessness which has reduced the image of the judiciary as a sacrosanct institution in a democracy. The suspension and subsequent dismissal of the former Chief Justice of Nigeria, Justice Walter Onnoghen towards the composition of the 2019 Election Petition Tribunals is another case of President Buhari's direct influence on election litigation process. Even when the aides of former president Yar'adua tried to push him into meddling with the judiciary, he maintained his position and refrained from interfering in judicial processes.

This further shows that most times the executives interfere in the affairs of the judiciary and that in turn determines the processes and outcome of election litigations in Nigeria. This is mostly because the judiciary has not fully gained independent as purported in paper and in theory. Practically, the executives both the president at the national level and the governors at the state level interfere in the judiciary and, as such, influence the verdict. The cronies of the ruling party will always have an advantage in the judiciary proceeding once the president and his aides interfere in the judiciary proceedings.

Another respondent declared:

> So, whoever approaches the court is not necessarily aiming to manipulate the processes but to seek justice, because it's possible that he probably has suffered manipulation in the course of the electoral process, so it depends on the fact on ground.
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> ***In-depth Interview 38/March 07, 2018***

Another underlying interest and forces that determine the processes and outcome of election litigations in Nigeria is seeking of justice. Sometimes, election processes are manipulated through rigging, inflation of numbers, deliberate and calculated disruption of voting process, snatching of ballot boxes, destroying and burning of votes amongst other election-manipulation strategies employed.

The victim of such manipulation and the party involved will try to seek justice by engaging in election litigations to seek justice and redress the injustice perpetrated against him and his party. Moreover, the outcome of election litigation in Nigeria is also determined by fact on ground. In every proceeding, civil or criminal litigation, concrete evidence is required to prosecute election litigation. Invariably, an election litigation that lacks fact or evidence to prosecute such a case will be struck out by the court for lacking in merit (Abdul-Razaq, 2005).

Election litigation processes and proceedings are built on facts. Many election litigations that lacked facts have been struck out. For example, the Supreme Court while delivering judgment on the 2007 Presidential election petitions argued that the petition of Muhammadu Buhari of the ANPP was dismissed for lack of evidence while that of Atiku Abubakar of the AC was struck

out for lack of merit (Ashiru, 2009: 106). That judgment suggested that both candidates didn't provide evidences enough to prove their allegations or that the evidences were found to be untrue. Accordingly, the process and outcome of election litigation in Nigeria depend on the fact on ground. In the middle of this contest is the judiciary which forms the last hope of the populace for justice. The quest for justice attracts a lot of interests from persons and agencies across all realms of life. In a bid to defend their choice, the masses put massive pressure on the politicians and the parties they represent while they are employing the services of lawyers who understand the law and are believed to have the requisite legal expertise to gain electoral victory through the court during the litigation process.

It is expected to be a battle of facts from litigant parties to support their various claims. The opponent is engaged by exploiting loopholes in the electioneering process, the electoral act laws and other valid laws of the land to establish case as well as drive the litigation process in their favour by either upturning or upholding electoral victory.

Following the sensitivity of the entire process and the demand required of the system, an election tribunal panel made up of judges is formed to look critically into the cases of litigant parties in order to uphold the law and put all parties involved or indicted under check. Regarding this, respondents consider election issues as unique and that they should be treated as such. Thus, a respondent stated:

> Generally, with respect to election petition in law we say election litigation matter is sue genres. The Latin word means election litigation is of its own kind. Is not like any other case. Because it has its own rules; it has its own way of adjudication; the tribunals are set up with different rules and mandates
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> ***In-depth Interview 09/August 02, 2017***

Another, respondent went further to explain the uniqueness of the election tribunal with focus on the nature of their activities and requirement or responsibilities:

> We are even at the point of agitating that judges should be retrained for purposes of election because it is not the usual business of adjudication in the other normal civil cases. As a result, there is dynamism into election litigation that ordinary

> person may not be able to understand if compared with other cases in court. The proceeding is different, appearances, filing, and everything is not the same.
>
> ***In-depth Interview 41/April 09, 2018***

The uniqueness of the election litigation on its own is a factor that will determine its processes and outcome. Unlike a pure civil or criminal case, election litigation sometimes involves both civil and criminal matters. Election litigation is unique, so the judge presiding over such case should be experienced in election litigation, otherwise the verdict would be upturned by a higher court of law.

The election petition tribunal panel is constituted by the Chief Justice of the Federation who appoints judges to such responsibility and forwards the names to the President for approval. The selection process is believed to be based on competence of the judges who have track record of handling election litigation cases in order to guarantee authentic and reliable judgement. The judges are called from different parts of the country to work in tribunals far away from their jurisdiction as a way of achieving credibility of the process and enjoying the confidence and support of masses. A respondent explained it thus:

> Don't also forget that the way the judicial officers, the tribunal judges are dispersed and posted, is such that if you are elected from Ondo state, be sure that you will hardly be told to go to any state in the Southwest. So it is like they detailed people from Southwest to Northwest; from Southeast to Northeast; from Northwest to Southwest. So, they just mix them up like that. So, in most cases when you see panel here, you see them Hausas; Northerners. May be one or two Igbos so as to allow a dependable and reliable process that people can feel these people have no connection with us.
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> ***In-depth Interview 44/April 12, 2018***

From the above assertion, unlike in a pure civil or criminal proceeding, wherein the judge will preside over cases emanating from his own state, judges are transferred to other geo-political zones other than their own geopolitical zone of origin or geopolitical zone of practice in election litigation processes. This is to avoid bias and nepotism in the election litigation processes and outcomes. However, this particular practice by the judiciary and judicial officers have neither holistically curtailed nor curbed bias and nepotism amongst the judicial officers. Although one is

not totally writing off this strategy by the judiciary to enhance public trust and make election litigation verdicts impeccable, more is required by the judicial officers in the process of election litigations in Nigeria.

Another respondent who is a politician remarked on the underlying factors influencing the process and outcome of election litigations in Nigeria. This is captured by the respondent as follows:

> One, both the winner and the loser, the moment the loser goes to the tribunal, he wants to contest some area and the winner will want to sustain. Now, if the winner actually sees that he won on a clean slate, then he may not want to see that the judges are manipulated, however, suppose the loser attempts to do that, he will have to make counter manipulation strategy.
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> ***In-depth Interview 14/September 05, 2017***

Usually, when an election is manipulated, it is the victim of the manipulation that seeks justice in the law court, likewise when an election is free and fair; it is the loser that engages in election litigation. However, in election litigation process, both the election winner and the challenger are involved in political strategies to secure victory. The winner will ensure that the judge is not manipulated in the process of the litigation. He will seek to counter all manipulation strategies that may be employed by the opposition party and/or his counterpart. Such counter strategies of all judicial manipulation strategies employed by the loser will also determine the process and outcome of election litigations in Nigeria.

Another respondent had this to say on the underlying interests and forces that determine the processes and outcomes of election litigation in Nigeria:

> Well, the answer is very simple. Because they are looking for victory in the court, they want to succeed and then they want favourable judgment. If you rig election and the person you rigged out, takes you to court you want to, first the case is going on but you have already assumed office you are already enjoying it, you wouldn't want to leave, so you do everything to retain that post. And the person that has been rigged out also wants to get his mandate back so that is the simple answer, because they want to win.

***In-depth Interview12/August 17, 2017***

From the respondents' assertion, seeking victory is an underlying interest and factor why election candidates engage in election litigations. They want to retain their post and position, for instance, governors who have assumed office and are enjoying the benefits of their office or position which is usually attractive may not want to be thrown out, they will do everything within their power to retain such post and office to continue to enjoy what they are enjoying and the candidate that was rigged out will do everything within his power to secure victory at the election litigation courts so as to enjoy power and its accruing benefits.

This opinion by another respondent shows that all the stakeholders in the election from the INEC to the party members, to the political elite, to the security agents, to the judicial officers have a role to play in determining the processes and outcomes of the election litigations in Nigeria. Here are the direct words of the respondent:

> Yes, because there is no absolute transparency on behalf of the electorate, on the behalf of the parties, on behalf of the security agencies, on behalf of INEC and so on and even on behalf of the observers. So, these are factors that will make to say, ah, 'I won there o, it's someone that did this'. Now, the contestant will want to, the loser will want to dilute areas, will want to contest areas where he has lost to the winner, it is those areas that they can change results. So, now, I said, all actors I use the word all actors in the electoral process has not been absolutely transparent

***In-depth Interview 12/August 17, 2017***

The respondents opined that the electoral process as a whole lacks absolute transparency and no stakeholder in the electoral process could be exempted from corrupt practices and election malpractices. This also culminates in election litigation by the parties involved who feel that they have been cheated or that the result of the election has been changed in any way.

We quickly look at specific roles played by different stakeholders in the election litigation processes in Nigeria.

### 6.2.1 The Role of the Judicial Officers

The judiciary is the paramount actor in election litigation as it is the judicial officers that give the verdict of the election litigation processes. Since the judicial officers' role is germane in election litigation, judicial integrity should be our major concern. The subject of judicial integrity has assumed prominence not only in Nigeria but in the entire Commonwealth of Nations. Even before the publication of the Code of Conduct for judicial officers in Nigeria, Nweze (1996) had opined that "The oath of office of a judge is a covenant with such fundamental virtues like honesty, honour, probity and impartiality. These virtues characterise his conduct and dictate his sense of judgment. His fidelity to that covenant must not only be lived, it must be evident".

The judiciary functions as the only channel to legally contest election results and the last hope of an average person who seeks justice. Therefore, election litigation and the judgement emanating therein uphold election outcome or upturn wrongfully-declared winners and serve as a means of checkmating the Independent National Electoral Commission (INEC). This role of the judiciary is not just sensitive to the survival of a nation but also crucial to preservation of democracy, making the processes and outcomes of election litigation a stern contest. For a country like Nigeria striving to preserve her fragile democracy, it is not unusual to see the judiciary engaged in litigation cases arising from the process or outcome of election. This provides political parties and their candidates, legal platform to seek redress when the electioneering process seems to be short of expectation or lacking fairness and transparency.

> It's mutually reinforcing, political, and social. It is economic in the sense that the judges who are involved in this manipulation don't do it for free. We've heard the cases of millionaire judges, incidentally, it's not new, way back in 1995 there was the Kayode Osho Judicial Panel, meaning that way back in twenty-four years ago, ah, you must have had about the case of judges at that point in time who rode Mercedes Benz as their official car. So it means that the judges did not do it for free, we've had information about judges who are currently in the storm now, but whose antecedents clearly showed that they will do this today, so it's economic, it's social, it's cultural, it's a complex whole.
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> ***In-depth Interview 05/July 10, 2017***

From that assertion by a respondent, the judicial officials, especially judges are involved in manipulation of election litigation. It is pertinent to note that it is the judges that give the final verdict on election litigation. The respondents opined that judges involved in election litigation manipulations do not do that free of charge. They receive millions of naira, houses, cars, and other materials to compromise. Sometimes judges have been accused of receiving foreign currency especially from the political elite to manipulate election litigation process and outcomes.

The above findings is in tandem with the assertions of Ahmed (2013) who opined that corruption thrives in situations of bad governance, inefficiency and ineffectiveness of systems and institutions, mismanagement of public and other corporate affairs, authoritarianism, lack of respect for human rights, for the rule of law, impunity, and lack of respect for the independence of the judiciary, and lack of transparency and accountability in the management of public affairs (Ahmed, 2013). Similarly, Taiwo and Ajigboye (2013) opined that, as much as possible, judges try to insulate themselves from politics and ostensibly shy away from descending into it. Yet, the judiciary has a fundamental role to play in sustaining democracy by ensuring that election is free and fair. It accomplishes this in the kind of judgement it gives on election petitions cases coming before the courts.

The above is further collaborated by the assertion of Adejumobi's position that, in a bid to restore the rightfully-elected official or candidate, and a constitutional channel to seek justice, the judiciary as an institution germane, not just to the construction but also sustenance of democratic polity, is greatly consulted (Adejumobi, 2004).

### 6.2.2 The Role of the Political Elite

Political parties in Nigeria and other developing democracies are controlled to a very large extent by political elites. Elaigwu (1999) has noted that political elites in new democracies perceive the control of the state and its allocating powers in instrumental terms as an avenue for elite enrichment rather than an avenue for pursuing the public good. According to Elaigwu, what accrues to the governing elites, as individuals, is more important to them than collective public good or commitment to democratic values.

Against this backdrop in the context of election litigations, the political economy and the development of private capitalist enterprise, the state becomes a *resource* that is sought by competing fractions of the ruling elites. Thus, driven by the urge to reap from the immensity, ubiquity and profitability of state power, factions of the ruling elite engage in a bestial struggle to control the state which not only condemns political competition to warfare but also reduces public service and pursuit of the common good to a secondary issue. Since the political practitioners place a very high premium on political power and the spoils it offers, they have no qualms about taking the most extreme (usually extra-legal) means to acquire and maintain political power (Aina, 2004; Mojeed, 2017).

Writing on the profitability of state power in the Nigerian context, Ake (1996) notes that "those who win the state power can have all the wealth they want even without working while those who lose the struggle for state power cannot have security in the wealth they made even by hard work". Nigeria politicians, like their counterparts across the African continent, participate in electoral contest and election litigation with a *winner-takes-all* mentality which conceives electoral defeat not only as a loss of elective office and all its privileges but also of life itself (Monga, 1999).

Within the context of election litigation, therefore, power is everything to the political elites and those who control the coercive resources use them freely to promote their interest including the appropriation of "surplus" (Ake, 1985). The negative manner in which the ruling elites in developing democracies seek state power and the selfish manner in which they dispense same, particularly for primitive accumulation, are partly facilitated by the relative lack of autonomy of the state in these emergent democracies, thereby making the state easy to be captured and privatised by the governing elites that lack the discipline of economic production.

The bureaucratic and legal-rational features of impersonality, rationality and impartiality associated with the state of Europe from where the state in developing countries was imported are yet to take firm roots in these new democratic states (Osaghae, 2011; Mojeed 2017). Thus, within the context of election litigations, the political elites may bargain and negotiate for their personal gains rather than for the political party's victory. Although even when it seems that the

political elites are toiling towards party victory in the litigation process, they have ulterior desire for personal aggrandisement (Hyden, 2006).

One of the respondents said in an interview:

> Naturally before, it's not really common for oppositions to manipulate judiciary, before we don't even know that such things happen, that if there is manipulations anywhere from the opposition even the ruling party. But the facts that occur recently in the judiciary gave us the clue that a lot of things have being happening in the past that we are not aware about. For example, it is easier for you to bribe a judge by the political elites, we were not aware of things like that before but now it is possible and these issues have been existing over a long time
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> ***In-depth Interview 32/January 16, 2018***

It has been established above that some judges are bribed to manipulate election litigation processes and outcomes. This act is not executed by ordinary party members. It is carried out by political elites in the party involved. Although sometimes these money and gifts are not given directly to the judges, it is delivered through their friends, agents, relatives and family members. Bribing a judge by the political elites is no longer a knotty task, as this is carried out with ease and without compunction (Ashiru, 2009; Onapajo and Uzodike, 2014).

Another respondent bared his mind:

> Money, voting is money, there are relationship between parties, there are relationships between let's say the ACN and the judges. You know, you have a case in southwest and the judge in charge happens to be your friend, you know how to push your money to it, you know how to tell the person that look, you're going to get this, and the judges involved looked at the case these are ways you can go and do this thing, this is to loophole which will go this way, you will end up getting what you
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> ***In-depth Interview 09/August 02, 2017***

From this, bribing of judges by political elites is possible through the "significant others" of the judges involved. Political parties, especially the incumbent, through their political elites have a cordial relationship with prominent judges especially the ones that will handle election litigation in various states and even at the federal level. The bribe money is neither given directly to the

judges concerned nor paid into their bank accounts. It is sent to their proxies who convey it to them (Ugochukwu, 2004; Ashiru, 2009).

### 6.2.3 The Role of the Political Parties

The role of the political parties in electioneering, election and election litigations cannot be overemphasised. Political parties play a vital and inevitable role in election litigations and process especially in a democracy. According to Przeworski (1991), democratic system is a political system in which political party is central to the political/electoral process. They know what winning or losing election means to the party but they are confronted with the uncertainty of not knowing whether they would win or not. One of the respondents spoke on the role political parties in the enterprise:

> When you look at the election process, you are supposed to be after voting, your party agents are supposed to sign and have a sheet, a duplicate sheet for all parties and same copy for INEC. And when all the agents get back to the secretariat for example at the end of election and the total-sum what they signed and INEC countersigned and it is different from what is announced. You will be very convinced to go all out, to seek redress in the court of law which was what Dr Olusegun Mimiko did! Yes, it took a very long time. I think that is one thing. There are two issues that we still need to resolve in the judiciary of Nigeria. One is the issue of quick adjudication of cases. Two, the issue meting out punitive measures, giving out punishment to be served to erring civil servants to erring representatives of government that are being paid by taxpayers' money. All this manipulation are being entrenched in, are still being encouraged, are still in the system because there are no scapegoats.
>
> ***In-depth Interview 01/June 12, 2017***

Political parties play a prominent role in the electoral process and the ensuing election litigation. First, a candidate contests election under a political party. Members of the political party rally round their candidate to ensure that their candidate wins the election. They do not only vote in the election process, but also ensure that their votes are safeguarded, counted and recorded by their party agent. The party agent signs a result sheet at the ward level, local government level and state as applicable.

They ensure that there is no manipulation of their votes at electoral wards. However, for electoral wards where there are violent, electoral malpractices and rigging of any kind, the party agent in that particular electoral ward will testify that such malpractices occurred. As such, the party member, who may be the party agent can testify or witness in the court of law that electoral malpractice took place in the affected ward.

Party agents at each electoral ward have copies of election results which they send to party executives at the state level. If the figures are manipulated at the point of collation, counting and announcing, the party agents will reject such figures which have either been manipulated or inflated because it is not in tandem with the result their party agent at the electoral wards submitted to them. This is especially for the parties who have lost the election and those already losing the election from the results of counted and announced results.

Another respondent commented:

> You will see that there is a kind of politicization of litigation of election. In fact, starting from the constitution of panel that will listen or will hear, undertake election matters, you will see that maybe there is kind of maybe influence one way or the other. Definitely, a political party in power has a kind of control over the Judiciary, and they may one or the other want to dictate the way in which the election result will go and the result of the litigation. So there have been attempt here and there that, that those in favour of PDP or those in favours of ACN should be part of the panel, other than that one cannot say specifically, that there has been a politicization but what happened thereafter, what we could see, especially not specifically relating to 2007 but 2011, what we saw the outcome, then one can say there has been politics in it.
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> ***In-depth Interview 04/June23, 2017***

The statement further shows that ruling political party controls the judiciary and invariably manipulates the judiciary as independence of the judiciary is a mirage in Nigeria. The ruling political party often goes to the extent of dictating the side the pendulum of justice will swing in electoral processes including the process of election litigation (Mehler, 2007; Onapajo, 2014.

### 6.2.4 The Role of the Masses/Populace

The masses also play a vital role in election litigation processes in Nigeria. The masses are very influential in a democratic system as they mostly determine who will rule them with their voting powers. However, when election results have been manipulated against the wishes of the electorate, the masses do not only protest but they also encourage their candidate to seek redress in the court of competent jurisdiction. One of the respondents declared:

> I think the biggest motivating factor then was the populace. The voters were restless, the voters were convinced that this was not what we did, this was not our mandate, and that propelled the then candidate, in person of Dr Olusegun Mimiko. Even then it might surprise you that some supporters even dropped money, contributed for him, and encouraged him to proceed to court. They were with him throughout the situations then, because it started here at the High Court in Akure. We have situations then that people trekked from their various houses irrespective of the distance to the court, to cheer him up and to listen to, day to day proceedings of the court proceeding, if you were in his condition, you will feel confident, you will feel strengthened, you will feel refuelled to see the case to logical end.
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> ***In-depth Interview 35/February 03, 2018***

As the respondent cited in the Mimiko election litigation case, it can be deduced that it was the masses that encouraged him to contest. This is because the masses voted massively for him and they observed that their votes and the election results were manipulated by the ruling party in collaboration with INEC. The gubernatorial candidate of Labour Party, Dr Mimiko was supported by the masses from the time of voting, through the court processes. Some of them reportedly contributed money to support Dr Mimiko to proceed to court when they observed that the election result had been manipulated. This shows that the masses play a prominent role in election litigation processes.

Further report by another respondent goes thus:

> Firstly, actually I said something about issue of money. The aspect of it is that relationship between judiciary officers and the council involved in those cases, it's still subject to one thing, that if the masses doesn't want you, they can't rig for you that is the theory, if they rig for you, you will be having problem until you

> leave the seat. Let me use the current governor of Kogi State as example. The masses doesn't want him that is why he is having problem all the time because he wasn't prepared for the job, there were lots of issues that occur, he wasn't the candidate
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> ***In-depth Interview 29/January 10, 2018***

It is observable from that the masses may not influence or manipulate the outcome, but when they support a candidate, they will come all out to ensure that his mandate is restored if such candidate was rigged out of the electoral process.

Another respondent offered his opinion thus:

> So public opinion does not matter but at times it can cause havoc, that is where a decision you make in the court, against a particular person and the people doesn't want the particular person there, you see people protesting, riot in town burning of tires in major roads, causing a lot of problems, it always end up in riot, where people believe that this is their right, their right has been trampled upon and their votes does not count, we don't want this person, that is why you see them, the only thing the masses know how to do best is to react, they will protest, it's either peaceful or the other way round, so that's the only thing they do, not that masses will march together and go to court to challenge the verdict of the tribunal, but they can protest that no, this will not stand and that is it.
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> ***In-depth Interview19/October 24, 2017***

This response contradicts all the preceding assertions on the role of public opinion in deciding election petition cases. It is deducible that the masses play a role in the election litigation process and outcome. Notably, the masses can cause havoc if the decision of the court does not favour their political party and/or candidate. They do that by protesting, blocking of major roads, rioting and burning of tyres on the major roads which have security implications for the atmosphere of hearing the petitions. The masses only react to the final verdict declared by the judge though they cannot alter it.

Another respondent expressed his position:

> Well it is often said also that; at times judges also read the mood of the society before they give their judgment, at times it is often agreed that way particularly in

> the case of presidential election, they look at the judgment, they look at the mood, and they look at the social implications of their judgment.
>
> ***In-depth Interview22/November 08, 2017***

Although the previous respondents opined that the masses do not directly or indirectly influence the result of election litigation, the mood of the masses and society at large will directly or indirectly influence the decision of the judges based on some technicalities and other considerations outside facts and figures presented in the court of competent jurisdiction. The judge will consider the security implication, economic implication, implication on lives and property of a society before upturning, upholding, and declaring the winner of election litigation as the masses may cause havoc if their vote is manipulated and the person their candidate is robbed.

For instance, at times there is tendency for the judgment to lead to crisis, so they read the mood of the society, but that should not compel the judge to abandon the law and follow public opinion because at times opinions could be contrary to the law, right; so, ideally, judges are supposed to uphold the law; but at times, they also consider what they call the political and social implications of judgment before they pronounce it (Ojo, 2011. For instance, it was believed that political and socio-economic factors rather than the logic of law influenced the Supreme Court judgment which upheld the election of Umaru Yar'adua as the president of Nigeria in 2007. This is further reinforced by the President's admission that the poll that produced him as president was fraught with malpractices (Saharareporter, 2010). Simply put, the political and socio-economic implications of conducting a re-run election in the 2007 presidential election measured in terms of the huge financial costs often devoted for elections in Nigeria, the political apathy that may follow and the attendant violence which serially characterise elections in Nigeria may have motivated majority of the Supreme Court justices that decided the case.

### 6.2.5 The Role of the Electoral Management Body (INEC)

By 1999, political power was again transferred to a civil government with Independent National Electoral Commission (INEC) overseeing the conduct of elections since then. Notably, free, fair and acceptable election as a fundamental element in democratisation is not an end in itself.

Thus, for elections to be viewed as credible, free, fair and acceptable there is need for an unbiased regulator. Joseph Stalin posited that "those who cast the votes decide nothing; those who count the votes decide everything (cited in Ibrahim and Garuba, 2010)". Within the context of the foregoing, it can be safely argued that it is only when the right people are in place with the appropriate institutional framework that democracy could be said to be consolidated or would at the long run engender consolidation. This will also in turn reduce incessant election litigations after elections.

INEC has been managing elections in Nigeria since 1999; however, this umpire has been accused of corruption, unfairness and seen as an instrument of rigging election for incumbent office holders and their parties (Agbaje and Adejumobi, 2006; Omotola, 2010; Yagboyaju, 2011). Moreover, INEC plays a prominent role in the election litigation processes.

> Let me go practical now, we have ten wards in Akure local government, and when you look at the voting data, voting strength pattern, voting strength in the ten wards, ward two has the highest voting strength and they always usually come out first to participate in voting exercises. In the 2007 election, when INEC was supposed to take all voting logistics to ward two by 7.30am but was getting there by 11am and you expect that election to end by 3pm, people will force the voting process to conclusion but there was connivance with the electoral umpire to short-change the electorate.
>
> ***In-depth Interview 01/June 12, 2017***

The Independent National Electoral Commission is involved directly or indirectly in election manipulation. This is because their action and inaction will invariably cause election manipulation in the election processes. When INEC fails to do what it is supposed to do at the appropriate time, like delivering of election materials at the electoral wards as and when due, such action can lead to disenfranchisement of the electorate which could be in favour of a political party, and that particular electoral ward is their strong zone for winning the election. Such late delivery of electoral materials to the wards may even cause election not to hold at all at such wards, and yet result will be produced for such wards. This could also be in connivance with the political party INEC wants to the favour.

This was buttressed by another respondent:

> INEC deliberately confusing people whether it is going to be electronic or analog, No incidence form that does not even cause you five hundred Naira to print, card readers not being effective, some even got missing between the State and the Local government, some laptops that were supposed to be used for voting process did not even come up and you collected money, you had a budget, you collected money to fix all this things and they were not fixed in 365days and you knew there was going to be election, because the moment the government is sworn in, you know that four years' time, so date, you will go through another process.
>
> ***In-depth Interview16 /September 14, 2017***

This shows that INEC by deliberately or not deliberately failing to make the adequate preparation towards providing the logistics for election could contribute to election manipulation during the election process. When INEC deploys non-functional or malfunctioning card readers, this hinders some electorate from exercising their legal rights in the election process.

Elections in Nigeria are not done impromptu; there is always adequate time frame (four years) from the time of one election to another election for INEC to conduct another election, hence there is adequate time for INEC to prepare and make the necessary arrangements with regard to logistics and preparation for the election. Unfortunately, elections in Nigeria have been flawed by logistics failure and lack of preparation which in turn breeds election malpractices and manipulations.

Another respondent aired his view:

> Deliberately, in fact the basic thing is what is the effect of appointment of INEC chairman in Nigeria? Is it not at the whim and caprices of the government in power? Is it supposed to be so? We will still expect in Nigeria that we will say, possibly if there are ten parties let the ten parties nominate two, each to form the board of INEC. So that every stakeholder will be fully represented, if you look at the Desmond Tutu of this world, those are people that are supposed to be arbitrators in INEC issues because they are seen as above some certain levels of parochial interest. Electoral administrators are supposed to be incorruptible; they are supposed to be fair in their judgment but are INEC Commissioners not card carrying members of government in power? So these are the issues.

***In-depth Interviewer 28/December 19, 2017***

The respondent opined that the process of appointing INEC Chairman and INEC Commissioners in Nigeria makes it almost impossible for INEC to organise free and fair elections because such appointment are political appointments made by the ruling political party. Section 154 (1) of the 1999 Constitution of the Federal Republic of Nigeria vests the powers to make these appointments in the president (FGN, 1999). The INEC Chairman and Commissioners will, on most occasions, favour the political party that appointed them into office and that will affect the credibility of not only the election process but also the election litigation process. The respondent added that allowing political parties involved in the election to nominate the electoral board members will go a long way to make it free, fair and transparent.

The position of another respondent is captured thus:

> Most of the time when cases are taken to court, INEC is also joined as a party as a witness to the judgment. So, and at times, they can provide information that can actually validate or void an election. So they can be a factor, they can be compromised too, but again, there have been massive improvements in that aspect. Because, I think some days or weeks ago, about two or three INEC officials were sent to jail, because they were arrested for collecting money from the political parties involved in the election; Yeah, and they were sentenced to imprisonment just few days ago. So that is an improvement, and it's also an indication that it happens

***In-depth Interview 03/June 16, 2017***

Beyond the election process, INEC is fully involved in the post-election process which includes the election litigation. It is noteworthy that INEC is in custody of the election materials which could be inspected during the election litigation process. It could refuse to release such materials in defiance of court orders; indeed Nigeria has witnessed cases in which government and its agents vehemently refused to comply with court orders.

Apart from refusing to obey court orders, they could as well manipulate or tamper with the election materials with the intention of removing traceable evidence that the election result was manipulated. In addition, INEC could provide information that will either validate or void election petitions which will lead to the striking out of cases at the election tribunals or retaining

of such cases at the election tribunal. INEC's role in election litigation is fundamental because it is at the centre of election processes.

### 6.2.6 The Security Agencies

The credibility and consequently the acceptability of elections in Nigeria have been riddled with litigious cases because of lack of straight wins through the ballot. Such failure to secure electoral victories through the ballot often lead to political crises and governance failures as litigation frequently upsets governance through election litigations. Importantly, security is indispensable to the organisation of transparent and credible elections.

The electoral process is circumscribed by security considerations from the provision of basic security to the electorate, to ensuring that result sheets are protected, to the litigation processes. Election security is a major element of the electoral process but with respect to emerging democracies, it has been hampered by many factors including faulty legal framework, poor logistical and technical management of electoral conduct, poor management of opposition and competition, poor management of disputes arising from the conduct of elections and the politicisation of the roles of security agencies (Lindberg, 2009; Danjuma, Yahaya and Aminu 2016). It is only the police that is constitutionally empowered to provide security at the polls and, even at that, such police personnel ought not to carry arms in discharging such a responsibility **(**Okechukwu, Ugwu and Onu, 2017).

Because most of the elections in Nigeria are characterised by violence and intimidation of opponents, the role of the security agents is very important. Most politicians have thugs they use to disrupt election and steal ballot boxes from polling stations (Ojo, 2011; Onapajo, 2014). Unfortunately, most times the security agents that are supposed to ensure peaceful election are seen guarding and protecting political thugs.

> In situation when you find out that Nigeria's judiciary is not well developed, you use security apparatus of the state to intimidate voters to cause voter apathy where you are not popular. These are the things we saw in 2007 election. There was raw intimidation of opposition, trying to capitalize on the strength base of opposition and frustrating them so that they will be deprived.
>
> ***In-depth Interview 24/November 27, 2017***

Security agents are supposed to play vital role in ensuring that elections are not only free and fair but the electorates are protected against any harm or intimidations. On the contrary, most times, the security agents are used by the ruling political party to intimidate and harass the electorates. This causes electoral apathy and, in turn, disenfranchises the populace from participating in the election processes (Omotola, 2007; Nwolise, 2007). Even during the election litigation process proper, security agents are used to suppress members of the rival political party from presenting themselves to witness in the court of law.

Another respondent had to say:

> And also the security officers of the country, ordinarily, they are to be neutral but if you watch what is happening now they more or less in support of the government. You know the party agent should not move close to the where voting takes place. It is the police officer that will give them sign that person have voted /thumped for you. So you can pay him, so you can see a kind of connivance. I saw it on YouTube, I watched myself as well. They are not that independent. So one way or the other they are not that neutral, and they supposed to be neutral in order to have fair election in Nigeria, so they do influence the outcome of election
>
> ***In-depth Interview 10/August04, 2017***

It is worrisome that, in Nigeria, security officers who are supposed to be neutral are partisan especially in the election process. The security agents especially, the Nigeria Police have been accused on several occasions of conniving with the political party in power to rig and manipulate election result for the government in power (Oloruntimehin, 2005; Nwolise, 2007).

Another respondent spoke in respect of this:

> We can use the example of governorship elections in 2014, in Edo, Ekiti and Osun wherein security personnel, particularly the DSS, masked, they used mask, mask oh, to prevent prominent members of the opposition then, that shows that to a very large extent they took side, that to a large extent showed that they were selective, that to a large extent showed that they were biased, they were unfair, they were partisan and to the extent that they could do that on the field means that they could do worst thing on election day, they could prevent people from voting and so on and so forth.
>
> ***In-depth Interview 11/August 04, 2017***

This statement by one of the respondents throws more light on the assertion that the security agents do more harm than good in the electoral process. The security agents are not neutral; rather, they support the government in power to manipulate the election processes by not allowing legitimate electorates to come out and vote the candidate of their choice. This action by the security is one of the underlying factors that influence the election litigation processes.

### 6.2.7 The Mass Media

One of the focal duties of the media in a democracy is to objectively monitor governance while holding relevant institutions and officials accountable to the people (See Section 22 of the Constitution of the Federal Republic of Nigeria 1999). These include those who operate in the legislative, executive and judicial circles of the polity together with all agencies of governance and democracy. Commenting on the above, Dukor (2003) argues that the mutual suspicion between the state and the media in Nigeria has jeopardised the fundamental right to know and impart information.

This paradoxical trend resonates in Nigeria as the state negates its constitutional relationship to the media and citizenry by alienating them in terms of providing information on issues of public concern. The implication is that the development of the whole society is undermined with regard to the right to know and impart information. Again, this widens the communication gap between government and society (Aghamelu, 2009).

Dukor (2003) noted that there has been a democratic flourishing of the independent press which has generally accompanied attempts towards democracy and respect of human rights after the military interregnum. However, the development of an independent press in aiding democratic growth has been hampered by the manner journalism is practiced in Nigeria which is said to be inflicted by some unethical flaws (ibid). The media is polarised politically in terms of geographical axis, ethnic loyalty, and sectionalism, party affiliation and selfish interests.

This is against the fact that the media is one of the pillars that sustain democracy hence it is expected to be immune and isolated from politics. It is on this premise that Dukor reviews the relationship between the state and the media in Nigeria and noted that it has been that of mutual distrust. The media in Nigeria, according to the Nigerian Press Council, has fallen victim of

manipulations by government and politicians to achieve their particularist interests (Mwantok, 2018).

Aghamelu (2009) lends support to the foregoing when he observed that "We are witnesses to the fallen standard in the practice of journalistic profession and its adverse contributions to nation building through hasty and imprudent reporting of events and issues, ethnic polarisation of media houses and the attendant undue influence on power and political tussles. As a result, in moment of crisis, the media become ready tools for those actively involved in the crisis of power". A respondent noted that:

> Yes, the media had positive influence in the outcomes of the election litigation in 2007. This was majorly because in the time of Yar'adua there was the freedom of expression and freedom of speech unlike what is happening now where mass media, social media and journalists are clamped down. The media aspect of Nigeria was not gagged, people were allowed to air their view, people were listened to, and in some case even the utterance of people affects the policy almost immediately. Now there is hate speech bill which is mainly aimed to shut people up in the social media. But 2007 was not like that, the then President Yar'adua was a true democrat.
>
> ***In-depth Interview 06/July 11, 2017***

From that respondent's contention, the media had a positive influence in the outcomes of the election litigation process in 2007. This was attributed to freedom of speech which was obtainable in Nigeria in 2007 in contrast to what is obtainable in Nigeria today when the media is gagged. In 2007, the populace was free to express their opinion in the mass media without intimidation. Because the people were free to express their mind, they were listened to and their concerns were addressed.

Currently in Nigeria, there is a bill against hate speech which has been argued intends to disallow the people from airing their views on public matters. Although the bill which is still under consideration in the legislative houses proposes to criminalise hate speech which has the tendency to spark public violence and conflict, however it has been viewed by the public and the media as a governmental antic to muzzle the media and tame the voice of the people (Eke, 2020). The above finding is in tandem with the position of Adaramodu and Jamiu (2011) that most

journalists in Ekiti, specially the print media, contributed considerably in reporting events as it were and they paid for their stance. Although some of them were victimised, they were not deterred. The role of Adaba FM (88.9), a Radio station based in Akure cannot be overemphasised in the struggle to liberate Ekiti (ibid).

The Ekiti State election litigation is unique in the sense that, as at October 2009, the second election petitions tribunal was still sitting to determine the winner of an election held since 2007. The first election tribunal disposed of the case on August 28, 2008 by affirming the victory of Mr. Oni, candidate of the PDP. The AC candidate, Dr. Fayemi proceeded to the appellate court which nullified the election of Mr. Oni and ordered a rerun election in 63 wards spanning 10 local governments of the state.

The Appellate court also ordered Mr. Oni to vacant his seat and hand over the seat to the Speaker of Ekiti State House of Assembly. Dr. Fayemi was declared the winner, having polled more votes Mr Oni.

### 6.3 Strategies Employed by Political and Non-political Elites in the Manipulation of the Judicial Process in Election Litigation Cases in Nigeria

Since politicians basically desire victory to enjoy the spoils of office (Nyam, 2015), securing electoral victory becomes a do-or-die affair. In their desire to secure electoral victory, politicians would do everything possible to manipulate the electioneering process. After such manipulation, litigations arise and the onus of sustaining such stolen mandate rests on the politicians.

Elections become a contest, a do-or-die affair rather than the inclination to serve. Clearly, Nigerian elections are not based on issues or commitment to service for the public good (Nyam, 2015). Most electoral victories, as was common to the 2003 elections, were secured on the back of massive and pronounced electoral fraud and corruption (Eneweremadu**,** 2009).

To ensure such, politicians attempt manipulation of the judiciary as a last resort to hold on to power, using different strategies. Such include influencing the process of selection of judges that seat on the tribunals to judge litigation cases, as mentioned by a chieftain of one of the major political parties. The appointment of their legal team was a major strategy. The opinions of

respondents cutting across professional background support a particular respondent who declared thus:

> Except for the few cases where President is not that interested in whatever the result is. You rightly said it's not an appointment, it's actually selection. And there are directives that guide the judge to avoid a predetermined end. It's always the case, and you can't understand law like a judge, that's why l said judges are guided by certain directives and guidelines to avoid a predetermined end, that's what we call leading in the court. To be very frank with you, putting into consideration the Africa mentality and the Nigeria mentality which is even worse off than the African mentality, you cannot say they professionally selected the judges of the election tribunal without any ulterior motives and intentions. It is almost impossible in this part of the world because If the President is trying to stand aloof, what of the aides, are they still aloof too? But, while it was somehow a little bit fairer under the 2007 dispensation in that if you must have to pressure the judiciary, you must hide to pressure the judiciary, not acting brazenly like it is done nowadays.
>
> ***In-depth Interview39/March 08, 2018***

The respondent opined that selection of judges who adjudicate the election litigation is one of the strategies employed by the political and non-political elites in the election litigation cases in Nigeria. The president appoints the Chief Justice of Nigeria (CJN) through the recommendation of National Judiciary Council (NJC). The CJN, in turn, selects the judges who sit over election litigation cases in different states and at the federal level. Due to lack of judicial independence in Nigeria, scholars have argued that the selection of CJN is politicised by the executive and this is done in a way that makes the CJN loyal to the president (Vanguard News, 2015.

Further, during election litigation, the Chief Justice selects judges that will favour the ruling party and their candidates. The only exception was President Yar'adua in 2007 who did not interfere in the internal affairs of the judiciary. That was why the ruling party lost election litigation in Ondo State. The political elites directly or indirectly manipulate the judicial process in election litigation cases in Nigeria through the selection of judges that adjudicate in the election litigation.

Another respondent stated:

> But that some selection is not politically motivated, it is not possible, some will be ethnical, some will be because he is my friend in school, some will be brotherly, let him go and eat there too, some will be I can always call him in the midnight and he will answer me.
>
> ***In-depth Interview 33/February 01, 2018***

Although the responsibility of choosing or deciding the calibre of judges who serve in election tribunal is tied to the Chief judicial officer of a state or the country as the case may be, it is not unlikely for the executive arm to interfere with the process. For instance, the purported promotion of Justice Ayo Salami, former President of the Court of Appeal to the Supreme Court as announced by the NJC and hurriedly approved by the executive in 2011 cannot be divorced from attempts by the executive to interfere in the selection of election petition judges (Omenma, 2019). Prior to the purported promotion, the ruling PDP has lost almost all gubernatorial election litigation cases to the opposition ACN in Ekiti, Osun and Edo states and to the Labour Party (LP) in Ondo state. Justice Salami however rejected the promotion describing it as a Greek gift (Vanguard News, 2011). The executive finds it easy to interfere in the operations of the judiciary because of its constitutional role that requires it to approve or appoint the chief judicial officers in a state and the country. A respondent explained this possibility thus:

> Certainly, there is no doubt about it. The NJC recommends at the federal government level to the president for appointment. And the state government level to the governor for appointment of state judges, honourable judges and chief judge. In the higher level; the federal high court and federal court of appeal, the NJC recommends to the president. Although we have not had cases of refusal by either the president or the governor, but we've had controversial cases…
>
> ***In-depth Interview26/December 05, 2017***

These controversial cases run through different geographical zones of the country. It was reported to have occurred in Kwara State, Rivers State and Osun State; during the reign of governors Bukola Saraki, Rotimi Amaechi and Aregbesola respectively (Adangor, 2015). And very recently, the President, Muhammadu Buhari, in his refusal to swear in Walter Onnoghen as the Chief Justice of Nigeria, which was later done by the Vice President, Yemi Osibanjo, leading

to the short stay of Walter Onnoghen in office (vanguard News, 2016). Though different reasons were reported for such controversies, the major suspicion was the ploy of the executive to induce fear, force compliance to political and personal loyalties, which they needed to guarantee (Shehu and Tamin, 2016). Therefore, one can infer that the strategy of "Appointment of legal team" mentioned by respondents, is majorly tied to the power of incumbency. This was depicted by a respondent thus:

> But from the fact of what we can read or what we can get in the pages of newspapers and all reports, there is that tendency to lean to that side that there is a kind of politicization of election litigation. In fact, starting from the constitution of panel that will listen or hear or that take election matters, you see that there is a kind of influence in one way or the other. Definitely a political party in power has a kind of control over the judiciary and they may in one way or the other want to dictate the way in which the election result will go and the result of the litigation.
>
> ***In-depth Interview 26/December 05, 2017***

In assembling the election litigation petition panel, the ruling party seizes the opportunity of power which the constitution ascribes them to influence the selection process. Here, the president and governors, the executive arm, influences and, in some cases, dictate the quality and personality of judges that make the team of tribunal judges to oversee the litigation process by virtue of their close relationship and possible understanding with the chief judge, who does the selection and forwards to them for approval.

In preparation for such opportunities, the president and governors ensure that a loyalist or judge who will tend to be loyal to them or their political party is given the legal mandate or role of chief judge. This presupposes that chief judges, strangled by possible oath of loyalty or sealed bargain, do the bidding of the party or president/governor.

The above finding corroborates the stand of Salawu (2013) that political manipulation of judges presupposes an untoward tilting of institutional ethos towards railroading judges into granting order in favour of the incumbent, failure of which attracts direct or subtle sanction. Instances include the reversal of the dismissal of one of the two sacked judges who gave controversial rulings purposing to remove Governor Chris Ngige from office by the National Judicial Council to retirement with full benefits by the Federal Government in 2004, indicating the emasculation

by the executive arm of an institution established to ensure the sanctity of justice delivery system in Nigeria. Another respondent noted:

> The selection of judges for the tribunal and/or litigation cases has become more subjective than objective because we have had skewed judgements.
>
> ***In-depth Interview 45/April 12, 2018***

In furtherance of the above, a respondent mentioned several ways by which judges are compromised to give skewed judgement:

> So, there is monetary inducement and that is the major strategy. There is also promise of material benefit, may be a promise of a contract. There is also promise of promotion, elevation, positions. Maybe you are in appeal court and you want to go to Supreme Court. It is a thing of bargaining; if you give us favourable judgement, we will elevate you to Supreme Court. …which are done through third parties mostly lawyers. And they also use promise of elevation or employment; may be for their children. Give me this judgement then I'll employ your wards.
>
> ***In-depth Interview 09/August02, 2017***

This has made the suspecting masses to distrust the quality and integrity of election litigation tribunal team selected by these judges for the executive to approve. Thus, it aligns with the view of masses as exposed in respondents' opinion which describes the appointment of these tribunal judges as mere selection where merit is never considered, but driven basically by sentiments and prejudice. The above finding is in collaboration with the statement of Nweze (2013 that the subject of judicial integrity has assumed prominence not only in Nigeria but in the entire Commonwealth of Nations. He stated that, even before the publication of the Code of Conduct for judges in Nigeria, the oath of office of a judge usually emphasises integrity. These virtues define the conduct of the judge in delivering judgement. Judges are expected to be an embodiment of virtues of probity and honesty. Contrary to this oath, many judges have been indicted for corruption, bribery and perverting of justice in Nigeria.

The above finding is further buttressed by the assertions of Falana (2013) when he opined that, due to lack of independence, some very senior judges betray their oath by being involved in corrupt practices. The dismissal of some very corrupt judges did not stop others who have

continued to dent the image of the judiciary and thereby undermining public confidence in the judiciary. Another respondent opined thus:

> This is a country where we don't give merit to substance in any space of our national life. Merit doesn't come in. What comes in is what kind of faces do you put on, what kind of tribal mark is on your cheeks, and that is what determines who come to this. So, in most cases the competencies and the capabilities of those tribunal jurists can be challenged.
>
> ***In-depth Interview 42/April 10, 2018***

While many subscribe to the above, others believe that the appointment of tribunal judges might be based on merit (Abdul-Razaq, 2005). Hinged on the fact that such appointment or selection cannot be done haphazardly, knowing the nature of work involved which suggests the need for not just experts but also experienced ones. They must be judges who are conversant with litigation cases, and who would be professional in their approach and conduct knowing the sensitivity of the election litigation process and the implication of the judgments emanating therein.

Such respondents are of the view that judgement is not made out of sentiment but based on facts presented before the judges, blaming the professionalism of litigant lawyers and not the flaw of the judges. But they questioned the judgement emanating from such judges which, to these observers, cannot stand international scrutiny. Thus, the view that:

> Most times you cannot really say that the judgement of the election tribunals can really stand the test of time if it is exposed to international x-ray. Most times it can't.
>
> ***In-depth Interview 15/September 13, 2017***

The point at issue is that the appointment of the best qualified judges to handle the litigation cases could be transparently done but this does not guarantee the transparency of the process. In view of this, it is clear that there exist other strategies which are used to manipulate the litigation process.

In addition to influencing the team of tribunal judges, there is also inducement, which could be financial or material and also work-related in terms of, promotion, employment and so on The judicial officials overseeing the litigation process are financially-induced by the litigants to gain favourable judgement. This corrupt act is dependent on the highest bidder, thus justice is being sold and it questions the integrity and transparency of the judiciary. This strategy was the most mentioned as almost all respondents commented on it, making reference to the just-suspended CJN as well as other judges found to be in possession hard currencies at home. Such responses include:

> There are quite a number of strategies that are employed. Of course, I said initially at the beginning that if you want to induce a judge you won't do it in the open. So definitely there is inducement. I mean monetary inducement.
>
> ***In-depth Interview31/January15, 2018***

The above brings to the fore the fact that judges are not free from the problem of corruption which affects the economy of the country. In recent cases, there were newspaper reports concerning judges whose houses were raided and hard currencies found. However, a major concern is that the judges were never caught directly involved in financial negotiations over cases brought before them. Never was it reported that such judges were caught collecting money in other to favour a litigant over the other. This means that there is a strategy employed by the judges that protects them from exposure. To this end, a respondent explained the possibility of having a middle man for the transaction. Such middle man must be an agent of the judge. A respondent noted that:

> But you know that money is a factor before they influence one way or the other, its money. They use people that are very close to the judiciary they don't go to them directly. They use people that are very close to them.
>
> ***In-depth Interview20/October 26, 2017***

This exposes the fact that judges collect a lot of money to drive the process in such a way that judgement favours the higher bidder. Meaning that before even the judgement is pronounced, the litigants are confident of victory as they must have known their fate, all other things being equal as planned. This formed one of the accusations of the then ruling party against the opposition

party which they believed to have gained favourable judgement on the strength of sentiment. A PDP chieftain was reported to have said:

> I know of a particular politician in Ogun state, who is always going to one particular judge to file his case and he is always sure of winning that case.
>
> ***In-depth Interview 07/July 19, 2017***

Other forms of inducement mentioned by respondents include the established relationship between the judges and litigants which might have been in existence for many years. Respondents understand that these judges are also human beings and live in the same society. Therefore, it is difficult to deny their possible relationship with the litigants. Such relationships could be school affiliation, family bond or as colleagues at workplace and so on and so forth.

> For example, especially the old judges among them, it is this modern day that you hardly see a south-western who is a friend of a north easterner. But in those days among the elderly judges, they probably went to the same university and slept on the same bed. If you ask Sanusi, the emir of Kano, he will tell you his best friends were Catholics. And were easterners when he was in secondary school why? Because in those days there were only central schools, good ones that are central for everybody to go.
>
> ***In-depth Interview 09/August 02, 2017***

Another respondent validated the above thus:

> Judiciary has its own internal problem. Most of these judges are partisan and in view of this, most of them will select cases and post them to a court where their fixed judges are, that will make decision the way it will favour them. How do you think the former governor of Lagos state end up winning a lot of cases in court of appeal? It was not because he has good case. It was because they have their way. So, it was obvious that if you are connected, you won't be directed when it has to do with judicial cases.
>
> ***In-depth Interview 39/March08, 2018***

The respondents' assertion further reiterated that judges are partisan. Even the judges connive with their colleagues to post cases to courts where they have cronies who will dance to their tune.

This is one of the major strategies employed by the political and non-political elites to manipulate election litigation in Nigeria.

Another respondent had this to say:

> In many ways, is the judiciary arm of government having its own source of funding in Nigeria? Are they independent financially? They look up to the executive. Are they independent, in promoting, in financing, in determining their accommodation, in determining how they run their processes? No I think it would have being a better situation if it is the National Assembly that confirms and supervises the judiciary because whether you like it or not, the executive is unitary. It will have been a better situation if the judiciary can be allowed to work based on the constitution of Nigeria. Let their finances be on first charge. First charge as in, as the budget is being passed, let them warehouse their funds and manage themselves their own way their funds finance independent of the government which is not still possible up till now. Chief Justice of the State will be the best friend of the Attorney General of the State and the Governor. Why? Why should they be friends? Why should they see? It still culminates because there is no clear borderline.
>
> ***In-depth Interview 44/April 11, 2018***

All these strategies are used by political and non-political elites in manipulating the judiciary and election litigation processes and outcomes mainly because the judiciary is dependent on the executive for finance, accommodations, welfare and appointment. This applies both at the federal and the state levels.

The executive subtly dictates to the judiciary. It could have been different if the National Assembly confirms and supervises the judiciary rather than the executive. There is no way that the judges will be manipulated by the political elites since it is the executive that will approve and release their finance. The judiciary would work and fare better if they are financially independent and autonomous.

Another respondent introduced another dimension to the study with this perspective:

> I have never been part of the political party. So I may not know the system that they employed, except what is manifested outwardly, so I may not specifically mention or know how their doings, how they influence judiciary one way or the

> other. But you know that money is a factor, before they influence one way or the other, it involves money and they use people that are very close to the Judiciary, they don't go to them directly. They use people that are very close to them. Like the issue of this Issa Ayo Salami that I mentioned earlier on.
>
> ***In-depth Interview 01/June 12, 2017***

Due to get-rich-quick syndrome and materialism in Nigeria, the judges can easily be induced with money. Monetary inducement seems to be the most prevalent strategy employed by political elites in manipulating the judiciary processes in the election litigation in Nigeria.

## 6.4 Processes and Outcomes of the Controversial Election Litigation Cases in Ekiti, Osun and Ondo States explained within the Context of Election Manipulation in Nigeria

### 6.4.1 Ekiti State Election Litigation Case

Ekiti State election of 2007 is reportedly one of the most controversial in Nigeria. Looking at the nature of the litigation that ensued after the election, one may not be able to deny the assumption that the process must have been marred with series of electoral and judicial malpractices. Most of the respondents were of the same view that the electoral process was not free and fair, blaming INEC for not providing a level playing ground.

However, there seems to controversy on who benefited from the lacuna of the electoral process as well as how incumbency factor affected the build up to the marred electoral process as well as the initiation of the process and outcome of the litigation cases. A respondent was of the view that:

> These feelings of lack of respect for the rule of law, injustice and bridge of human right; before, during and after the electoral process, led to series of election litigation cases numbering 1,054 which is above double of that of the previous electioneering process. Of the said number of litigation cases, that which took place in western Nigeria, specifically mentioned, Ekiti, Ondo and Osun states were unique due to the length of time it took to deliver judgement largely accepted by the masses as fair.
>
> ***In-depth Interview 29/January 10, 2018***

According to the report from *The Guardian* newspaper of 18 February 2009, the governorship candidate of Action Congress Dr Kayode Fayemi contested the election result on two main grounds. The first was a complaint of serious irregularities and fraud in 10 local government councils of which 63 wards were mentioned, while the second pertained to non-compliance to the rules stipulated in the Electoral Act (The Guardian, 18 February 2009). Information gathered from respondents also assent to these as the main issues raised, as they recalled several instances.

After Fayemi lost his appeal at the ESEPT, he appealed to the Court of Appeal sitting in Ilorin. In February 2009, the court upheld one of the two main complaints of the petitioner, which was enough ground to cancel the election of the PDP candidate Mr Segun Abayomi Oni. In specific terms, the court observed that Oni's purported election had substantially failed to comply with the provisions of the 2006 Electoral Act. The court rejected the second ground for petition because the AC flagbearer failed to prove beyond reasonable doubt ballot-box stuffing allegation levelled against his opponent.

Consequently, the court ruled that Segun Oni should hand over the leadership of the state immediately to the Speaker of the state legislative house, Olatunji Odeyemi, while re-run elections in 10 of the 16 local government areas of the state should be held within 90 days. The limit of the progress made was, however, highlighted by the confusion and violence that trailed the re-run election in Ekiti, which eventually took place on 25 April 2009. Several days after the poll, the outcome remained unknown.

What followed was some sort of drama with the sudden disappearance and reappearance of the state Resident Electoral Commissioner Mrs Ayoka Adebayo. After disappearing for some days, triggering speculation that she might have resigned her position under duress, Ayoka Adebayo, who had supervised the re-run election, surfaced in INEC's headquarters in Abuja to announce that she would return to Ekiti State to complete the announcement of the election results (The Punch, 30 April 2009). According to the comments of a respondent on the peculiarity of Ekiti politics:

> The issue of litigation after the election in Nigeria, I think goes beyond that of 2007. I will mention specifically the peculiarity of Ekiti state before that of 2007. Ekiti state was not enjoying democracy as at the time election of 2007 came on

> board. It was not enjoying democracy because we had a period when we were under emergency rule. One Major General (Rtd.) Tunji Olurin was brought to be the administrator of Ekiti state.
>
> ***In-depth Interview 39/January 08, 2018***

When she eventually returned to her duty post, the Ekiti Resident Electoral Commisioner declared PDP and its candidate as the winner of the re-run election thereby raising suspicion that the vote or, more correctly, the result, had been manipulated. The declaration of the election outcome resulted in a temporary breakdown of law and order as frustrated and angry supporters of the AC clashed with security agents and PDP thugs. Consequent upon the announcement, the candidate of the AC returned to the Ekiti State Election Petition Tribunal (ESEPT), petitioning again, that the result declared by INEC was a farce. This petition eventually succeeded in October 2010, when the election that produced Oni as governor was nullified on the grounds of non-compliance with the provisions of the 2006 Electoral Act. Immediately, the candidate of the AC was sworn-in as the validly-elected governor of Ekiti State.

Another respondent had this to say:

> Yeah, if the electoral system or judicial system is found to be unjust, then the beneficiary will have a lot of crisis of acceptance by the people, you know people will just say well he's a governor but they won't give him respect and that's what actually happened in Ekiti state during the Segun Oni time. For three and half years people didn't want him because they know that he didn't win the election and I think there were two court judgments, the first one, he lost, Fayemi won, he went to appeal, the appeal now said that there should be a rerun, so the rerun was also rigged, Fayemi went to court again, the tribunal also gave judgment in favour of Oni, you know, he went to court again, before the appeal now give it to Fayemi, so throughout that three and half years, Oni did not enjoy the support of the people, in fact they were actually abusing him, they were calling him names, publicly so that's an example of lack of legitimacy
>
> ***In-depth Interview 41/April 09, 2018***

The Ekiti gubernatorial judicial saga was intriguing before it was finally settled by the Appeal Court. The opposition party (Action Congress) candidate went to court again after the rerun on the premise that the rerun was rigged. Governor Segun Oni won again at the court. The candidate

of Action Congress, Fayemi, did not relent, but appealed the case and finally won the case and Segun Oni was removed as governor.

Another respondent had this to say to further buttress the processes and outcomes of the controversial election litigation cases in Ekiti State within the context of election manipulation in Nigeria:

> Unfortunately, cases of Oni and Fayemi were eventually settled in the court of appeal. The opposition, those people that lost the election believed that Salami must have compromised for him to have given them the election. But let me tell you one thing about law, it's not only the fact of the case that gives law, there are areas of technicalities, where you use technicalities to win an election. Let me give you an example, if there is violence in one particular polling booth, the court can throw the entire election process there away and declare it as nullified.
>
> ***In-depth Interview 05/July 10, 2017***

The Ekiti 2007 election litigation between the People's Democratic Party's Governor Segun Oni and the Action Congress candidate Kayode Fayemi ended in the court of appeal. However, there were allegations and counter-allegations after the final judgement that the judges, who gave the court verdicts at different phases of the litigation, must have been compromised (Onapajo and Uzodike, 2014). Both parties accused each other of attempts to influence the judicial process and swing the pendulum of justice in their favour. In November 2007, both parties alleged each other of unduly interfering in the activities of the Election Petitions Tribunal chaired by Justice Bukar Bwala. The AC alleged that the PDP, with the aid of a prominent lawyer in Ekiti State who was also one of its members influenced the ouster of two judges that were uncompromising from the election petition tribunal. The party claimed that there was intense pressure and lobbying from the PDP on the NJC to remove and replace some of the very rigid judges (Akinmade and Falade 2007). The PDP on the other hand alleged that there was ascertained robust affinity between the AC and members of the electoral panel. The party claimed that the AC was always aware of the internal operations of the tribunal which suggested that the link was aimed at influencing the tribunal's judgment in favour of the AC (Adeolu, 2007).

After the declaration of Kayode Fayemi as the winner of the 2007 gubernatorial election in Ekiti, Segun Oni filed another suit in the appellate court in March 2011 seeking that the judicial verdict

which ousted him from his position as governor be nullified. He premised his argument on the claim that there was robust familiarity between the members of the tribunal, notably the President of the Court of Appeal Justice Isa Ayo Salami and the leader of the ACN Senator Bola Tinubu. Segun Oni vehemently argued that Tinubu had once approached the Chairman of the Senate Committee on the Judiciary Senator Umaru Dahiru to enhance the appointment of Justice Ayo Salami as President of the Court of Appeal during his screening by the Upper Legislative chamber (Onapajo and Uzodike, 2014). He also supported his claims by providing evidence showing that Tinubu had constantly exchanged telephone calls with Justice Salami during the election litigation process. Based on these claims, Oni argued that the court judgment which removed him from office in October 2010 was manipulated in favour of Kayode Fayemi of the ACN (Nigerian Compass, 2011). e that as it may, the respondent opined that, aside the facts of a particular case and the provision of the law, there are other factors that are considered before giving the verdict on a particular election litigation.

The Ekiti State election litigation between Segun Oni of People's Democratic Party and Fayemi of the Action Congress could be adjudged to be the longest election litigation in the Nigerian democratic history, especially in the Fourth Republic. The above finding is in tandem with the assertion of Ugochukwu (2009) who noted that the tribunal issued a deadline to Kayode Fayemi who was challenging the return of Segun Oni as the validly elected Governor of Ekiti state to conclude his case because the court process was dragging too long. The Chairman of the Tribunal said he was tired of the antics of parties to delay cases (ibid). He was frank in admitting that the tribunal was slow, reminding parities that the tribunal was not prepared to sit d to give evidence before the tribunal.

The above findings were reiterated by Adaramodu and Jamiu (2011) in their work titled "Long Walk to A New Dawn, An Account of the Struggle and Liberation of Ekiti People". They argued that, prior to the 2007 gubernatorial elections in Ekiti State, Mr Segun Oni and Dr Fayemi belonged to a socio-cultural organisation called E-Eleven. The two members were the major gladiators and were said to have promised that whoever won would be accepted, and the loser would cooperate with him. But this promise became difficult to fulfil afterward. Mr Oni accused Fayemi of not respecting the agreement both in 2007 election and the re-run election in 2009.

However, on 15th October 2010, the court of appeal declared Fayemi as the winner after a tortuous legal battle that lasted for three years and seven months.

In the process of election litigation in Ekiti State, INEC was indicted especially in the Court of Appeal judgement. INEC was indicted by the Judges particularly because the order of the tribunal through an *ex parte* instructing the 3rd respondent (INEC) to issue and release to the appellant (ACN and its candidate) all forms and documents used by INEC for the conduct of the election in all the disputed wards for inspection as materials significant for proof of evidence was not obeyed. The *ex parte* related to all INEC forms and documents without exception. There is no evidence to show that the 3rd respondent actuallyfilled the ballot papers. In condemning the action of the Resident Electoral Commissioner in Ekiti State, the tribunal stated furiously that "what beats the imagination was the prevaricating conduct of the 4th respondent". This was the INEC Resident Electoral Commissioner in Ekiti state who had earlier protested against the results of the four wards of Ido-Osi declaring them as fake. Mr Segun Oni had won massively in those four wards which were parts of his area of political strength (Adaramodu and Jamiu (2011), She refused to declare those results as to do so would according to her amount to an affront on her Christian conscience.Consequently, she abandoned her duty post. Later on, she surfaced without any form of explanation whatsoever, she agreed and declared the same results which she had earlier castigated as being repulsive to her conscience.

Although the constitutional role of INEC is to oversee the conduct of elections, the body also has a crucial role to play in election litigation. Importantly, the electoral body is usually joined as part of respondents to election petitions simply to provide documentary evidences including voters register, ballot papers and result sheets when needed as proof of evidence by petitioners or the respondents in the court (Thisday, 2019). However, INEC fails in most cases to provide these materials and where it does; it responds untimely (ibid). The indictment of INEC by the Court of Appeal verdict underscores the antecedents of the electoral umpire as a harbinger of electoral manipulations especially as it concerns the 2007 elections. It also revealed the electoral institution in Ekiti as a bias umpire. The role of INEC during the election litigation of Dr Fayemi in 2007 was that of a biased umpire who pandered to the whims and caprices of the ruling political party- the People's Democratic Party as at 2007. This background information about INEC's culpability in the series of election petition trials explains the import of the Appeal

Court's harsh verdict on the electoral body's office in Ekiti state. This shows that the INEC was compromised in the first place during the electoral processes. From the foregoing, it becomes obvious that the 2007 election was manipulated by the ruling PDP strongly supported by INEC at both the national and state levels in Nigeria. All these came to fore at the Ekiti Petitions Tribunal where it was revealed how Ekiti INEC assisted the PDP to inflate figures whereby a PDP candidate who scored only 4 votes was awarded 240 votes and this was done throughout the constituency (Adaramodu and Jamiu, 2011). The actions of INEC at this stage removed any doubt about its partisanship in favour of the PDP. This is because INEC would reject a result it had certified if it is not in favour of the PDP while it would defend any result no matter how fraudulent if it is in favour of the PDP. In most cases, INEC's counsel became the defender of PDP (ibid).

When Dr. Fayemi wanted to enlist the use of expert for forensic inspection, INEC fought hard to convince the Tribunal against granting the order to use forensic machine and handwriting experts to inspect the materials used in the conduct of the April 14 elections. It was at this point that people started wondering why INEC was acting strange although it had awarded itself 80% pass mark in the conduct of the polls. It was an issue of concern why the Commission was afraid of public scrutiny of the exercise. The populace thought that INEC should be in the fore front of advocating the use of forensic machine to scrutinize the ballot papers so as to detect multiple voting.

Eventually, when the first Ekiti Tribunal granted Dr. Fayemi's application to use forensic machine in August 2007, The Ekiti State INEC Commissioner, Mr Gabriel Okafor, disappeared from the office, absenting himself so that he would not make the ballot boxes, ballot papers and other relevant materials available for inspection. The INEC commissioner started filing many frivolous motions at the Ekiti tribunal aimed at stalling the inspection and to buy time so that the PDP, with the backing of INEC, could manipulate, mutilate or destroy the ballot papers (Adaramodu and Jamiu, 2011). The above scenario in Ekiti State during the election litigation process shows that INEC connived with the ruling People's Democratic Party to rig the 2007 gubernatorial elections in favour of the PDP at the ballot process and twice at the election petition tribunals where its candidate won before the verdict was eventually upturned at the Appeal Court (ibid).

### 6.4.2 Osun State Election Litigation Case

According to Basiru and Adegoke (2011), the general election had been conducted on 14April, 2007, which was the day for the Houses of Assembly and gubernatorial elections across the country. The electoral body under Professor Maurice Iwu declared Olagunsoye Oyinlola and the People's Democratic Party (PDP) winners of the election in the Osun State. However, this might not have gone down well with the people as it was a matter of public knowledge that the election was rigged against the Action Congress and in favour of PDP (Basiru and Adegoke, 2011).

On 11th May 2007, Aregbesola filed a case against Oyinlola with 1,367 respondents (because all electoral officers and presiding officers were joined). While Aregbesola and the Action Congress party were preparing various petitions on behalf of Action Congress, they were served several petitions which originated from other political parties challenging Action Congress's victory in some local government areas of Osun State. Some of such petitions actually originated in the name of Progressive Peoples Alliance (PPA) but were funded by the PDP-led by Oyinlola.

In most of those cases, there were complaints that PPA candidates were excluded in the April, 2007 elections and, hence, the prayer for the nullification of the elections and an order for new elections to be organised by INEC in the affected local government areas. The petitioners applied for orders of the Tribunal to inspect electoral materials and, on Tuesday 22 May, 2007, the tribunal granted the said application. On 31st May, 2007, the petitioners' agents/counsel commenced inspection of the materials enumerated in the said order of the Tribunal. The trial commenced on the 3rd day of October 2007 with Justice Thomas Naron presiding over the Tribunal. After months of trial, the judgement was delivered and the petition was dismissed.

On the 14th day of June 2011, the AC filed notice of appeal containing 69 grounds at the Court of Appeal, Ibadan against the judgement of the judicial panel on electoral disputes delivered on the 28th day of May, 2010 and the rulings delivered in the course of the proceedings on August 11, 2009, 26th January, 2010; 27th January, 2010; 28 January, 2010 and 4th February 2010. After the hearing of the appeal on the 1st day of November, 2010, Chief Akin Olujinmi was assigned to argue the appeal. He made very brilliant submissions on behalf of the Appellants. The appeal by Aregbesola was on the grounds that:

1. Records of INECs certified voters' register for Boripe local government showed that there were a total of 12,000 registered voters for the local government while it was announced that 14,000 votes were cast in the local government during the election. This suggests that INEC must have concocted election figures for the local government contrary to what was available in its own records. Such allegation can only be refuted by INEC, and no other respondent. But, as we are aware INEC, for very apparent reason, failed to come and provide evidence in rebuttal
2. We were able to prove in certain areas that voters are said to have fully completed the voting exercise between 10 and 50 seconds. This could not have been possible given the alleged number of votes recorded as allegedly cast, and the time within which they were said to have been cast.
3. It was detected that the primary result sheet in all elections, which was form EC8A, was not available in 114 polling units across 7 local government councils. Surprisingly, results were collated and votes allocated to the said polling units on the EC8B, EC8C and EC8D forms.
4. In Odo Otin local government which happens to be the local government area of the first respondent Olagunsoye Oyinlola, 86 blank EC8A forms as certified by INEC were supplied as exhibit yet results were collated and allotted to the local government on forms EC8C and EC8D. .
5. Used ballot papers as supplied by INEC, were less than the total number of ballot papers recorded on form EC8A as having been used for the respective polling units, affecting 560 polling units across the ten conflictual local government areas. This leaves a deficit of 90, 372 ballots in the said 560 polling units.
6. Used ballot papers as supplied by INEC, were more than the total number of ballot papers recorded on form EC8A as having been used for the respective polling units, affecting 116 polling units across nine of conflictual local government areas. This leaves an excess of 10,561 ballots in the said 116 polling units.

7. There were inconsistencies in the total number of votes, number of accredited voters eligible to vote and the total number of registered voters in the conflictual ten local government councils.
8. The total number of votes recorded on forms EC8A for 201 polling units, was more than the number of persons accredited to have voted in 8 of the disputed local government council,.
9. The total number of votes recorded on form EC8A for 368 polling units, was less than the number of persons accredited to have voted in 8 of the disputed local government councils.
10. The total number of votes recorded on form EC8A for 71 polling units, was more than the number of registered voters, in the voters' register produced for inspection, duly certified by INEC and tendered as exhibits in 8 of the disputed local government councils,.
11. No voters register was produced for inspection by INEC in 172 polling units in 8 of the disputed local government councils.
12. Forms EC8B, certified and produced by INEC for inspection for Ife Central Local government, surprisingly showed that a PDP agent, one Alhaji S.O. A Nafiu signed results sheets for 9 out of 11 wards in Ife Central local government, whereas collation of results at the wards is supposed to be held simultaneously in the respective wards.
13. There was disparity between the total number of registered voters, as recorded on form EC8D for Boripe local government which stood at12,631 and the total number of votes recorded on the same form EC8D for PDP in Boripe local government council which was 14,497.
14. This avalanche of evidence of malpractices and illegalities affected 879 polling units of a total of 946 polling units in the 10 conflictual local governments.

The respondents, led in submissions by Mallam Yusuf Olaolu Alli, SAN, also made their submission, while other counsels representing INEC and the Police also made their submissions. After the submissions of the counsel, judgement was reserved to a later date to be communicated

to all the parties. On the 26th of November, 2010 the president of court of appeal declared Aregbesola of Action Congress winner. Moreover, it was established in Osun State that there was connivance between the counsels representing the incumbent governor of Osun State of the People's Democratic Party (PDP) in the name of Mr. Kunle Kalejaye and the Chair of the tribunal. One of the respondents interviewed spoke to buttress the above assertion:

> Mr. Kunle Kalejaye was then a very senior member of the Bar, he was a senior advocate of Nigeria, he represented the interest of Prince Olagunsoye Oyinlola, whose electoral victory was challenged by the then AC Rauf Aregbesola and during the course of the litigation, it was established that there were correspondences, via, text messages, telephone calls and so on and so forth, between Mr. Kunle Kalejaye and the Chair of the tribunal and at the end of the day it led to the drubbing, because it was finally established and the Sanctions and Privileges committee of the Nigeria Bar Association withdrew the rights and privileges of Mr kalejaye as a Senior Advocate of Nigeria.
>
> ***In-depth Interview 36/February 06, 2018***

The above assertion shows that undue personal contact with the members of the tribunal (the judges involved) was the strategy employed by the ruling party- the People's Democratic Party to manipulate the election litigation processes and outcomes contrary to the principle of impersonal rule guiding legal practice. The correspondence between Mr Kalejaye and the tribunal chair was to facilitate financial inducement of the tribunal members by the incumbent governor with Mr Kalejaye acting as the middle man. Observably, the incumbent governor and government usually use state resources, not only to pursue their cases to continue to remain in the office, but also to bribe the members of election litigation tribunal. This particular scenario did not only play out in Osun State, it also happened in Ekiti where the incumbent government, of the Peoples' Democratic Party used the state resources to pursue its court case and also to induce and bribe the members of the election litigation tribunal.

### 6.4.3 Ondo State Election Litigation Case

Like those in other states of the federation, the 2007 gubernatorial poll in Ondo State, , featured many political parties and their flagbearers, including the then sitting PDP governor, Dr Olusegun Agagu, who apparently was running for a second term in office having been election

as the governor of the state in 2003. Following the collation of results across the state, Dr Agagu of the PDP was declared by INEC as the duly elected governor. However, the result was outrightly rejected by opposition political parties and their candidates. Consequently, complaints were filed at the Ondo state gubernatorial election petition tribunal. The first complaint against the election result was received on 15 April 2007, barely 24 hours after the candidate of the PDP was declared as winner. Eventually, the result was contested at the tribunal by four candidates, the most forceful being the candidate of the relatively unknown Labour Party, Olusegun Mimiko, whose complaint after almost two years resulted in the ouster of the PDP governor from office on 22 February 2009 after the Appeal Court, sitting in Benin, declared him as the rightful elected governor of Ondo State. The verdict of the Court of Appeal relied strongly on the judgement of the lower tribunal, which had earlier cancelled the disputed governorship election results in ten local governments and declared Mimiko the winner (The Guardian, 23 February 2009).

The tribunal verdict was received with celebration and jubilation in Akure, Ondo State capital, "a triumph of the majority over the oppression of the minority" (The Guardian, 23 February 2009). One of the respondents interviewed gave a background to the Ondo State election litigation between the incumbent governor Olusegun Agagu of People's Democratic Party and Mimiko of Labour party:

> Mimiko opted out of PDP and formed the party called Labour party. So after the election came up, the masses wanted PDP out in prefrence for Mimiko and the masses voted strongly for Mimiko. Note that there is a provision in the electoral law that, if there is violence in a particular area, results from such area will be cancelled while others will be counted. During, the gubernatorial election in Ondo state, there are some areas whereby some manipulation including snatching of ballot boxes occurred, at the tribunal they have to cancel those areas, because votes from those areas were actually counted for the PDP. The labour party tendered evidences that election didn't take place here, so how will you assign figures for this particular person, that in view of this, we want the tribunal to cancel the result of these areas. This It was Justice Olagoke that was handling the matter at that time. The case moved to Court of Appeal, to justify and prove the authentication whether election took place in those areas. The Court of Appeal now held in law that the electoral act says where there is violence in whatever place, such area would be cancelled and that was how some areas were cancelled in Ondo state and the number deducted from PDP's result it was obvious that the Labour party had more votes than the PDP, that was how the Court of Appeal

ruled in favour of labour party and that was how they secured the governor's that seat that time in 2009.

***In-depth Interview 33/February 01, 2018***

The Labour Party gubernatorial candidate was said to have left the People's Democratic Party and formed Labour Party in Ondo State and contested on the platform of the new political party. The election was marred by rigging and violence and the People's Democratic Party candidate who was the incumbent governor was returned for a second term. Because Mimiko was convinced that the populace voted for him en masse and was aware of the malpractices perpetrated by INEC and the People's Democratic Party to return Agagu as the governor, he went to court to seek justice and redress. Although he lost in the first instance, he appealed the judgment in the Court of Appeal which reviewed the decision of the tribunal. Consequently, votes cast in the places where there were electoral violence and malpractices were cancelled and all the figures assigned to PDP were deducted. Consequent upon this, the number of votes for the Labour Party surpassed those of the People's Democratic Party in Ondo State and Mimiko of Labour Party was declared as the validly elected governor.

However, there was a twist to the Ondo state governorship election litigation which points toward the fact that certain political undercurrents shaped the outcome of the judicial process different from what was portrayed in the open. In 2010, the ousted governor, Dr Olusegun Agagu petitioned President Goodluck Ebele Jonathan who succeeded Umaru Musa Yar'adua passed away. In the petition, Dr Agagu claimed that the two judgments from the election petition tribunal and the Court of Appeal which removed him as governor were substantially founded on dubious security reports. In his petition letter, Dr Agagu argued that judges of both the election tribunal and the Appeal Court erroneously accepted the purported security report written by the State Security Services which flawed the polls only in the local government areas where he convincingly won. According to Agagu, the security report claimed that elections in the ten local government areas where the PDP governorship candidate won were characterised by violence and irregularities and consequently the courts nullified over 63percent of votes cast in these ten local government areas for the PDP and surprisingly retained all the votes in the seven local governments where the Labour Party and its candidate won (Oloja, 2016). What is most worrisome in the legal-politico issue in Ondo state is that the officer who represented the State

Security Services at the election petition tribunal openly declared that the agency does not possess such security report (ibid). Accordingly, Dr Agagu claimed that his lawyers opposed the admission of the purported security report as exhibit in the court but the judges turned down the plea stating that "the court is not concerned with how the evidence was obtained (Oloja, 2016)". The tribunal, it was expected, should have conducted investigation into the source of the purported security report based on the evidence from officials of the security agency including its Director-General.

In his reaction to the petition of Dr Agagu, President Jonathan was said to have instructed the police authorities to investigate the claims contained in the petition stating that such inquiries have the tendency of curbing corruption in the judiciary and by extension in the electoral process (ibid). According to Oloja (2016), Police Special Investigative Unit report confirmed that the purported security report tendered by the Labour party before the Justice Nabaruma-headed election petition tribunal in Ondo state upon which the victory of its candidate was based were actually forged. The investigation report titled "Police investigation report on a case of forgery and altering of state security service report" claimed that eight out of the nine security reports tendered by the Labour Party before the tribunal were discovered to have been fraudulently obtained hence were fake. It can be inferred from the foregoing discussion that there appears to be elite conspiracy particularly from the ruling PDP to remove Dr Agagu from office which the judiciary was used to actualise based on two observations. First, the recommendations of the Police investigative panel submitted to the government that Labour party leaders and their lawyers who procured and presented fake security report at the tribunal should be arrested and subsequently prosecuted was abandoned and not acted upon till President Jonathan left office in 2015. Second, the petition Dr Agagu wrote to the then Chief Justice of Nigeria to investigate the political undercurrents and unethical judicial behaviour that marred the 2007 election litigation process in Ondo state was equally ignored. What followed was the defection of Dr Mimiko from the Labour party to the PDP to work for the re-election bid of President Jonathan as president in 2015 (Sahara Reporters, 2014).

Summarily, it is essential to state that it was the 2006 Electoral Act that guided election litigations that emanated from the conduct of the 2007 elections, and the provisions of the Act were largely relied upon to determine the outcome of the election litigation case in Ondo State as

well as in the other states where votes were deducted or added before pronouncing the winner. Sections 140-151, Part IX of the 2006 Electoral Act, deal with the determination of complaints arising from the conduct of elections. Specifically, Sections 147 which talks about nullification of election by tribunal or court states thus:

(1) Subject to subsection (2), the Tribunal or the court shall nullify an election if it determines that a candidate who was returned as elected was not validly elected on any ground

(2) If upon determination, it is discovered that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the constitution in this Act.

(3) In accordance to the provision of subsection (2) of section 149 of this Act, on the motion of a respondent in an election petition, the Election Petition Tribunal or the Court may strike out an election petition on the ground that it is not in conformity with the provision of this part of this Act.

The above provisions provided the legal backbone for the nullification of the elections of the incumbent governors of Ondo, Ekiti and Osun States of Nigeria in 2009 and 2010 respectively. Another respondent had this to say to further buttress the utility of the provisions in the 2006 Electoral Act especially as regards electoral malpractices and nullification of election results:

> Well, firstly I've already made mention of the issue of violence in the Electoral Act. When there is violence in a place, votes cast there are cancelled, now it has been amended that when there is violence in a particular place and the votes cast there is huge such that can affect the overall result, another date will be chosen for rerun election in those areas. That is one of the areas they are exploiting which has given room for inconclusive elections in contemporary electoral conduct.

***In-depth Interview 28/December 19, 2017***

The above respondent who is a legal practitioner presents a clearer interpretation of the 2006 Electoral Act especially section 147, subsections 1-3 which the 2007 election litigation was

anchored on. The act provided that when there is violence in an electoral ward, the results of that particular ward will be cancelled contrary to what is obtainable now. It was on that basis that votes in the areas where the political parties perpetrated violence and assigned figures to themselves were cancelled and the opposition parties declared winner of the elections. It should be noted that the ruling party the PDP was more profound in its attempts to retain power and thus used all conceivable means to manipulate the election litigation processes in the three states under review. This, however, doesn't exempt manipulative tendencies of opposition parties to replace the ruling party.

As observed above, the PDP led-administration in 2007 wanted to consolidate itself in power by all means across the nation including the three states of Ekiti, Ondo and Osun and thus engaged in all forms of election malpractices to accomplish the motive. The outgoing president of Nigeria under the ruling PDP emphatically said during their campaign in 2007 that the election was a do-or-die affair for the party (Tenuche, 2009). It should also be noted that, prior to the 2007 general election, the PDP have been boasting that they will remain in power for 60 years and they had to do all sorts of things to remain in power. The PDP engaged in election malpractices which included, but not limited to, ballot box snatching, conniving with the electoral umpire (INEC), harassing and intimidating the electorates, shooting and killing people. Indeed, the way and manner the 2007 general elections were manipulated to service the particularist interests of the ruling party was unimaginable and unprecedented (Aiyede, 2007; Omotola, 2009). Three AC supporters lost their lives in Ekiti State, Mr. Adekunle Ajayi had a hand amputated due to gunshot and Segun Ajayi also had a leg amputated due to electoral violence in Ekiti State (Adaramodu and Jamiu, 2011).

The major strategy and means used by the ruling PDP to influence the processes and results of the 2007 election litigation cases in Ekiti, Ondo and Osun states was the manipulation of the selection of the judges who would sit at the election litigation tribunals. When the first plan failed, they engaged in the inducement of the appointed judges and members of the election tribunal with money and other gifts, ranging from promotion, houses, cars, employment opportunities for their children, overseas trips and vacations (Akinmade and Falade, 2007; Saharareporters, 2010).

Because of the manipulation methods employed by the ruling People's Democratic Party, it affected the outcome of the election litigation in all the three (3) of Ekiti, Ondo and Osun states. This is because it took longer period before justice was restored. And since none of the three petitioners got victory at the first tribunal, all appealed the cases because the ruling party (PDP) manipulated the processes and the judges involved gave verdict that favoured it. Both the petitioners and the respondents often appealed courts verdicts after declarations because they usually claim they have substantial evidence of manipulation by their opponents which consequently dragged the legal processes through many years. For instance, the election litigation case in Ondo State lasted for two years while cases in Ekiti and Osun lasted for over three-and-half years.

### 6.5 The Ways the Structure of the Nigerian Judicial System allowed the Manipulations of the Processes and Outcomes of Election Litigations in Nigeria

A country that desires peace and thrives on the principles and dictates of democracy with respect to the rule of law, for sustenance, must have an institution that checkmates the activities of the populace, leaders and masses alike individually as a citizen and collectively as group in solidarity. Such institution is expected to be a powerful institution that interprets the law to the understanding of the citizens in order to foster common understanding as well as peaceful coexistence. Such an institution, as the judiciary, has been adjudged by Mbanefo (1975) and Walraven and Thiriot (2002) to be a basic requirement for the prosperity and survival of a liberal democratic state. Walraven and Thiriot (2002) noted that such an institution must be strong and independent, owing to the responsibilities ascribed to it. Accordingly, the institution needs a system of its own and its laws fully implemented while operating totally free from the dictates of other agencies, but having its activities controlled from within itself without interference. It will give such an institution room to exercise its oversight functions without fear or favour. One of the respondents interviewed had this to say about the ways the structure of the judicial system in Nigeria allows the manipulation of the processes and outcomes of the election litigations in Nigeria:

> In judiciary, until the autonomy of the judiciary is fully free that no executive arm of government is controlling them we cannot have a credible election litigation result. They are getting their money direct from the federal government and after

> that nothing happened, so people needs to understand that, and if he is your boss and he is still paying you, you need to listen because you don't want to lose your job, that is it, but when it has to do with opposition, relationship comes in and that makes it more difficult and you use the loopholes to salvage their thing.
> ***In-depth Interview 24/November 27, 2017***

Another respondent also commented:

> I said it earlier on, certainly no doubt about it, the NJC recommends at the federal government level to the president for appointment, at the state government level, the governor, for appointment of state, judges in the state honourable judges and chief judge in the case of the state. At the higher level, federal high court and federal court of appeal, the NJC recommends presidents. Although we have not had cases of refusal, we have not had cases of refusal by either the president or the governor, but we've had, controversial cases
> ***In-depth Interview 03/June 22, 2017***

The assertion of the respondents above shows that the Nigerian judiciary is structured in a way that the executive controls and dictates to it. The judiciary is not independent in Nigeria as it is supposed to be. In theory, the Nigerian judiciary is an independent arm of government that checkmates the executives and the legislature; in reality, the judiciary in Nigeria is structured in such a way that it is being manipulated by the executive. This gives room for political influences over the processes and outcome of election litigations in Nigeria.

As established before, the executive approves and releases to the judiciary finance, accommodation, salary, allowance and other welfare packages. Just as the respondent opined, until the judiciary is fully autonomous and free from the executive arm of government, we may not get credible election litigation results. The above finding is in tandem with the assertions of Ahmed (2013) when he stated that, since the judiciary is responsible for settling disputes, reviewing of actions of actors and upholding the rule of law, it becomes imperative for the judiciary to be independent if the judicial officers are to give unbiased decisions. As enforcers of constitutional limitations on government and public officials as well as the final arbiters in legal disputes, an independent judiciary performs the important role of shielding individuals against state power (Ahmed, 2013).

Another respondent lends credence to further buttress the above assertion. He puts his words bluntly thus:

> One is not happy with the situation in the country now, there is this believe that if there is litigation, no matter the merit of your case. The government in power finds it very difficult to lose. It shows that one hardly get justice in Nigeria nowadays, especially in election petition matters. No matter the merit of the case, the justices want to lean in favour of the government, that's just it. And more so, with the experience that we had, the way they remove judicial officers nowadays and nothing happens they want to secure their job. If you look at the fact and the merit of the cases of the here and there one cannot actually say justice has been done. Although there have been some isolated cases here and there, wherein what may come, the judicial officer will want to stand on the ground, stand on the merit but nowadays you hardly see it is so pathetic.
>
> ***In-depth Interview 08/July20, 2017***

The assertion from the respondent still boils down to the lack of independence of the judicial arm of government. It should be clear that the executive controls the state apparatus such as security agents, the INEC and its officials. The judiciary is seen as the last hope of an average person who is seeking justice for injustice that must have been done against him/her and his/her political party. Unfortunately, this arm of government that the average person and the downtrodden in the society look up to for justice and redress is being manipulated subtly by the executive arm of government. Except in rare cases, it is very difficult for an incumbent government to lose election litigation case irrespective of the merit of such case.

The judicial officers will want to favour the government of the day to keep their job and get other favours. The solution to this is the independence of the judicial arm of government. The above findings are in collaboration with the opinion of Ahmed (2013) when he stated that autonomy of the judiciary or independence of the judiciary requires that judges should be free and self-governing in the conduct of its affairs. Merely stating that the judiciary is independent, without more, is a fallacy; rather, certain frameworks must be enshrined to secure independence. Thus, another respondent advocated separate judicial commission to try election litigations in Nigeria:

> I am an advocate of electoral judicial commission separated from the Nigeria Judicial Council. I don't think electoral cases should be handled like the day-to-

> day cases like criminal cases or civil cases. I think since it is a four-year thing, there should be a new agency, judicial agency that will handle that because time matters. Electoral cases should be disposed of within 90days. As in before whosoever that is confirmed is sworn in, let there be an electoral judiciary commission set out already right from the moment parties are nominating people for their primaries, and continue to observe and see what happens! Not taking them off some other cases to come and dabble into electoral litigation cases at the end of the day, messing the future the destiny of people for another four years. It's clumsy as it is now, but then we will not be dancing around the same circle as we are.
>
> ***In-depth Interview 09/August 02, 2017***

This assertion by another respondent further lends credence to the above:

> Yeah, some people have actually called for special court, to try electoral offences to make it faster, so I think, that is an indication that it is still too slow, there should be a situation whereby cases should be concluded before swearing in. Somebody that has been accused of electoral offence should not be allowed to assume office. So there should be a way to conclude cases within three months of waiting so that a wrong person will not benefit. Now, somebody has spent two, three years before he is removed, the person has benefitted before he is removed
>
> ***In-depth Interview 18/October 03, 2017***

There is an axiom that "justice delayed is justice denied". Election litigation in Nigeria takes a very long time to conclude, as it happened in the Ekiti, Osun and Ondo States election litigations. This is because the judiciary is saddled with too many cases, from civil to criminal cases, from low profile to high profile cases and there were lots of adjournments. This makes it difficult for an election litigation to be concluded within a short time. The respondent continued:

> The worst of it all is that the wrong candidate who might have rigged the election will be in the office using state or government finance to pursue the case, enjoying the full benefit of the office he is occupying while he is not the rightful candidate. Electoral cases should not go beyond 90 days no matter what transpires.

The above finding is in tandem with the observation of Nweze (2013) when he stated that the question of speedy disposal of cases has now assumed a prescriptive constitutional norm. The

constitutions of most countries in the Commonwealth league make provision for the resolution of cases within a reasonable time. The usual expression is "within a reasonable time". Commonly used phrases include "without delay" or "without unreasonable delay". Unfortunately, notwithstanding the imperatives of prompt disposal of cases, the judiciary has, as a matter of culture, delayed all cases especially with regard to election litigations.

Another respondent had this to say regarding the structure of the judiciary:

> The structure of the judicial system is very much in order. I think it is the interference of the executives that I believe is the major problem. First, even if we are going to have any modification, I think it has to do with what happens if there is an allegation against the CJN. But I don't see anything wrong in the structure of the judicial system other than the executive interference
>
> ***In-depth Interview 19/October 24, 2017***

Contrary to previous assertion made already, the respondent above opined that there is nothing wrong with the structure of the judicial system in Nigeria but noted that the only problem is the interference of the executive in the affairs of the judiciary. This assertion further validates the preposition made by a previous respondent even though the respondent felt that there is nothing wrong with the structure of the judiciary except for internal and external interference. Such interference will allow the executive to manipulate the processes and outcomes of the election litigations to favour and service certain interests.

The above findings are in tandem with Leonard (2009) when he asserted that the continuous existence of a strong and independent judiciary is firmly-rooted in its competence and transparency, a function of independence which will strengthen the masses' faith in the institution and, thus, reliance on it for justice in all facets of life. This explains the view of (Leonard 2009) that independent and competent judiciary is, in many ways, pivotal for democratic practice. A strong judicial arm of government is not only capable of checking the misuse of power by government or its officials (Ashiru, 2009), it also has the capability of managing the intra-elite conflicts which are products of struggle for power and competition for economic resources which often characterise party politics in a multi-ethnic society such as Nigeria (Suberu, 2001).

## 6.6 Implications of Intermittent Controversies Surrounding Election Litigations in Nigeria's Fourth Republic for Democratic Consolidation

Democratisation which speaks of the movement towards exclusive and extensive political participation in governmental affairs that enhances the collective freedom of the citizens especially in terms of how the populace contributes to and shapes public policies that have implications for the society (Zambelis, 2005). It involves creating and expanding the political environment to accommodate the interaction, negotiation and competition of multiple actors to seek self-actualisation, within the framework of set and permissible rules (Adejumobi, 2000). Democracy demands that the means of safeguarding the liberties of individuals which includes fundamental human rights and basic freedoms for the people must be effectively guaranteed. Democracy most importantly demands that that the law should be supreme, and there should be equality before the law (Abe, 2010).

In an exposition of the pre-colonial African society practices, Ake (1992) noted that everything was everybody's business, engendering a strong emphasis on participation adding that the standard of accountability was even stricter than in Western societies. One of the respondents contributed to the discussion on the implication of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic consolidation thus:

> The fact that we have violence and rioting immediately after elections has telling implications on the national security and election has been established to be one of the major drivers of violence in Africa so if the electoral process is compromised through judiciary then the cycle of violence will continue.
>
> ***In-depth Interview 39/March 08, 2018***

The above shows that the implication of intermittent controversies surrounding election litigation in Nigeria Fourth Republic for democratic consolidation is huge. The respondent opined that violence in form of riots and clashes between supporters of political parties have a lot of implication on the national security of the country. It has been observed that election is one of the major drivers of violence in Africa (Albert, et.al 2011). Most times, this violence does not only claim properties worth millions of naira but also human lives. And often there are reprisal

attacks and the number of victims of such violence keeps increasing, sometimes leading to ethnic or religious violence which threatens not only the national security but also democracy itself.

Another respondent opined thus:

> The implication is much on the security, when the judgment to the masses is not fair, it most times leads to lack of cooperation on the part of the masses. It can lead to great security problem as in coup attempt and possible takeover by the Military. It might even lead to ethnic resistance of governance. It can lead to ethnic war, coup, resistance on the part of the citizenry, agitation, restiveness, unrest, so those are the effect and it can lead to the collapse of democracy…
>
> ***In-depth Interview40/March 13, 2018***

These views show that the implication of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic consolidation borders much on the security. When the masses have been defrauded of their political power and manipulated for a long time, it leads to civil disobedience which in turn leads to violence. Moreover, the military is also watching the developments which could predispose it to stage a coup and possibly takeover the government.

Because of the prevalence of massive corruption and manipulation in Nigeria's electoral processes, the military may not continue to stay aloof while the situation degenerates. Another respondent declared thus:

> To be frank with you if, we should continue with the way things are as we are experiencing now, I don't see the future for our democracy. I don't think we would be able to sustain the democracy if we continue this way. You can't predict what happens after voting. There is manipulation here and there, vote buying, bribery and so on. And you are thinking if you get to the court, you will be able to get justice, you find out things are the same there. People are not happy, they are aggrieved. And if people are aggrieved one way or the other, the Military may not be happy and may want to truncate the democracy itself, because what we are experiencing is not true democracy, it is like imposition. Be rest assured that by the time it starts from up to the top of the ladder, it may lead to revolution. Even our votes don't really count so what do we do, people think of taking laws into their hands. It happens and if it happens, that is the end of democracy.

***In-depth Interview 22/November 08, 2017***

The respondent further argues that constant electoral litigation manipulations have the tendency of making Nigeria lose its democracy. According to him, if things are not checked on time and the politicians especially, the executive does not retrace its steps the country might end up experiencing democratic relapse. Because the judiciary, the last of hope of the populace, is being manipulated and the populace is aggrieved, such a hopeless situation and feeling of injustice may lead to revolution.

Another respondent lends credence to the foregoing thus:

> Big trouble waiting to happen because once people lose confidence in the judicial system, the next thing is recourse to self-help and self-help is a recipe to anarchy.

***In-depth Interview 10/August 04, 2017***

This further throws more light to the prepositions made by the previous respondents. This is because the loss of confidence in the judicial system may trigger civil disobedience which is a form of self-help to seek justice and that itself can engender violence. When people no longer trust the system through which they can ventilate their grievances and see that justice is done, they will have no option than to seek alternative means which will be very detrimental to the survival of democracy. When asked about the consequences of the controversial electoral judgment on the national security, one of the respondents simply asserted:

> The answer is that, the judgment has bastardized democracy

***In-depth Interview 26/December 05, 2017***

This shows that controversial electoral judgements has debased what democracy stands for in Nigeria, hence people will no longer have faith in the democratic process because its basic tenet has been destroyed. The above finding is in tandem with the assertions of Nweze (2013) when he opined that the inability of the courts/judiciary to check the excesses of the politicians has been cited as one of the factors that occasioned the fall of the first democratic experiment in Nigeria. He reiterated that, had the courts/judiciary espoused a purposive approach to constitutional interpretation, the politicians would not have ridden roughshod on the Constitution.

## 6.7 Conclusion

This chapter has undertaken the analysis and discussion of data collected from both primary and secondary sources. The discussion showed that political elite have perfected the act of manipulating democratic system which ordinarily portends a system which allows for popular choice over individualistic tendencies. It revealed that politicians will stop at nothing to gain political power including manipulating an institution widely recognised as important for the sustenance of democracy and the preservation as well as protection of citizens' rights. The chapter also revealed that judicial manipulation is both internal and external. Internal manipulation involves judicial officers inducing their colleagues to give favourable judgment to their paymasters. External manipulation usually comes from the elite both ruling and non-ruling. These two forms were observable in the 2007 to 2010 governorship election litigation cases in Ekiti, Osun and Ondo states of Nigeria. Notably, discussion also showed that both the incumbent and opposition parties made attempts to influence the judicial process of resolving disputed electoral outcomes but the ruling party usually becomes successful in its manipulative tendencies due to the power of incumbency and its access to state resources. Chapter seven that follows this chapter will summarise the research findings, draw conclusion and make useful recommendations that will help in repositioning the electoral and justice systems in Nigeria.

# CHAPTER SEVEN

# SUMMARY, CONCLUSION AND RECOMMENDATION

## 7.1 Introduction

This chapter undertakes the summary of the entire study, summary of research findings, conclusion reached, a section on the originality and contribution of the study to the literature on electoral manipulation through the manipulation of judicial processes of resolving disputed electoral outcomes as well as recommendations made to reform both the electoral and justice systems in Nigeria. These are organised under the following sub-headings:

## 7.2 Summary of the Study Findings

The study examined different strategies and patterns political elites use in manipulating the judiciary to secure electoral victory through the courts and the practices that subject the judicial system to manipulation using the 2007 general election and the ensuing litigations from selected states. The study adopted five objectives which are directly linked to the research questions the study investigated. Research objectives are further simplified into fifteen questions which formed the basis of the research instrument.

The first objective of the study was to examine the underlying interest and forces that determine the processes and outcomes of election litigations in Nigeria. The study, amongst other things, observed that "self-interest" among the political elites is one of the underlying forces that determine the processes of election litigation in Nigeria. Politicians want to remain in power and for self-aggrandisement, hence they will engage in election litigation in order to manipulate the judicial process even when they have no case to prove. Similarly, members of a political party who benefit in one way or the other from the political party will strive to retain such political party in power. Another underlying interest and forces that determines the processes and outcome of election litigations in Nigeria is the feeling of seeking justice. From observations, electoral processes are manipulated through rigging, inflation of votes, deliberate and calculated disruption of voting process, snatching of ballot boxes, destroying and burning of ballot papers amongst other election-manipulation strategies employed. The victim of such manipulation and the party involved usually take recourse to filing election petitions to seek justice and reverse the

injustices of election manipulations and malpractices, perpetrated against them and their party members. Although the outcome of election litigation in Nigeria is determined by the presentation of facts because in every proceeding, civil or criminal litigation, concrete evidence (fact) is required to prosecute a case. However, findings have shown that facts can also be manipulated as seen in the Ondo state election litigation process.

The uniqueness of the election litigation on its own is a factor that will determine its processes and outcome. Unlike a pure civil or criminal case, election litigation sometimes involves both civil and criminal matters. Election litigation is unique in its own way. Accordingly, the type of judge presiding over such case should have experience in resolving electoral disputes; otherwise, after giving verdict, it could be upturned in a higher court of law. Seeking victory is an underlying interest and factor why candidates in elections engage in election litigations. Political parties play a vital and inevitable role in election litigation processes in a democratic system. First, a candidate contests election under the auspices of a political party. Members of the political party rally round their candidates to ensure that they win the election. They do not only vote in the election process, but also ensure that their votes are safeguarded, counted and recorded by their party agents. The party agents sign a result sheet at the ward level or local government level as the case maybe. They ensure that there is no manipulation of the votes in favour of their party and candidates in their different electoral wards. Notably, for electoral wards where there is violence, electoral malpractices or rigging of any kind, it is the party agent in that particular electoral ward that will testify that malpractices occurred.

As such, the party member, who is the party agent, can testify or witness in the court of law that electoral malpractice took place in their ward. Party agents at each electoral ward have copies of election results which they send to party executives at the state level. Where there are electoral malpractices and the figures are manipulated at the point of collation, counting and announcement, it is the party agents who will object to such figures which have been inflated or reduced because it contradicts the result their party agent at the electoral wards had submitted to them. This is especially for the parties which have lost the election or are losing the election from the results of counted and announced results. The role of the electoral umpire in resolving such electoral contradictions becomes pertinent. Observably, the Independent National Electoral Commission is directly or indirectly involved in the process of manipulating election results.

This is because their actions and inactions will invariably affect the overall outcomes of the electoral process. When INEC fails to do what they are supposed to do at the appropriate time such as delivering of election materials at the electoral wards as and when due, such action can lead to the disenfranchisement of the electorate which could be in favour of a political party where that particular electoral ward falls within the stronghold of its opponent to claim landslide winning in the election. Such late delivery of electoral materials to the wards may sometimes stop election from holding in such wards and surprisingly results will be produced for such wards. This is usually in connivance with the political party INEC wants to favour and the security agents assigned to duty.

This shows that INEC's failure, deliberate or not, to make adequate preparation towards providing the logistics for the election could contribute to election manipulation during the election process. When INEC deploys non-functional or malfunctioning card readers, it will debar the concerned electorate from exercising their legal rights in the election process. Worrisomely, the security agents are not neutral; rather, they support the government in power to manipulate the election processes by disallowing legitimate electorate from coming out to vote the candidate of their choice. This action by the security is one of the underlying factors that influence the election litigation processes. The media also played a positive influence in the outcomes of the election litigation process that followed the 2007 general elections. This was attributed to the freedom of speech which was obtainable in Nigeria in 2007. In 2007, the populace could freely express their opinion without intimidation in the media perhaps due to the commitment of the then president to guarantee a truly democratic society.

The second objective of the study was to examine the strategies employed by political and non-political elites in the manipulation of the judicial process in election litigation cases in Nigeria. The strategies commonly employed include interference in the selection of judges who adjudicate the election petition cases. Constitutionally, the President appoints the Chief Justice of Nigeria (CJN) through the recommendation of the National Judiciary Council (NJC). The CJN in turn selects the judges who sit on election litigation cases in different states and at the federal level. Due to lack of judicial independence in Nigeria, scholars have argued that the selection of CJN is politicised by the executive and this is done in a way that makes the CJN loyal to the president.

In assembling the election petition panel, the ruling party seizes the opportunity of power of incumbency to influence the selection process. Here, the president and governors (which constitute the executive arm) influence and, in some cases, dictate the quality and personality of judges that make the team of tribunal judges to oversee the litigation process by virtue of their close relationship and possible understanding with the Chief judge, who does the selection and forwards to them for approval. Monetary inducement is another strategy used by political elites to manipulate the election litigation process.

In addition to influencing the team of tribunal judges, there are also inducements, which could be financial or material and also work-related incorporating promotion, employment and so on. The judicial officials to oversee the litigation process are financially-induced by the litigants to gain favourable judgement. All these strategies employed by political and non-political elites in manipulating the judiciary and election litigation processes and outcomes have been tied to the fact that the judiciary is still dependent on the executive for funding, accommodation, welfare and appointment. This takes place both at the federal level and the state levels. The executive subtly dictates to the judiciary.

Objective three of this study was concerned with processes and outcomes of the controversial election litigation cases in Ekiti, Osun and Ondo states explained within the context of election manipulation in Nigeria. Ekiti State election of 2007 is reportedly one of the most-controversial elections in Nigeria. Looking at the nature of the litigation case that ensued after the election, one may not be able to deny making the assumption that the process must have been marred with series of electoral malpractices. However, there seems to be no agreement on who benefited from the lacuna of the electoral process as well as how incumbency affected the build-up to the marred electoral process as well as the initiation of the process and outcome of the litigation cases.

The motive behind the election litigation case in Ekiti State in 2007 was the feeling of injustice that the People's Democratic Party (PDP) with Segun Oni as their gubernatorial candidate manipulated the election and its outcome. The Action Congress candidate Fayemi felt that the election was manipulated because he claimed that majority of the masses voted for him. After Fayemi had lost at the tribunal, he challenged the judgement in the Court of Appeal. It was the Court of Appeal that ordered a rerun. In the process of the rerun, the election was allegedly

rigged again. The opposition party (Action Congress) candidate went to court again after the rerun on the premise that the rerun was rigged. Governor Segun Oni won again at the court. The candidate of Action Congress Fayemi did not relent, but appealed the case and finally won the case at the Appellate court and Governor Segun Oni was removed. What is observable in the Ekiti scenario was the trade of accusations and counter-accusations by both political parties over attempts at influencing the process of selecting judges to pervert the course of justice, inducements of tribunal members, interference in the internal workings of the election petition tribunal and establishment of personal contacts with the members of the panel.

In the case of Osun State, Rauf Aregbesola filed a complaint against the victory of Olagunsoye Oyinlola of the People's Democratic Party (PDP) after INEC had declared him the winner of the election. On the 14th day of June 2010, the AC filed notice of appeal containing 69 grounds of appeal at the Court of Appeal, Ibadan against the judgement of the Tribunal delivered on the 28th day of May, 2010. After the hearing of the appeal on the 1st day of November, 2010, judgement was reserved to a later date to be communicated to all the parties. On the 26th of November, 2010 the President of Court of Appeal declared Aregbesola of Action Congress winner and the duly elected governor of Osun state. It was established in the Osun election litigation that judges use middle men to transact business over who gets favourable court verdict. The defendant's lawyer was discovered to have made personal contacts with the judges of the tribunal to "buy" electoral victory through the court. This action earned him serious sanctions from the Nigerian Bar Association, an umbrella body of lawyers in Nigeria.

In the Ondo State election litigation, four contestants challenged the victory of the incumbent governor Dr Olusegun Agagu who was contesting to secure a second term of office. The most pronounced challenge was instituted by the candidate of the Labour Party, Dr Olusegun Mimiko. The PDP governor was sacked from office on 22 February 2009 when the Court of Appeal, sitting in Benin, declared Mimiko as the rightful and validly elected governor of Ondo State. The court affirmed the judgement of the lower tribunal, which had annulled the disputed poll on the ground of which the petition was filed and consequently declared Mimiko to be the winner. Because Mimiko was convinced that the populace voted for him massively and was aware of the malpractices carried out by INEC and the People's Democratic Party to return Agagu as the governor, he went to court to seek justice and redress. Although he lost in the first instance, he

appealed the case and, at the Court of Appeal, the case was reviewed in his favour. Initially, the judicial process was thought to have gone without any political undercurrent but a petition filed by the ousted governor showed that the court verdict may have been bought on the strength of a security report purportedly emanating from the State Security Services which was declared as fake upon investigation. The manner in which the petition and the findings of the police special investigative report on the claims contained in the petition were abandoned by the executive and the judiciary was suggestive of attempts to politicise the election litigation in Ondo.

The fourth objective of this study was concerned with the implication of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic consolidation. As observed by the study, Nigeria's judiciary system is structured in a way that the executive controls and dictates to the judiciary. The judiciary is not independent in Nigeria as it is supposed to be. In theory, the Nigerian judiciary is said to be an independent arm of government that checkmates the executive and the legislature. In reality, the judiciary in Nigeria is structured in such a way that it is manipulated by the executive and thus influences its operations including the processes of election litigations. As established earlier, the executive approves and releases funds for the judiciary for the purposes of their accommodation, salaries, allowances and other welfare packages. Just as respondents opined, until the judiciary is fully autonomous and free of executive interference and control, credible election litigation results may be unachievable.

The judiciary is seen as the last hope of aggrieved persons who are seeking redress for injustices committed against them and their political parties. Unfortunately, this arm of government that the aggrieved individuals and the down trodden in the society look up to for justice is being perniciously manipulated subtly by the executive arm of government. Except in rare cases, it is very difficult for an incumbent government to lose election litigation irrespective of the merit of such case due to the abuse of power of incumbency. This perhaps explains why election litigation in the selected states became tortous spanning a period of between two to three and half years to conclude having been won by the opposition political parties.

The fifth and last objective of this study was to examine the implications of intermittent controversies surrounding election litigations in Nigeria's Fourth Republic for democratic

consolidation. Discussions showed that the implication of intermittent controversies surrounding election litigation in Nigeria's current democratic practice for democratic consolidation is huge bothering majorly on tendencies for compromised national security as a result of civil disobedience, protests and demonstrations which are products of resorting to self-help. The prevalent manipulations of election litigation have the tendency for democratic relapse.

### 7.3 Conclusion

This study has further exposed the deficiencies in election administration and the administrative system of justice in Nigeria both of which have implications for the sustenance and consolidation of democracy. The seeming frustrations of Nigerians with successive military regimes in Nigeria made the securitisation of democracy compelling in the 1990s culminating in the country's return to party politics and the eventual inauguration of the current Fourth Republic in May 1999. The evaluation of democratic performance has since been greeted with mixed feelings. To some Nigerians, the imperfections in Nigeria's current democratic credentials are surmountable challenges that can be resolved with the continued commitment from both the govern and the governed. To them, the worst democratic Nigeria cannot be substituted for military rule however benevolent it might be. To some others, the disappointment of democratic practice and the continued faltering of the democratisation process have increased the fear of democratic relapse and the tendency for possible military takeover. This fear has continued to be sustained because of the controversies that trail every general election conducted since 1999 and the attendant crisis that follow the judicial process of resolving disputed electoral outcomes. Again, this has called to question the utility of judicial intervention in Nigeria's democratic process. As noted earlier, the judiciary is pivotal for the sustenance of a democratic system since it is required to enforce and guarantee fundamental human rights including the promotion of justice and equity all of which form the pillars upon democratic practice rests.

However, this study notes that the judicialisation of the electoral process has further deepened the misfortunes of electoral democracy in Nigeria. Substantially, major controversies that characterise election administration in terms of the politicisation of the election management body and the electoral process itself and the politicisation of other relevant stakeholders in the conduct of elections in Nigeria particularly security agencies have manifestly affected the

judicial process of resolving the controversies that trail the balloting process. Since electoral fraud can also be carried out through the courts, high hopes that greeted the return of Nigeria to democratic practice after many years of military rule have been dashed. The judiciary has been seen as a market place where electoral victory can be priced, negotiated and indeed offered for sale depending on the biding capacity of interested 'buyers'. This important institution is viewed as a safe place for electoral fraud because vote-buying is no longer synonymous with balloting process alone, it has also come to be associated with the judiciary especially as it relates to election litigation. This reality has inadvertently raised the stakes in election litigation in Nigeria particularly in the Fourth Republic. Politicians believe that loosing elections at the ballot is not the end of the road for them as there are still avenues through the courts to further pursue their political ambition provided they have the financial strength to ground out desired results. This explains why most electoral outcomes are challenged at the election petition tribunals after election results are announced by the INEC. Politicians throw everything into the judicial process including huge monetary compensations, the use of 'old time sake', personality or goodwill and ethno-religious connections to buy favour from members of the judiciary to secure electoral victory.

Observably, these strategies are not limited to the ruling party, as opposition parties also get involved in counter-strategies to neutralize or outwit the potency of the ruling party to influence the judicial process. This study found out that this development is responsible for producing billionaire judges with stupendous wealth including huge sums of money in their bank accounts or those of their cronies and properties in choice areas in Nigeria and abroad. Though subtly, it also increases the competition for who makes the membership of election petition tribunals both within the judiciary and among politicians seeking favour. As found out in this study, the permissive fraud in the judicial system is structural because the judiciary in Nigeria is wired in such a manner that makes it susceptible to legislative and executive manipulations. The fact that the appointment, promotion, welfare and dismissal of judges in Nigeria have the hands of the legislature and executive in one way or the other makes the judiciary a manipulative object in the hands of the duo. While this study is not canvassing for the appointment of judges through the ballot process the same way legislators and some members of the executive are elected, it noted however that legislative and executive input in the appointment of judges makes the institution subservient despite the principle of separation of powers guiding their tripartite arrangement in a

presidential system like Nigeria.. As found out in the study, the intervention of the military in Nigeria's political terrain with its hierarchical and command structure within the administrative framework of centralization contributed an untold damage to the structure of the judicial system. Democratic governments, rather than purge the judiciary of these military legacies, have continued to maintain the status quo for their self-serving interests.

Notably, election litigation will continue to be a topical issue in Nigeria because election administration still remains deficient. The deficiencies in Nigeria's electoral democracy constitute a burden on the judiciary. The conduct of elections serves the primary purpose of lubricating the democratic engine until the system is sustained in a way that democratic reversal is not contemplated. However, the inability to conduct credible, free and fair elections within the context of global best practices has continued to make judicial intervention in democratic process inevitable. The burden to sustain democracy and its ideal principles thus rests on the judiciary and this observably turns the judiciary to both a market place and a theater of war for political entrepreneurs. This study noted that the politicisation of election administration and the judicial process of resolving ensuing disputes can be tied to the nature of politics in Nigeria. Political elite see politics in Nigeria as a struggle for power and competition for economic resources which accommodates the urge for capital accumulation rather than a call to service. And because political offices in Nigeria are both attractive and rewarding, there is increased competition to either remain in office or replace those that are already there. Without doubt, this has aggravated the manipulative tendencies of governing and non-governing elite to perpetuate themselves in power. Resultantly, rules are compromised and governmental institutions desecrated and bastardised to actualise the self-interest of the elite. Summarily, the politicisation of election litigation in Nigeria is a furtherance of elite politics to secure political power by all means when they initial fail at the ballot.

### 7.4 Originality of the Study

This study has further explored into an area of electoral politics and electoral manipulations that has not been much researched before. The literature is replete with studies on elite manipulation of the electoral process through various strategies including inflation of voters' register, electoral violence, under-age voting, vote-buying, ballot stuffing, results alteration and/or falsification and corruption of electoral officials. However, this study has furthered the discourse on electoral

manipulation by beaming search light into the judicial process of resolving disputed electoral outcomes. This study established instances of the politicisation of the judiciary by political elite to secure electoral victory through the courts which suggests that election rigging is not limited to the ballot. Three novel contributions are important in this regard. First, the study makes it vivid that the politicisation of election litigation begins with the manipulation of the process of selecting judges that seat over disputed election outcomes to favour certain interests.

This established that there is a link between the process of selecting judges and the verdicts emanating from the tribunals. Again, this points to the fact that 'political reasons' rather than competence, courage and experience largely determine the appointment of judges into the election petition tribunals. It is only when this strategy fails that other alternatives are explored by political entrepreneurs. Second, available studies have relied much on secondary data particularly allegations contained in newspaper reports to examine the context of judicial manipulations and corruption in Nigeria. The use of in-depth interview to elicit information from relevant stakeholders in election litigation process in selected states has strengthened the argument of a politicised election litigation process. Key informants provided evidences of interactions between political elites and members of election petition tribunals thereby making research findings reliable. Third, the fact that the study established that the manipulation of the judiciary is not only external as usually pronounced in the public has opened a new line of argument on the independence of the judiciary. Both serving and retired judges bear influence on members of election petition panels to facilitate favourable judgment for their preferred candidates and/or their pay masters which proves the internalization of judicial manipulation in Nigeria's election litigation process.

### 7.5 Recommendations

Election litigation in Nigeria has raised many serious legal, administrative and political issues of concern which require immediate attention of election petition stakeholders, particularly the judiciary, the election management body and the political class if electoral justice would be achieved and democratic consolidation guaranteed. This study makes the following recommendations to improve electoral administration and electoral justice system in Nigeria:

### 7.5.1 Re-designing Election Timetable to Curtail Technicalities in Election Litigation

As provided by the Electoral Act 2015 (as amended), general elections are to be conducted 90 (3 months) days before the swearing-in and handing date for successive administration. It is also provided that election petition tribunals should resolve all electoral disputes brought before them within 180 days (6 months) counting from the date of presenting the petition while an appeal against unsatisfactory judgments of the tribunal should be disposed within 60 days (2 months) from the date of the declaration of judgment by the election tribunal or Court of Appeal (Akinlawo cited in Ojelu, 2019). The essence of these time limits is to prevent election litigation from dragging beyond reasonable period so as not to affect governance at the concerned political level. However, politicians and the courts have been implicated in the politics of time limits by resorting to technicalities in deciding election petition cases.

Technicality in election litigation would mean not deciding election petition on merit and substance of the case but on some extra-legal matters such as timing, title or status of petitioners and so on. To be sure, problems relating to timely resolution of electoral disputes have been addressed with the introduction of time limits. However, it is observed that, despite the time limits, victorious candidates at the polls exploit all sorts of antics to slow the litigation process to ensure the expiration of the mandatory 180 days within which petitions must be disposed. The argument then follows that time permitted for the petition to be heard has lapsed so such petitions should be dismissed. On such occasions, grave injustice is done to the petitioner when the petition is struck out for effluxion of time. Technicalities, especially those that border on time limit, have created insurmountable legal hurdles for election petitioners particularly in a presidential election petition. For instance, the Supreme Court of Nigeria noted in the 2005 presidential election petition case between Muhammadu Buhari and Olusegun Obasanjo that it is legally impossible to prove allegations contained in election petition against a presidential election because thousands of witnesses are needed to invalidate the outcome of such elections (Ojelu, 2019). If by chance and a dint of hard work on the part of the legal team of the petitioners the required thousands of witnesses are assembled, the time limit of 180 days will constitute an insurmountable hurdle to cross. On account of such technicalities, the courts have continued to strike out weighty allegations of electoral malpractices. As noted by the Supreme Court of Nigeria in MAERSK LINE V. ADDIDE INVESTMENT LTD (2002):

> Allowing the judicial process to be bogged down by technicalities makes it malfunctions and its credibility tainted when it continues to be manipulated to go from technicality to technicality and to thrive on technicalities (cited in Ojelu, 2019).

Relatedly, resorting to technicality in deciding election petition cases has placed a serious burden of proof on the petitioners thereby making it cumbersome to successfully prove allegations of electoral fraud (Omenma, Ibeanu and Onyishi, 2017: 45). For instance, presidential electoral outcomes have been decided by the courts in more than 50 countries since the e World War II ended and none has been upturned or reversed (Hirschl, 2006; Whittington, Keleman and Caldiers, 2008;) except in Panama where the judiciary successfully nullified the country's 1989 presidential election (Hernandez-Huerta 2015). In fact, not even in countries such as Philippines, Mexico and Nigeria with the highest frequency of contested elections was the judiciary able to upturn presidential elections for the reasons of technicalities (Omenma, Ibeanu and Onyishi, 2017:46). The problem of technicalities in the processes of hearing and disposing election petition cases are compounded by the unwillingness of INEC to release election materials for forensic analysis and court scrutiny. Without these necessary materials which include voters' registration, result sheets, used and unused ballot papers which are usually in the possession of INEC, petitioners will find it terribly difficult to prove any allegation of electoral fraud.

With this practice, the argument can be sustained that a legitimate means to secure political office in Nigeria is to steal the mandate of the electorate at the ballot while the courts, through election petitions, validate the fraud (Mohammed, 2008). This assertion is consistent with the observation of the Electoral Reform Committee report (2008: 148) that INEC frustrates "several election petitions due to failure to provide evidence thereby jeopardizing the petitions of litigants". Consequent upon the foregoing, I propose that the Electoral Act 2015 currently in use be amended towards 2023 general elections to accommodate changes to the current election time table in Nigeria. The time limit of conducting elections 90 days before swearing-in is still being manipulated by politicians and judicial officers to skew court judgments in favour of a preferred political party and its candidate. Both election conduct and election litigation processes should be concluded within 270 days (9 months) to the swearing-in and handing over date. When politicians are aware that their political antics are capable of tampering with the swearing-in date, there are tendencies for consensus of actions across party lines to avoid technicalities that

could delay election conduct and the ensuing litigations. This is because, according to Otteh (cited in Ojelu, 2019), technicalities are some of the political devices to exert pernicious influence and strategic control over the leadership of Nigeria's judiciary. Notably, the issue of technicality has not only put election disputes on trial but also the credibility, independence and fairness of the judiciary in Nigeria.

### 7.5.2 Stiffer Penalties for Culpable Judicial Officers

Nigeria's political process is characteristically marred with corruption and corruptive tendencies (Yagboyaju, 2013). This is because the syndromes of 'money politics', 'Big man politics', and the 'politicization of the judiciary' appear to be the major determining factor of the system of electoral justice in Nigeria and elsewhere on the Africa continent (Kramer, 2004; Lewis, 2008; Kew and Lewis, 2010). The predictable election adjudicatory processes outcomes in Nigeria often respond to very narrow but powerful interests (Omenma, Ibeanu and Onyishi 2017:48). Within the context of prevailing dominant money politics in Nigeria, the judiciary has become targeted 'markets' for political investors while electoral justice becomes auctionable (Ibid) and sellable to the highest bidder. Therefore, there is convergence between political corruption and judicial corruption. The manifest effect of this syndrome is to always see a wide gap between the evidence of electoral frauds and the attendant court verdicts. Instances of proven cases of corruption and financial inducement against judges sitting on election petition cases have continued to pervade the polity, thus questioning the role of the judiciary as an important institution of democratic sustenance. For instance, four out of the five members who sat on the Legislative Houses and Governorship Election Tribunal in Akwa Ibom State in 2003 were found guilty of allegations of financial inducement from the state governor, Victor Attah, to uphold his victory in the 2003 general elections (Ugochukwu, 2004; Fawehinmi, 2007). In the same vein, Justice David Adeniji and Justice Okwuchukwu Opene of the Appeal Court were found to have received bribes in the amount of 15 million naira (an equivalent of US $100,000) and 12 million Naira (an equivalent of US $80,000) respectively and gave controversial judgments on contested election petitions brought before them (ibid).

Disturbingly, the National Judicial Council (NJC), which is the supervising body for all judicial officers and matters in Nigeria, rather than take proactive measures and appropriately sanction

judicial officers found culpable in political and judicial corruption relating to election petitions, pay lip service to such unsalutary development, hence depicting the judiciary as weak and unable to act independently (Puddington, 2010:3). This is not to say some judicial officers have not been sanctioned, but many escape punishment after successfully politicising their trials for alleged corruption. As a matter of fact, some judges are even elevated to higher cadres in the judiciary after they delivered political judgments that should be scrutinised by the NJC. Some observers of Nigeria's electoral justice system aptly noted that:

> Judges in Nigeria have been compensated with promotion to higher ranks after giving "political" rulings. The appointment of Justice Atanda Williams as the Chief Justice of Nigeria was criticised by Chief Awolowo before his appeal to the Supreme Court was heard. Justice George Oguntade was promoted to the highest court in Nigeria- Supreme Court after he delivered the "required judgment" on the 2003 presidential election petition, while Justice James Ogebe, the head of the judicial panel that determined the 2007 presidential election petition, was elevated to the Supreme Court in 2007 by the President, few days before the verdict of the tribunal he chaired was due to be announced. Judges that are uncompromising are either suspended to give way for the required ruling or their promotion suspended for declining to give a political judgment. The President of the Court of Appeal of Nigeria, Justice Isa Ayo Salami, was suspended because he declined to do the biding of the executive in delivering required verdict (Ugochukwu, 2011; Ebenezer, 2014).

To forestall the predictability of the outcome of investigation of alleged corrupt judicial officers, this study recommends that the NJC, which is responsible for the recommendation of the appointment and dismissal of judges, should take full responsibilities for such investigations. The regular court system which tries alleged corrupt judges has been politicised, thereby making it difficult in most situations to prove allegations of corruption against the accused. With the NJC in the saddle, investigation processes will be given speedy attention, thereby removing frivolous adjournments that characterise many corruption trials. Importantly, judges and litigation lawyers who usually facilitate financial dealings between trial judges and their clients, if found culpable, should be dismissed from the Bar and the Bench to serve as deterrent for other judicial officers with corrupt tendencies.

Furthermore, many judges in Nigeria connived, especially with the ruling political party as was observed in the 2007 general elections. Therefore, fostering judiciary integrity should be paramount by carrying out thorough scrutiny of judges selected for election litigations. As such, this may go a long way in the road to the elimination of selection of corrupt judges on the electoral litigation panel. And if any should be found wanting, the judge should not only be dismissed, but also imprisoned. Sanctions such as suspension or fine should be replaced with stiffer penalties to sanitize the electoral justice system and the legal profession. Judicial officers will become more cautious in their approach to duties particularly on assignments relating to election petitions. Professionalism and diligence will be emphasised when they are aware that any proven case of infractions could put their career on the line. They are likely to reject overtures from political investors in order to build an enviable and successful career in the judiciary.

### 7.5.3 Appropriate Sanctions for Court-Removed Public Office Holders

Any meaningful reform in Nigeria's electoral system must cut across three important stakeholders; namely, the election management body, the judiciary and the political class. Injecting reforms that are capable of reducing stress in Nigeria's electoral process and the judicial process of resolving ensuing disputes without proper measures that will curtail the antics of the politicians may not likely produce the desired outcomes. It is in this regard that this study recommends sanctions for political office holders who are removed by the courts for electoral fraud and manipulations. Political office holders found guilty of manipulating the electoral process to secure political power occupy such political offices as interlopers and usurpers, hence must be severely sanctioned to first caution politicians to abide by guidelines and seek political power within the ambit of the law and second to reduce the 'thirst' and 'hunger' for political offices which are incredibly attractive in Nigeria.

Towards future general elections in Nigeria, both the electoral laws and the constitution should be reformed to include two clauses relating to political office holders found guilty of electoral fraud. The first clause should make court-removed political office holders to compulsorily refund all monies and financial benefits in the form of salaries and allowances received while illegally occupying such offices and the second clause should categorically ban court-removed political office holders from being recognised as having occupied such offices before. It is common

practice in Nigeria, for instance, that court-removed state governors are still addressed as former governors by the media as if they legally occupied such offices and completed their tenures of offices. Eradicating such appellations and making them refund all financial benefits received will significantly make corrupt political practices unattractive to prospective politicians, control their inordinate political ambition, thereby reducing their tendency for electoral and judicial manipulation).

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**APPENDIX I**

UNIVERSITY OF KWAZULU-NATAL

**SCHOOL OF SOCIAL SCIENCES**

**INFORMED CONSENT FORM**

**Dear Participant,**

My name is ONI EBENEZER OLUWOLE (Student N0: 216072032). I am a Doctoral Candidate at the department of Political Science, School of Social Sciences, University of KwaZulu-Natal, Pietermaritzburg Campus, South Africa. My Research is titled ***'The Politicisation of Election Litigation in Nigeria's Fourth Republic'.***

The aim of the study is to investigate *whether the judiciary is captured and manipulated by political elites to produce winners through the courts when electoral disputes shift to the judiciary*. I am interested in interviewing you so as to share your experiences and observations on the subject matter.

Please be informed that:

- The information that you provide will be used for scholarly research only.
- Your participation is entirely voluntary. You have a choice to participate, not to participate or stop participating in the research. You will not be penalized for taking such an action.
- Your views in this interview will be presented anonymously. Neither your name nor identity will be disclosed in any form in the study.
- The interview will take about one hour
- The transcript and any other items associated with the interview will be stored in a password-protected file accessible only to me and my supervisors. After a period of 5years, in line with the rules of the university, it will be disposed of by shredding and burning.
- If you agree to participate please sign the declaration attached to this statement (a separate sheet will be provided for signatures). I would be using a tape recorder for the interview.

For further explanation, kindly contact me at: School of Social Sciences, University of KwaZulu-Natal, Pietermaritzburg Campus, Scottsville, South Africa
Email: 216072032@stu.ukzn.ac.za/ebinotopsy9@gmail.com
Tel: +27738680376; +2348064096791

My Supervisor is Dr Khondlo Mtshali
School of Social Sciences, Pietermaritzburg Campus,
University of KwaZulu-Natal
Email: Mtshalik@ukzn.ac.za
Phone number: +27332605892

The Humanities and Social Sciences Research Ethics Committee
Ms Phumelele Ximba
Research Office, University of KwaZulu-Natal,
Email: ximbap@ukzn.ac.za, Phone number +27312603587.

Thank you for your contribution to this research.

DECLARATION

I…… *(Full names of participant*) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire. I understand the intention of the research. I hereby agree to participate.

I consent/do not consent to have this interview recorded (if applicable)

--- ---

SIGNATURE OF PARTICIPANT DATE

**APPENDIX II**

UNIVERSITY OF KWAZULU-NATAL

**SCHOOL OF SOCIAL SCIENCES**

**RESEARCH INSTRUMENT/INTERVIEW SCHEDULE**

**Dear Respondent,**

My name is ONI EBENEZER OLUWOLE, a PhD Candidate at the department of Political Science, School of Social Sciences, University of KwaZulu-Natal, Pietermaritzburg Campus South Africa. My research focuses on the 'Politicisation of Election Litigations in Nigeria's Fourth Republic'. The study aims to examine the influence of politics on Election Litigation Processes and Outcomes in Nigeria. Your knowledge of the situation informed your choice as a respondent and your responses in this interview session will go a long way in helping to make informed judgments. This information will be anonymous and you should be comfortable and honest in responding to the questions as you possibly can.

Given your knowledge of the 2007 gubernatorial election litigation cases in Ekiti, Osun and Ondo states:

1. Were there attempts by political parties, their candidate or any individual/group acting on their behalf to manipulate the judicial process in their favour? If yes, give instances
2. What in your opinion were the major motivating factors for political parties and/or their candidates' attempts to manipulate the judicial process to secure electoral victory through the court?
3. What were the specific strategies used by political parties, their candidate or any individual/group acting on their behalf to manipulate the judicial process in order to gain electoral victory?

4. Do you think these strategies have impact on the judgment of the court? If yes, how?
5. Do you think that the selection or appointment of judges that sat on the election litigation cases was politically motivated? If yes, give reasons
6. Were there established political or personal connections between the judges and members of opposition political party or any individual/group acting on their behalf that could compromise the judicial process?
7. If yes, what implication does that have on the integrity and credibility of the election litigation process and judgment emanating therein?
8. In what ways was the independence of the judiciary compromised in the election litigation cases?
9. Is there any way incumbency influences the processes and outcomes of election litigation cases?
10. To what extent does public opinion influenced the processes and outcomes of election litigation cases?
11. What are the implications of the complexities that characterize election litigations for election administration in Nigeria?
12. What are the implications of controversial electoral judgments for:
    i. Nigeria's National Security?
    ii. Legitimacy of government and elected representatives?
    iii. Nigeria's democratic sustenance and development?
13. In what ways were other stakeholders in election administration in Nigeria such as the Independent National Electoral Commission (INEC) and security agencies used to manipulate election litigation processes and outcomes?
14. Are there specific aspects of the 1999 Nigerian constitution and the Electoral Acts that are exploited to gain electoral victory through the courts?
15. In what ways does the structure of the Nigerian judicial system allow the manipulations of the processes and outcomes of election litigations?

APPENDIX III

UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

14 December 2016

**Mr Ebenezer Oluwole Oni 216072032**
**School of Social Scie3nces**
**Pietermaritzburg Campus**

**Dear Mr Oni**

**Protocol reference number: HSS/2082/016D**
**Project title: The Politicisation of Election Litigations in Nigeria's Fourth Republic**

**Full Approval – Expedited Application**

In response to your application received 28 November 2016, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL.**

**Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.**

**PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.**

**The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.**

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

.....

**Dr Shenuka Singh (Chair)**
**Humanitities & Social Scinces Research Ethics Committee**

**/pm**

Cc: Supervisor: Dr Khondlo Mtshali & Dr Adeoye Akinola
Cc. Academic Leader: Professor Maheshvari Naidu
Cc. School Administrator: Ms N Radebe & Mr N Memela

**Humanities & Social Sciences Research Ethics Committee**
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## APPENDIX IV

## RELEVANT ELECTORAL LAWS IN THE 2002 ELECTORAL ACT

Part I of the 2002 Electoral Act contains 14 sections with series of subsections. The 14 sections include:

**1.** (1) No general election shall be conducted before the Commission has concluded the compilation and updating of the National Voters Register, in this Act referred to as the "Register of Voters", which shall include the names of all persons entitled to vote in any Federal, State, or Local Government Election.

(2) The Commission shall maintain as part of the Register of Voters a Register for Voters for each State of the Federation and the Federal Capital Territory.

(3) The Commission shall maintain as part of the Register of Voters for each State, and Federal Capital Territory, a Register of Voters for each Local Government Area Council within the State and the Federal Capital Territory.

(4) The Register shall contain in respect of every person the particulars required in Form EC.IA in the Second Schedule to this Act including the principal name and such one or more further names by which a person is usually or may be known and his address which for the purposes of this subsection may be the name of a village or in the case of a town, the name of the street, if the Commission thinks fit, but no person shall be registered under a principal name alone being a single name or without his address.

(5) The registration of voters and the up-dating of the Register of Voters under this section shall stop not later than 60 days before any Election covered by this Act.

(6) At least 30 days before the commencement of the general registration exercise, the Commission shall issue to all the Political Parties a booklet containing the full list of all the Registration Centres in the country.

(7) Every political party shall have the right to send up to two representatives or agents to each Registration Centre to observe the registration exercises.

**2.** (1) A person shall be qualified for registration as a voter if such a person:

(a) is a citizen of Nigeria;

(b) has attained the age of eighteen years

(c) is ordinarily resident, works in, originates from, or is an indigene of the Local Government Area or Ward covered by the Registration Centre;

(d) presents himself to the Registration Officers of the Commission for registration as a voter within the period stipulated by the Commission for registration of voters;

(e) is not subject to any legal incapacity to vote under any law, Rule or Regulations in force in Nigeria;

(2) No person shall register in more than one registration centre or register more than once in the same registration centre.

(3) Any person who contravenes the provisions of subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding N 100,000 or imprisonment for a term not exceeding one year or both.

**3.** (1) A person who before the election is resident in a Constituency other than the one in which he was registered may apply to the Resident Electoral Commissioner of the State where he is currently resident for his name to be entered on the Transferred Voters List for the Constituency.

(2) An application under subsection (1) of this section shall be accompanied by the applicant's voters' card and be made not less than 30 days before the date of an election in the Constituency where the applicant is resident.

(3) The Resident Electoral Commissioner to whom an application is made under the provision of this section shall cause to be entered the applicant's name in the Transferred Voters' List if he is satisfied that the applicant is resident in a polling area in the Constituency and is registered in another Constituency.

(4) Whenever an Electoral Officer on the direction of the Resident Electoral Commissioner enters the name of any person on the Transferred Voters' List for his Constituency he shall-

(a) assign that person to a polling station or a polling area in his Constituency and indicate in the list the Polling area or polling station to which that person is assigned;

(b) issue the person with a new voters' card ; and

(c) send a copy of the entry to the Electoral Officer of the Constituency where the person whose name has been so entered was originally registered and upon receipt of this entry, the Electoral Officer shall delete the name from his voters' list.

**4.** (1) For the purpose of maintaining and updating the Voters' Register, the Commission shall appoint such registration, revision, or update officers as it may require, provided that such officers shall not be members of any Political Party

**5.** (1) Each Electoral Officer shall have charge and custody of the voters' register for his Local Government Area under the general supervision of the Resident Electoral Commissioner. (2) The voter's register shall be kept in such form as may be prescribed by the Commission.

**6.** In the performance of his or her duties under this Act, a registration officer and an update officer may- (a) demand from any applicant the information necessary to enable him to ascertain whether the applicant is qualified to be registered as a voter in accordance with the provisions of this Act; (b) require any voter or applicant to complete an application within a period specified by the Commission

**7.** (1) The Commission shall design, print and control the issuance of voters' cards to voters whose names appear in the register.

(2) No voter shall hold more than one valid voter's card.

(3) Any person who contravenes subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding NI 00,000 or imprisonment not exceeding one year or both.

(4) The Commission may, whenever it considers it necessary, replace all or any voters' cards for the time being held by voters.

**8.** (1) Whenever a voters' card is lost, destroyed, defaced, torn or otherwise damaged, the voter shall, at least seven days before polling day, apply in person to the Electoral Officer or any other officer duly authorized for that purpose by the Resident Electoral Commissioner, stating the circumstances of that loss, destruction, defacement or damage.

(2) If the Electoral Officer or that other officer is satisfied as to the circumstances of the

loss, destruction, defacement or damage of the voter's card, he shall issue to the voter a duplicate copy of the voter's original voter's card with the word "DUPLICATE" clearly marked or printed on it' showing the date of issue.

(3) No person shall issue a duplicate voters card to any voter on polling day or within seven days before polling day.

(4) Any person who contravenes subsection (3) of this section commits an offence and is liable on conviction, to a fine not exceeding N100.000 or imprisonment not exceeding one year or both.

**9.** (1) The Commission shall cause a voters' register for each State to be printed, and any person may obtain from the Commission, on payment of such charges and subject to such conditions as may be prescribed, copies of any voters' register for the State or for a Local Government Area or Ward within it.

(2) Where the voters' register has been printed under this subsection (1) immediately before any election or a by-election and it contains the names of the voters who will be entitled to vote at that election, the Commission may publish a notice declaring that the printed voters register shall be used for the purpose of identification of voters at that election.

**10.** (l) Subject to the provisions of section 2 (2) of this Act, the Commission shall, by notice appoint a period of not less than 5 days and not exceeding 14 days, during which a copy of the voters' register for each Local Government Area or Ward shall be displayed for public scrutiny and during which period any objections or complaints in relation to the names omitted, or included in the voters' register or in relation to any necessary' corrections, shall be raised or filed.

(2) During the period of the display of the voters' register under this Act, any person may raise an objection on the form prescribed by the Commission against the inclusion in the voters' register of any name of a person on grounds that the person is not qualified to vote or to be registered as voter in the State, Local Government Area, or Ward, or that the name of a person qualified to vote or to be registered has been omitted or that a name of a deceased person is included.

(3) Any objection under subsection (2) of this section shall be addressed to the Resident Electoral Commissioner through the Electoral Officer in charge of the Local Government Area of the person raising the objection.

**11.** The Commission may appoint as a Revision Officer any person to hear and determine claims for and objection to an entry in or omission from the preliminary list; and may appoint such number of other persons as it deems necessary to assist the Revision Officer.

**12.** The proprietary rights in any voters' card issued to any voter shall vest in the Commission.

**13.** Any person who- (a) is lawfully in possession of any voter's card whether issued in the name of any voter or not; or (b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or (c) buys or offers to buy any voter's card whether on his or her own behalf or on behalf of any other person, commits an offence and is liable on conviction to a fine not exceeding N200,OOO or imprisonment not exceeding two years or both.

**14.** (l) Any person who-

(a) makes a false statement in any application for registration as voter knowing it to be false or

(b) after demand or requisition made of him under (a) or (b) without just us cause, fails to give any such information as he possesses or does not give the information within the time specified, or

(c) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter or

(d) transmits or is concerned in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to false; or

(e) by himself or any other person procures the registration of himself or any other person on a voters' register for a State, knowing that he or that other person is not entitled to be registered on that voters' register or is, already registered on it or on another voters' register or

(f) by himself or any other person procures the registration of a fictitious person commits an offence and is liable on conviction to a fine not exceeding N 100,000 or imprisonment not exceeding one year or both

(2) An; person who~

(a) by duress, including threats of any kind causes or induces any person or 'persons generally to refrain from register as a voter or voter;

(b) in any way hinders another person from registering as a voter, commits an offence and is liable on conviction to a fine not exceeding N200,000 or imprisonment not exceeding two years or both

Sections 131-139 under Part VII of the 2002 Electoral Act discusses the determination of election petitions arising from the conduct of elections as follows:

**131.** (1) No election and no return at an election under this Act, shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an “e1ection petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a Party.

(2) In this section "tribunal or court" means-

(a) in the case of Presidential election, the Court of Appeal, and

(b) in the case of any other elections under this Act, the Election Tribunal established by the Constitution or by this Act;

It should be noted that the Election Tribunal as provided for under the Constitution, and the 2002 Act shall be constituted not later than 14 days before the Election.

**132.** An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared;

**133.** (1) An election petition may be presented by one or more of the following persons-

(a) a candidate at an election;

(b) a Political Party which participated at the election.

(2) The person whose election is complained of is in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.

**I34.** (1) An election may be questioned on any of the following grounds, that is to say-
(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
(c) that the respondent was not duly elected by majority' of lawful votes cast at the election; or
(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election

(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of the Act shall not of itself be a ground for questioning the election.

**l35.** (l) 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 principles of this Act and that the non-compliance did not affect substantially the result of the election.
(2) An election shall not be liable to be questioned by reason of a defect in the title, or want of title of the person conducting the election or acting in the office provided such a person has the right or authority of the Commission to conduct the election.

**I36.** (l) Subject to subsection (2) of this section, if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or the Court shall nullify the election.

(2) If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act.

(3) On the motion of a respondent in an election petition, the Election Tribunal or the Court, as the case may be, may strike out an election petition on the ground that it is not in accordance with the provisions of this Part of this Act, or the provisions of First Schedule of this Act.

**137.** Without prejudice to the provisions of section 294 subsection (1) of the Constitution of the Federal Republic of Nigeria, 1999, an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or Court.

**138.** (l) If the Election Tribunal or the Court, as the case may be, determines that a candidate returned as elected was not validly elected, and if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the determination of the appeal.

(2) If the Election Tribunal or the Court, as the case maybe, determines that a candidate returned as elected was not validly elected, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the expiration of the period of 21 days within which an appeal may be brought.

**139.** The rules of procedure to be adopted for election petitions and appeals arising therefrom shall be those set out in First Schedule to this Act.

Sections 2-26 in the First Schedule of the 2002 Electoral Act discuss procedures for election petitions in Nigeria as follows:

**2.** (1) At the time of presenting an election petition, the petitioner shall give security for all costs which may become payable by him to a witness summoned on his behalf or to a respondent.

(2) The Security shall be of such amount not less than N5, 000. 00 as the Tribunal or Court may order and shall be given by depositing the amount with the Tribunal or Court.

3) Where two or three persons join in an election petition, a deposit as may be ordered under subparagraph (2) of this paragraph of this Schedule shall be sufficient.

(4) If no security is given as required by this paragraph, there shall be no further proceedings on the election petition.

**3.** (1) The presentation of an election petition under this Act shall be made by the petitioner (or petitioners if more than one) in person, or by his Solicitor, if any, name d at the foot of the election petition to the Secretary, and the Secretary shall give a receipt which may be in Form TF. 002 set out in Second Schedule to this Act.

(2) The Petitioner shall, at the time of presenting the election petition, deliver to the Secretary a copy of the election petition for each respondent and ten other copies to be preserved by the Secretary

(3) The Secretary shall compare the copies of the election petition received in accordance with subparagraph (2) of this paragraph with the original petition and shall certify them as true copies of the election petition on being satisfied by the comparison that they are true copies of the election petition.

(4) The petitioner or his Solicitor, as the case may be, shall, at the time of presenting the election petition, pay the fees for the service and the publication of the petition, and for certifying the copies and, in default of the payment, the election petition shall be deemed not to have been received, unless the Tribunal or Court otherwise orders.

**4.** (1) An election petition under this Act shall-

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by petitioner.

(2) The election petition shall be divided into paragraph each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively.

(3) The election petition shall further-

(a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast the election or that the election may be declared nullified, as the case may be; and

(b) be signed by the petitioner or all petitioners by the Solicitor, if any, named at the foot of the election petition.

(4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

(5) If an address for service is not stated as specified in sub-paragraph (4) of this paragraph, the petition shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.

(6) An election petition which does not conform to sub-paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the Tribunal or Court.

(7) The Form TF. 001 set out in Schedule 2 of this Act or one substantially like it shall be sufficient for the purpose of this paragraph.

**5**. Evidence need not to be stated in the election petition, but the Tribunal or Court may order such further particulars as may be necessary-

(a) to prevent surprise and unnecessary expense;

(b) to ensure fair and proper hearing in the same way as in a civil action in the Federal High Court; and

(c) on such terms as to costs or otherwise as may be ordered by the Tribunal or Court.

**6.** For the purpose of service of an election petition on the respondents the petitioner shall furnish the Secretary with the address of the respondents abode or the addresses of places where personal service can be effected on the respondents.

**7.** (1) On the presentation of an election petition and payment of the requisite fess, the Secretary shall forthwith-

(a) cause notice, in Form TF.003 set out in Second Schedule of this Act, of the presentation of the election petition, to be served on each of the respondent.

(b) post on the tribunal notice board a certified copy of the election petition; and

(c) set aside a certified copy for onward transmission to the person or person required by law to adjudicate and determine the election petition.

(2) In the notice of presentation of the election petition, the secretary shall state a time, not being less than five days but not more than seven days after the date of service of the notice, within which each of the respondents shall enter an appearance in respect of the election petition.

(3) In fixing the time within which the respondents are to enter appearance, the Secretary shall have regard to-

(a) the necessity for securing a speedy hearing of the election petition; and
(b) the distance from the Registry or the place of hearing to the address furnished under subparagraph (4) of paragraph 4 of this Schedule.

**8.** (1) Subject to sub- paragraph (2) and (3) of this paragraph, service on the respondents- (a) of the documents mentioned in sub-paragraph (1) (a) of paragraph 7 of this Schedule; (b) and of any other documents required to be served on them before entering appearance, shall be personal.

(2) Where the petitioner has furnished, under paragraph 6 of this Schedule, the addresses of the places where personal service can be effected on the respondents and the respondents or any of them cannot be found at the place or places the Tribunal or Court on being satisfied, on an application supported by an affidavit showing that all reasonable efforts have been made to effect personal service, may order that service of any document mentioned in sub-paragraph (1) of this paragraph be effected in any ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in Civil cases and that service shall be deemed to be equivalent to personal service.

**9.** (I) Where the respondent intends to oppose the election petition, he shall-within such time after being served or deemed to be served with the election petition; or where the Secretary has stated a time under sub-paragraph (2) of paragraph 7 of this Schedule, within such time as is stated by the Secretary, enter an appearance by filing in the Registry a memorandum of appearance stating that he intends to oppose the election petition and giving the name and address of the Solicitor, if any, representing him or stating that he acts for himself; as the case may be, and, in either case, giving an address for service at which documents intended for him may be left or served.

(2) If an address for service and its occupier~ are not stated, the memorandum of appearance shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.

(3) The memorandum of appearance which may be as in Form TF.004 set out in Second Schedule to this Act shall be signed by the respondent or his Solicitor, if any.

(4) At the time of filing the memorandum of appearance, the respondent or his Solicitor, as the case may be, shall-leave a copy of the memorandum of appearance for each; of the other parties to the election petition and three other copies of the memorandum to be presented by the Secretary and pay the fees for service as may be prescribed or directed

by the Secretary; and in default of the copies being left and the fees being paid at the time of filing the memorandum of appearance, the memorandum of appearance shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.

(5) A respondent who has a preliminary objection against the hearing of the election petition on grounds of law may file a conditional memorandum of appearance.

**10.** (l) If the respondent dose not file a memorandum of appearance as required under paragraph 9 of this Schedule, document intended for service on hi may be posted on die Tribuna1 notice board and that shall be sufficient notice of service of the document on the respondent.

(2) The non-filing of a memorandum of appearance shall, not bar the respondent from defending the election petition if the respondent files his reply to the election petition in the Registry within a reasonable time, but, in any, case, not later than twenty one (12) days from the receipt of the election petition.

**11.** The Secretary shall cause copies of the memorandum of appearance to be served on, or its notice to be given to the other parties to the election petition.

**12**. (1) The respondent shall, within fourteen (1) days of entering an appearance file in die Registry his reply, specifying in it which of facts alleged in the election petition he admits and which he denies, and setting out that facts on which he relies in opposition to the election petition.

(2) Where the respondent in an election petition, complaining of an undue return and claiming the seat or office for a petitioner intends to prove that the claim is incorrect or false, the respondent in his reply shall set out the facts and figures clearly and distinctly disproving the claim of the petitioner.

(3) The reply may be signed by respondent or the Solicitor. If any, him, if any

(4) At the time of filing the reply, the respondent or this Solicitor, if any, shall level with the Secretary copies of the reply for services on the other parties to the election petition with ten extra copies of the reply to be preserved by the Secretary, and pay the fees foe

service as may be prescribed or directed by the Secretary, and in default of leaving the required copies of the reply or paying the fees for service, the reply shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.

**13.** The Secretary shall cause a copy of the reply to be served on each of the other parties to the election petition.

**14.**(1) Subject to subparagraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election [petition or reply to the election petition as if for the words " nay proceedings" in those provisions there were substituted the words " the election petition or reply"

(2) After the expiry of the time limited by-

(a) section 154 of this Act for presenting the election petition, no amendment shall be made: (i) introducing any of the requirements of sub-paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or

(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition; or

(iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition and

(b) paragraph 12 of the Schedule for filing the reply, no amendment shall be made-

(i) alleging that the claim of the seat or office by the petitioner is incorrect or false ; or

(ii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.

**15.** When a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return at the election

shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed.

**16.** (l) If a person in his reply to the election petition raises new issues of facts in defense of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, ~thin five (5y days from the receipt of the respondent's reply, a petitioner's reply in answer to the new issues of fact, so however that (a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him (b) and the petitioner's reply does not run counter to the provisions of sub-paragraph (1) of paragraph 14 of this Schedule.

(2) The time limited by sub-paragraph (1) of this paragraph shall not be extended.

**17.** (1) If a party in an election petition wishes to have further particulars or other directions of the Tribunal or Court, he may, at any time after entry of appearance, but not later than ten days after the filing of the reply, apply to the Tribunal or Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Tribunal or Court otherwise orders, be set down for hearing on the first available day.

(2) If a party does not apply as provided in sub-paragraph (1) of this paragraph, he shall be taken to require no further particulars or other directions and the party shall be barred from so applying after the period laid down in sub-paragraph (1) of this paragraph has lapsed.

(3) Supply of further particulars under this paragraph shall not entitle the party to go beyond the ambit of supplying such further particulars as have been demanded by the other party, and embark on undue amendment of; or additions to, his petition or reply, contrary' to paragraph '4 of this Schedule.

**18.** Every election petition shall be heard and determined in an open tribunal or Court.

**19.** (l) Subject to the provisions of sub-paragraph (2) of this paragraph, the time and place of the hearing of an election petition shall be fixed by the Tribunal or Court

and notice of the time and place of the hearing, which maybe as in Form TF. 005 set out in Second Schedule of this Act, shall be given by the Secretary at least five days before the day fixed for the hearing by-

(a) posting the notice on the Tribunal notice board; and

(b) sending a copy of the notice by registered post or through a messenger to-

(i.) the petitioner's address for service;

(ii.) the respondents address for service, if any; or

(iii.) the Resident Electoral Commissioner or the Commission as the case may be;

(2) In fixing the place of hearing, the Tribunal or Court shall have due regard to the proximity to and accessibility from the place where the election was held.

**20.** The Resident Electoral Commissioner or Commission as the case may be shall publish the notice of hearing by causing a copy of the notice to be displayed in the place which was appointed for the delivery notice to be displayed in the place which was appointed for the delivery of nomination papers prior to the election or in some conspicuous place or places within the constituency, but failure to do so or any miscarriage of the copy of notice of hearing shall not affect the proceedings if it does not occasion injustice against any of the parties to the election petition.

**21**. The posting of the notice of hearing on the Tribunal notice board shall be deemed and taken to be good notice, and the notice shall not be vitiated by any miscarriage of the copy or copies of the notice sent pursuant to paragraph 19 of this Schedule.

**22.** (1) The Tribunal or Court may, from time to time, by order made on the application of a party to the election petition or at the instance of the Tribunal or Court, postpone the beginning of the hearing to such day as, the Tribunal or Court may consider appropriate, having regard at all times to the need for speedy conclusion of the hearing of the election petition.

(2) A copy of the order shall be sent by the Secretary by registered post or messenger to the Electoral Officer or the Resident Electoral Commissioner or the Commission who shall publish the order in the manner provided in paragraph 20 of this Schedule for

publishing the notice of hearing, but failure on the part of the Electoral Officer or Resident Electoral Commissioner or the Commission to publish the copy of the order of postponement shall not affect the proceedings in any manner whatsoever.

(3) The Secretary shall post or cause to be posted on the tribunal notice board a copy of the order,

(4) Where the Tribunal or Court gives an order of postponement at its own instance a copy of the order shall be sent by the Secretary by registered post, messenger to the address for service given by the petitioner and to the address for service, if any, given by the respondents or any of them.

(5) The provisions of paragraph 21 of this Schedule shall apply to an order or a notice of postponement as they do to the notice of hearing

**23**. If the Chairman of the Tribunal or Presiding Justice of the Court has not arrived at the appointed time for the hearing or at the time to which the hearing has been postponed, the hearing shall be by reason of that fact stand adjourned to the following day and so from day-to-day.

**24.** (1) No formal adjournment of the Tribunal or Court for the hearing an election petition shall be necessary, but the hearing shall be deemed adjourned and may be continued from day to day until the hearing is concluded unless the Tribunal or Court otherwise directs as the circumstances may dictate.

(2) If the Chairman of the Tribunal or the Presiding Justice of the Court who begins the hearing of an election petition is disabled by illness or otherwise, the hearing may be recommended and concluded by another Chairman of the Tribunal or Presiding Justice of the Court appointed by the appropriate authority.

**25.** (1) After the hearing of an election petition has begun if the inquiry cannot be continued on the ensuring day or, if that day is a Sunday or a Public holiday, on the day following the same, the hearing shall not be adjourned sine die but to a definite day to be announced before the rising of the Tribunal or Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the notice board. (2)

The hearing may be continued on a Saturday or a on public holiday if circumstances dictate.

(2) The hearing may be continued on a Saturday or a on public holiday if circumstances dictate.

**26.** (1) All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the Court who shall have control over the proceedings as a Judge in the Federal High Court.

(2) After hearing of the election petition is concluded, if the Tribunal or Court before which it was heard has prepared its judgment but the Chairman or the Presiding Justice is unable to deliver it due to illness or any other cause, the judgment may be delivered by one of the members, and the judgment as delivered shall be the judgment of the Tribunal or Court and the member shall certify the decision of the Tribunal or Court to the Resident Electoral Commissioner, or to the Commission.