

**PROBLEMS ASSOCIATED WITH SUBSTANTIAL COMPLIANCE DOCTRINE IN ELECTION PETITION CASES IN NIGERIA\***

**Abstract**

*The substantial compliance doctrine refers to a legal principle used in Nigerian election petition cases to determine whether an election should be nullified due to non-compliance with electoral laws. It holds that an election should not be invalidated if the non-compliance is not severe enough to affect the overall outcome of the election. Under this doctrine, the election must have substantially complied with the relevant provisions of the electoral laws, even if there were minor irregularities. The key statute guiding this principle is Section 135(1) of the Electoral Act<sup>1</sup> which provides that an election shall not be liable to be invalidated by reason of non – compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non – compliance did not affect substantially the result of the election. While the doctrine aims to prevent unnecessary election annulments over trivial breaches, it is not without challenges or problems. The application of substantial compliance doctrine in election petitions presents several problems. These problems often involve judicial discretion, inconsistent interpretations, and potential for abuse. In this article, the writer has identified these problems. It is anticipated that this article will open flood gates of discussions on the topic. This will go a long way in strengthening our democracy.*

**Keywords:** Problems, substantial compliance, election petition, cases

**1. Introduction**

The doctrine of substantial compliance in Nigerian election petition cases is a double-edged sword. While it prevents the invalidation of elections for minor errors, its subjective nature, lack of clear guidelines, and potential for inconsistent application create significant challenges/problems. Petitioners, courts, and the electorates alike are often left in a state of uncertainty about what constitutes substantial non-compliance, leading to legal complexities and undermining the credibility of the electoral process. While the substantial compliance doctrine is a critical part of Nigerian electoral law, it presents significant challenges, including ambiguity, inconsistent judicial interpretation, and a high burden of proof on petitioners. These issues can result in outcomes that undermine public trust in the fairness and transparency of elections. Addressing these problems may require clearer legal definitions and more consistent application by the courts to ensure a fair balance between maintaining electoral integrity and avoiding unnecessary annulments. In this article, the writer looks at the problems associated with substantial compliance doctrine in election petition cases in Nigeria. Such problems like ambiguity and lack of clear definition, judicial discretion and inconsistency, uncertainty and increased litigation, potential for judicial bias, difficulty in proving substantial non – compliance, impact on electoral integrity and tension between legal formalism and practical realism were thoroughly examined. This article will open flood gates of discussions on the topic and it will go a long way in deepening our democracy.

**2. Meaning of Election Petition in Nigeria**

An election petition is a formal legal process through which the validity of an election result can be challenged in court. Under Nigerian law, it provides a mechanism for aggrieved candidates or political parties to contest the conduct, results, or qualification of the winner in an election. Election petitions are distinct from regular lawsuits, as they are governed by special rules, timelines, and procedures due to their critical role in safeguarding the integrity of the electoral process. In Nigerian jurisprudence, election petitions serve as a vital tool in ensuring accountability and transparency in elections. Grounds for filing an election petition typically include: (1) Non-compliance with the Electoral Act: This could involve failure to adhere to election procedures, such as improper use of voting technology or irregularities in the collation of results. (2) Corrupt practices: Allegations of vote-buying, violence, or undue influence can be raised in election petitions. (3) Disqualification of a candidate: An election can be challenged if it is proven that the declared winner was not qualified to contest, based on factors such as age, citizenship, or criminal records. (4) Election malpractice or rigging: Election petitions can allege that the outcome was manipulated through ballot stuffing, multiple voting, or other forms of malpractice.

Election petitions are typically adjudicated by Election Petition Tribunals/Courts, which are established under the Nigerian Constitution and the Electoral Act. Appeals from the decisions of these tribunals/courts may be taken to the Court of Appeal, and in some instances, the Supreme Court. In *Atiku Abubakar v Buhari*,<sup>2</sup> Atiku Abubakar of the People's Democratic Party (PDP) filed an election petition challenging the 2019 presidential election, which declared Muhammadu Buhari of the All Progressives Congress (APC) as the winner. Atiku alleged that there were widespread irregularities and that INEC's failure to transmit results electronically violated the provisions of the

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<sup>1</sup> Electoral Act (No. 15 of 2022).

<sup>2</sup>(2019) LPELR-48113(SC).

Electoral Act. The Election Petition Tribunal and subsequently the Supreme Court dismissed the petition, affirming Buhari's election and holding that the petitioner failed to provide sufficient evidence of substantial non-compliance with the law. Section 132(7) of the Electoral Act 2022 provides that any person who is aggrieved by the outcome of an election may present a petition to an Election Tribunal or Court within 21 days after the date of the declaration of the result of the election. See also *Buhari v INEC*<sup>3</sup> and *Wike v Peterside*.<sup>4</sup> Section 134 of the Electoral Act 2022 outlines the grounds upon which an election may be challenged through a petition, including corrupt practices, non-compliance with electoral laws, and disqualification of the winner. In *Fayemi v Oni*,<sup>5</sup> Dr. Kayode Fayemi of the Action Congress of Nigeria (ACN) challenged the declaration of Segun Oni of the People's Democratic Party (PDP) as the winner of the 2007 Ekiti State governorship election. Fayemi filed an election petition alleging that the election was marred by widespread irregularities, vote manipulation, and non-compliance with electoral laws. The Election Petition Tribunal ruled in favour of Fayemi, annulling Oni's election. This judgment was upheld by the Court of Appeal, which declared Fayemi the duly elected governor of Ekiti State. See *Peter Obi v. INEC*.<sup>6</sup> Election petitions play a crucial role in Nigerian electoral jurisprudence by providing a mechanism for challenging the validity of election results.

### **3. Meaning of Substantial Compliance in Election Petition Cases in Nigeria**

Substantial compliance in the context of election petitions in Nigeria refers to a situation where, despite minor deviations from the procedural requirements set by law, the essence of the legal requirements is met in a way that does not undermine the integrity of the electoral process. The principle emphasizes that procedural irregularities or minor errors should not invalidate an election result if the essential elements of the process have been substantially followed. The principle of substantial compliance is primarily guided by the Electoral Act, 2022<sup>7</sup> which provides that certain defects should not invalidate election. The concept of substantial compliance in election petitions in Nigeria is shaped by a combination of statutory provisions, judicial precedents, and principles of electoral law. This framework aims to ensure that minor procedural errors do not unduly disrupt the electoral process or invalidate an election result if the core requirements have been substantially met. The focus on substantial compliance emerges from judicial interpretations rather than a direct statutory provision.

### **4. Perspectives of Substantial Compliance**

The doctrine of substantial compliance is aimed to balance between technical breaches of electoral laws and upholding the will of the electorate where the irregularities are insignificant to the overall result. The theories of doctrine of substantial compliance in Nigerian electoral process are as follows:

#### **Substantial Compliance**

The doctrine of substantial compliance is rooted in the idea that elections are primarily about the expression of the will of the people. As long as the core objective of an election, that is, the reflection of the voters' will, is met, the courts may overlook minor procedural irregularities. This theory promotes electoral stability by ensuring that not every procedural flaw results in the invalidation of the election. In *Buhari v INEC*<sup>8</sup> General Muhammadu Buhari, the presidential candidate, challenged the 2007 election results, alleging massive irregularities. The Supreme Court upheld the election, stating that there was substantial compliance with the Electoral Act 2006 despite some irregularities. The court held that the petitioner must prove not just that irregularities occurred, but that they were substantial enough to have affected the result of the election. The mere existence of irregularities was insufficient to overturn an election. In this case, the doctrine of substantial compliance was affirmed by the court as essential for the stability of elections, ensuring that only significant breaches lead to nullification.

#### **Electoral Integrity**

This theory posits that substantial compliance is necessary to uphold the integrity of elections. It emphasizes that procedural adherence guarantees fairness but allows flexibility for minor deviations that do not undermine the overall election result. In *Atiku Abubakar v INEC*,<sup>9</sup> the petitioner, Atiku Abubakar, challenged the 2019 presidential election, alleging widespread non-compliance with the Electoral Act, particularly concerning the transmission of results electronically. The court ruled that despite some irregularities, the election was conducted in substantial compliance with the law, and the irregularities did not substantially affect the outcome. The court reaffirmed the need to establish that the non-compliance was of such magnitude that it affected the result. The mere presence of irregularities or procedural flaws was not enough. The judgment in this case demonstrates the importance of balancing electoral integrity with practical flexibility, ensuring that technicalities do not nullify the genuine expression of voters' will.

<sup>3</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>4</sup> (2015) 17 NWLR (Pt 1485) 209.

<sup>5</sup> (2010) 17 NWLR (Pt 1222) 326.

<sup>6</sup> (2007) 11 NWLR (Pt 1046) 565.

<sup>7</sup> See section 135 of the Electoral Act (No. 15 of 2022).

<sup>8</sup> (2019) 8 NWLR (Pt 1674) 217.

<sup>9</sup> (2019) 5 NWLR (Pt 1670) 1.

### **Materiality**

This theory emphasizes the materiality of the non-compliance. It asks whether the irregularity materially affected the result of the election. Courts focus on the outcome, and where the irregularities are proven to be minor or immaterial to the result, the election stands. In *Wike v Peterside*,<sup>10</sup> Nyesom Wike, the governor of Rivers State, was challenged by Dakuku Peterside over alleged widespread violence, ballot snatching, and voter intimidation in the 2015 gubernatorial election. The tribunal annulled the election, but the Supreme Court reversed this decision, holding that the petitioner failed to prove that the irregularities affected the result. The Supreme Court held that an election should not be invalidated for every irregularity. The petitioner must show that the irregularities were so widespread that they materially affected the outcome. The decision stresses the materiality of irregularities, reinforcing that only significant breaches impacting the results can justify nullification.

### **Non-Punitive Approach**

This theory suggests that the substantial compliance doctrine prevents the court from adopting a punitive approach to election petitions. Rather than focusing on penalizing every breach of procedure, the court should focus on whether justice is done, that is, whether the election outcome truly reflects the will of the electorates. In *Oshiomhole v INEC*,<sup>11</sup> Adams Oshiomhole challenged the result of the 2007 Edo State gubernatorial election, citing widespread rigging and irregularities. The tribunal found in his favour, and the Court of Appeal affirmed this, holding that the non-compliance with the electoral law was substantial enough to have affected the outcome. The Court held that the purpose of electoral law is not punitive but corrective. Thus, only when non-compliance substantially affects the result should it lead to the annulment of the election. This judgment illustrates the non-punitive perspective, affirming that courts should not annul elections based on procedural irregularities unless the breach distorts the electoral outcome.

### **Voter Representation**

This theory is based on the understanding that elections are a means to represent the will of the people, and the substantial compliance doctrine ensures that minor irregularities do not obstruct this representation. It focuses on the fairness and transparency of the overall process. In *INEC v Oguebego*,<sup>12</sup> there was a dispute regarding the authenticity of the list of candidates submitted by political parties. The Supreme Court held that where the process allowed the electorates to express their will, even if there were disputes over party nominations, the election result should stand unless there was proof of significant non-compliance that affected the outcome. The Supreme Court reinforced that the primary concern of electoral laws is to reflect the will of the electorates and that minor irregularities in the process of candidate nomination did not affect the expression of voters' will. This case highlights the significance of voter representation, underscoring that procedural flaws that do not distort the electorate's intent should not invalidate elections.

## **5. History of Substantial Compliance in Electoral Process in Nigeria**

Below is an outline of its historical evolution.

### **Early Development and the Pre-Independence Era**

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

### **Post-Independence Era and the Emergence of Substantial Compliance**

After independence, Nigeria adopted its own Constitution and electoral laws, which gradually moved away from rigid adherence to technical compliance. The focus shifted towards ensuring that elections reflected the will of the people, even if minor irregularities occurred. This era saw the first signs of the substantial compliance doctrine taking shape. In *Awolowo v Shagari*,<sup>13</sup> Chief Obafemi Awolowo challenged the election of Shehu Shagari as President of Nigeria in 1979, arguing that Shagari did not meet the constitutional requirement of securing one-quarter of the votes in two-thirds of Nigeria's then 19 States. The Supreme Court ruled that while there were irregularities, they did not substantially affect the outcome of the election, thus affirming Shagari's victory. This landmark case marked the beginning of the substantial compliance doctrine, as the court moved away from strict legal formalism and began emphasizing the overall integrity of the electoral process over technical breaches.

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<sup>10</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>11</sup> (2009) 4 NWLR (Pt 1132) 607.

<sup>12</sup> (2015) 18 NWLR (Pt 1491) 273.

<sup>13</sup> (1979) 6-9 SC 51.

### **Doctrine of Substantial Compliance Gains Prominence**

In the 1999 democratic transition, following years of military rule, Nigeria's electoral system underwent significant reforms. The 1999 Constitution<sup>14</sup> and the Electoral Act 2002 were introduced to guide elections. The doctrine of substantial compliance began to feature more prominently in judicial decisions as courts were tasked with interpreting these new laws in the context of electoral disputes. In *Buhari v Obasanjo*,<sup>15</sup> Muhammadu Buhari, the presidential candidate of the All Nigeria Peoples Party (ANPP), challenged the election of President Olusegun Obasanjo in the 2003 election, alleging widespread irregularities. The Supreme Court upheld Obasanjo's election, holding that while there were irregularities, they did not substantially affect the overall outcome. This case solidified the substantial compliance doctrine, as the court held that only irregularities that significantly impacted the election results could warrant nullification, emphasizing the will of the electorates over procedural defects.

### **Refinement of the Doctrine in the Electoral Act 2010**

With the introduction of the Electoral Act 2010, the substantial compliance doctrine was given a clearer statutory basis. The Act specified that an election would only be invalidated if non-compliance with the law substantially affected the result. This marked a significant turning point in the legal treatment of electoral disputes. Section 139(1)<sup>16</sup> provides that no election shall be invalidated by reason of non-compliance with the Electoral Act unless it is proven that such non-compliance substantially affected the result of the election. The inclusion of this provision codified the substantial compliance doctrine, shifting the burden of proof to the petitioner to demonstrate that irregularities materially impacted the election.

### **Post-2010 Period: Greater Reliance on Substantial Compliance**

Following the 2010 Electoral Act amendment, courts increasingly relied on the substantial compliance doctrine to adjudicate electoral disputes. The doctrine became a safeguard against annulling elections over minor procedural errors, ensuring the stability of the political process. In *Oshiomhole v INEC*,<sup>17</sup> Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, alleging widespread rigging. The Court of Appeal annulled the election, finding that the irregularities were substantial enough to affect the outcome. Oshiomhole was declared the winner after a re-run election. This case exemplifies the application of substantial compliance, as the court acknowledged that not all irregularities warrant annulment but determined that the irregularities in this case were substantial.

### **Modern Application: Substantial Compliance and the 2019 General Elections**

The 2019 general elections saw further reliance on the doctrine of substantial compliance, particularly in the presidential election petitions. Courts used the doctrine to uphold the results of elections despite allegations of procedural breaches, focusing on whether such breaches affected the outcome. In *Atiku Abubakar v INEC*,<sup>18</sup> Atiku Abubakar challenged the victory of President Muhammadu Buhari in the 2019 election, alleging irregularities such as failure to electronically transmit results and voter suppression. The court held that while there were irregularities, they did not substantially affect the overall result. This case reaffirms the court's reliance on substantial compliance, as it dismissed the petition on the grounds that the irregularities cited were not significant enough to alter the election outcome.

### **Recent Legislative Reforms: Electoral Act 2022**

The enactment of the Electoral Act 2022 introduced several reforms aimed at addressing issues in the electoral process, including electronic transmission of results and improved safeguards against irregularities. The doctrine of substantial compliance continues to be a key aspect of resolving electoral disputes, though recent legal reforms aim to reduce the occurrence of irregularities in the first place. Section 134<sup>19</sup> emphasizes that an election will only be invalidated if the petitioner proves non-compliance with the law and demonstrates that such non-compliance substantially affected the result of the election. It also introduces new guidelines for the conduct of elections and transmission of results, aiming to minimize the likelihood of procedural errors. The 2022 Electoral Act continues to uphold the doctrine of substantial compliance, but with a stronger emphasis on technological transparency and procedural integrity, reflecting the evolving nature of electoral processes in Nigeria. The substantial compliance doctrine continues to be a crucial tool in preserving the integrity of elections while maintaining stability in governance, with courts applying it to ensure that electoral outcomes reflect the will of the electorate despite minor irregularities.

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<sup>14</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>15</sup> (2005) 2 NWLR (Pt 910) 241.

<sup>16</sup> Electoral Act 2010 (as amended).

<sup>17</sup> (2009) 4 NWLR (Pt 1132) 607.

<sup>18</sup> (2019) 5 NWLR (Pt 1674) 217.

<sup>19</sup> Electoral Act 2022.

## **6. Problems associated with the Substantial Compliance Doctrine in Nigeria**

### **Ambiguity in the Definition of Substantial Compliance**

One of the most significant issues with substantial compliance doctrine is the lack of a clear-cut definition of what constitutes 'substantial compliance.' The term is inherently vague and allows for wide judicial discretion, leading to inconsistent interpretations and unpredictable outcomes in election petition cases. In *Buhari v INEC*,<sup>20</sup> Muhammadu Buhari challenged the 2007 presidential election, alleging widespread irregularities and non-compliance with the Electoral Act. The Supreme Court held that while there were irregularities, they did not substantially affect the outcome of the election. The ambiguity surrounding 'substantial' non-compliance was a key factor in the court's ruling. Buhari contended that the conduct of the election by the Independent National Electoral Commission (INEC) was marred by gross irregularities, including inflation of votes in some regions and the failure to use appropriate electoral materials. However, the court maintained that the irregularities did not significantly alter the overall result.

### **Judicial Discretion and Inconsistency**

The doctrine gives tribunals and courts wide latitude in determining what constitutes substantial compliance. This often leads to inconsistency in rulings, even in similar cases, resulting in an unpredictable legal landscape. In *Peter Obi v INEC*,<sup>21</sup> the petitioner successfully argued that non-compliance with the Electoral Act in the Anambra State gubernatorial election affected the outcome. The election was annulled due to widespread irregularities, including missing election materials. Peter Obi, contesting for governor of Anambra State, argued that there was substantial non-compliance in the conduct of the election, as INEC failed to ensure that elections were held in several constituencies. The court ruled in his favour, declaring the election invalid. Also, in *Wike v Peterside*,<sup>22</sup> the election of Nyesom Wike as governor of Rivers State was annulled by the tribunal due to non-compliance with the use of card readers. However, the Court of Appeal and the Supreme Court reinstated the election, ruling that non-compliance with card reader guidelines did not substantially affect the outcome. The uncertainty regarding what constitutes 'substantial non-compliance' has led to a rise in election petition cases. Many candidates feel compelled to challenge election results, believing that they have a chance to convince the court that the irregularities affected the outcome of the elections. In *Ojukwu v Yar'Adua*,<sup>23</sup> Dim Chukwuemeka Ojukwu filed a petition challenging the outcome of the 2007 presidential election, alleging widespread electoral malpractice. However, the Supreme Court held that the irregularities were not substantial enough to warrant the annulment of the election. Ojukwu alleged that the election was fraught with irregularities, such as ballot stuffing and falsification of results. However, the court found that while there were infractions, they did not materially affect the outcome of the election.

### **Burden of Proof on Petitioners**

The burden of proving substantial non-compliance rests heavily on the petitioner. This requires significant resources and evidence, which many petitioners lack, especially in cases involving widespread or systemic irregularities. In *Ngige v Obi*,<sup>24</sup> Chris Ngige contested the Anambra State gubernatorial election, alleging substantial non-compliance. The court ruled in favour of Peter Obi, who presented sufficient evidence to show that the irregularities affected the outcome. Peter Obi was able to provide detailed evidence of missing ballots, election materials, and voter suppression in several regions, leading to the court's conclusion that the irregularities were substantial. Also, *Buhari v Obasanjo*<sup>25</sup> is another example where the petitioner, Buhari, was unable to present sufficient evidence to prove that the alleged non-compliance substantially affected the election.

### **Potential for Judicial Bias**

The wide latitude of discretion afforded by the doctrine can lead to allegations of judicial bias or political interference, particularly in high-profile election cases involving prominent political actors. In *Awolowo v Shagari*,<sup>26</sup> Chief Obafemi Awolowo challenged the election of Shehu Shagari, alleging non-compliance with electoral laws. The Supreme Court ruled in favour of Shagari, a decision that was widely criticized as being politically motivated. Awolowo argued that Shagari's election was marred by irregularities, including falsification of results. Despite evidence of these irregularities, the court ruled that they did not affect the outcome and upheld Shagari's victory.

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<sup>20</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>21</sup> (2007) 11 NWLR (Pt 1046) 565.

<sup>22</sup> (2015) 7 NWLR (Pt 1483) 533.

<sup>23</sup> (2008) 12 NWLR (Pt 1049) 507.

<sup>24</sup> (2006) 14 NWLR (Pt 999) 1.

<sup>25</sup> (2003) 17 NWLR (Pt 850) 587.

<sup>26</sup> (1979) 6-9 SC 51.

### **Undermining Electoral Integrity**

The doctrine can sometimes undermine the integrity of elections by allowing results marred by significant irregularities to stand. This can erode public trust in the electoral process, particularly when courts uphold elections despite substantial evidence of malpractice. See *Wike v Peterside*<sup>27</sup> Nyesom Wike's election as Governor of Rivers State was challenged by Dakuku Peterside, who alleged widespread violence and voter intimidation. While the election tribunal annulled the election, the Supreme Court reversed the decision, ruling that the irregularities were not substantial enough to affect the outcome. This case demonstrates the ongoing challenges in applying the substantial compliance doctrine, particularly when the judiciary is faced with significant but arguably not 'substantial' irregularities.

### **7. Factors behind the problems associated with the Substantial Compliance Doctrine in Election Petition Cases in Nigeria**

The substantial compliance doctrine is rooted in the idea of balancing procedural technicalities with the overall fairness of elections. The central theory is that elections should not be annulled based on minor infractions unless those infractions significantly affect the outcome. However, various theories highlight the problems associated with this doctrine in Nigerian election petitions. The theories are:

#### **Procedural Justice**

Procedural justice emphasizes fairness in the processes leading to an outcome. The substantial compliance doctrine attempts to ensure that elections are evaluated based on the overall process rather than specific procedural breaches. However, this raises the problem of inconsistency because different courts may interpret what constitutes 'substantial' compliance differently. In *Aregbesola v Oyinlola*,<sup>28</sup> the Court of Appeal found that there was non-compliance with the Electoral Act in Osun State's 2007 gubernatorial election, specifically in relation to issues such as ballot stuffing and failure to follow due procedure. The court determined that these breaches were substantial enough to invalidate the election. The key issue was whether these irregularities were sufficient to affect the election outcome, and the court held that they were. In *PDP v INEC*,<sup>29</sup> where the issue of non-compliance with ballot procedures was deemed significant but not enough to warrant the annulment of the election. Section 135(1) of the Electoral Act, 2022, states that an election result shall not be invalidated unless it is proven that non-compliance affected the result of the election. Section 135(1) of the Electoral Act, 2022 emphasizes the need for proof that non-compliance materially affected the election outcome.

#### **Legal Realism**

Legal realism posits that judicial decisions are often influenced by the broader social, political, and moral contexts rather than strict legal rules. The broad judicial discretion allowed under the substantial compliance doctrine can lead to subjective interpretations, causing inconsistencies in rulings. This raises concerns about fairness and impartiality in politically charged cases. In *Buhari v Obasanjo*,<sup>30</sup> Muhammadu Buhari challenged Olusegun Obasanjo's 2003 presidential election victory, citing substantial non-compliance with the Electoral Act. The Supreme Court upheld Obasanjo's victory, stating that although there were irregularities, they were not enough to affect the overall result. The court placed significant emphasis on the doctrine of substantial compliance, despite allegations of widespread irregularities. In *Wike v Peterside*<sup>31</sup> the Court of Appeal nullified Governor Nyesom Wike's election in Rivers State due to violence and massive irregularities, later reversed by the Supreme Court under the substantial compliance doctrine. Section 135(1) of the Electoral Act 2022<sup>32</sup> requires that the petitioner must show that the non-compliance significantly affected the election result. The discretionary nature of judicial interpretation in cases like *Buhari v Obasanjo*<sup>33</sup> reflects how substantial compliance can be inconsistently applied based on external factors, highlighting a key issue with the doctrine.

#### **Democratic Legitimacy**

Democratic legitimacy asserts that the validity of elections rests on the public's perception that they are free and fair. The substantial compliance doctrine, when applied leniently, can undermine this perception if it allows elections tainted by irregularities to stand. In *Peter Obi v. INEC*,<sup>34</sup> Peter Obi challenged the election results for the Anambra governorship, arguing that substantial non-compliance with the Electoral Act occurred. The Court of Appeal annulled the election due to widespread irregularities that undermined the legitimacy of the process. The court emphasized the need for elections to reflect the true will of the people and that the non-compliance was

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<sup>27</sup> *Supra*.

<sup>28</sup> (2011) 14 NWLR (Pt 1269) 353.

<sup>29</sup> (2008) 17 NWLR (Pt 1115) 206; (2008) 12 SC (Pt II) 162.

<sup>30</sup> (2005) 13 NWLR (Pt 941) 1; (2005) 18 SC (Pt 1) 1.

<sup>31</sup> *Supra*.

<sup>32</sup> This is in *pari materia* with section 139(1) of the Electoral Act 2010.

<sup>33</sup> *Supra*.

<sup>34</sup> (2007) 11 NWLR (Pt 1046) 565.

significant enough to warrant annulment. Also, in *Adeleke v Oyetola*,<sup>35</sup> where the Court of Appeal upheld the election result despite allegations of significant procedural breaches, citing the doctrine of substantial compliance. Section 135(1) of the Electoral Act 2022 underlines that substantial non-compliance must affect the election result to annul an election. Democratic legitimacy can be eroded when courts overlook significant irregularities under the guise of substantial compliance, as seen in cases like *Adeleke v Oyetola*.<sup>36</sup>

### **Burden of Proof**

This highlights the complexity and difficulty of the burden of proof placed on petitioners under the substantial compliance doctrine. The requirement for petitioners to not only show non-compliance but also prove that the non-compliance affected the result creates a legal hurdle that is often insurmountable. In *Atiku Abubakar v INEC*,<sup>37</sup> Atiku Abubakar contested the 2019 presidential election, citing non-compliance with the Electoral Act in the conduct of the election. The Supreme Court ruled against him, stating that he failed to meet the burden of proof to show that the irregularities substantially affected the election outcome. Although there were multiple allegations of non-compliance, the petitioner could not provide sufficient evidence to meet the burden of proof required by the substantial compliance doctrine. Also, in *Fayemi v Oni*,<sup>38</sup> where the petitioner's ability to meet the burden of proof on substantial non-compliance led to the annulment of the election. Section 135(1) of the Electoral Act 2022 requires petitioners to prove that non-compliance substantially affected the election. *Atiku v INEC*<sup>39</sup> reflects how the heavy burden of proof on petitioners can become a barrier to achieving justice in election petitions under the substantial compliance doctrine.

### **Electoral Integrity**

This concerns the overall integrity of the electoral process. When the substantial compliance doctrine is applied in a way that tolerates significant procedural breaches, it raises questions about the integrity of the election process itself. It can result in public distrust, as citizens may feel that elections are rigged or influenced by irregularities. In *INEC v Oshiomhole*,<sup>40</sup> the Court of Appeal nullified the election of Oserheimen Osunbor and declared Adams Oshiomhole as the rightful winner of the Edo State governorship election. The court found that there was substantial non-compliance with the Electoral Act, including widespread violence and ballot manipulation. The court emphasized that electoral integrity could not be upheld if such widespread irregularities were overlooked. In *Agbaje v Ambode*,<sup>41</sup> where the petitioner's challenge was dismissed despite allegations of procedural non-compliance, which the court deemed not substantial enough. Section 135(1) of the Electoral Act guides the determination of whether non-compliance affects electoral integrity. The theory of electoral integrity underscores cases like *INEC v Oshiomhole*,<sup>42</sup> where the annulment was seen as essential to preserving public trust in the process.

## **8. Some notable decided Cases based on the Doctrine of Substantial Compliance in Nigerian Election Petition Cases**

In recent years, the doctrine has been criticized for creating inconsistencies in judicial decisions. The lack of a clear definition of what constitutes 'substantial' has led to varying interpretations, which sometimes result in conflicting judgments at different levels of the judiciary.<sup>43</sup>

***Ogbuabor v Ogbu***.<sup>44</sup> In this case the appellant challenged the election results based on irregularities in the conduct of the election. The tribunal dismissed the petition, arguing that the irregularities were minor and did not affect the overall outcome of the election. On appeal to the Supreme Court, the Supreme Court held that for an election to be invalidated on the grounds of non-compliance with the Electoral Act, the non-compliance must be substantial and not merely procedural. The court emphasized that substantial compliance is sufficient to uphold the election result if the core requirements were met.

***Dare v Afolabi***.<sup>45</sup> The petitioner in this case alleged that the election process was marred by procedural flaws. The tribunal found some procedural errors but ruled that these did not substantially affect the outcome of the election. On appeal to the Supreme Court, the Supreme Court affirmed the tribunal's decision, reinforcing that minor procedural errors do not automatically invalidate an election. The court emphasized that substantial compliance

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<sup>35</sup> (2015) 7 NWLR (Pt 1483) 533.

<sup>36</sup> *Supra*.

<sup>37</sup> *Supra*.

<sup>38</sup> (2010) 14 NWLR (Pt 1210) 1.

<sup>39</sup> *Supra*.

<sup>40</sup> (2008) 15 NWLR (Pt 1109) 131.

<sup>41</sup> (2015) 15 NWLR (Pt 1481) 314.

<sup>42</sup> *Supra*.

<sup>43</sup> *Wike v Peterside Supra*.

<sup>44</sup> (2015) LPELR-25868(SC).

<sup>45</sup> (2018) LPELR-44359(SC).

with the electoral laws is enough to sustain an election result unless the errors are grave enough to impact the integrity of the election.

***Ikpeazu v Otti.***<sup>46</sup> The petitioner contested the election on the grounds of numerous procedural lapses, including issues with the conduct of the election and documentation. The tribunal reviewed whether these lapses were substantial enough to affect the result of the election. The Supreme Court held that while procedural errors were present, they did not constitute a substantial breach affecting the election's outcome. The court applied the principle of substantial compliance, affirming that the election result was valid because the core electoral requirements were observed.

***Makarfi v Sheriff.***<sup>47</sup> This case dealt with internal party elections where allegations of procedural deviations were made. The petitioner claimed that these deviations significantly affected the election's legitimacy. The Court of Appeal examined whether the deviations were substantial or merely procedural. The Court of Appeal upheld the election results, applying the principle of substantial compliance. The court determined that the deviations were procedural and did not impact the overall integrity of the election. The judgment reinforced that substantial compliance with procedural requirements is sufficient to validate the election.

***Bola Tinubu v Olusola Oke.***<sup>48</sup> The petitioner challenged the election results on grounds of procedural flaws, including issues with the recording and declaration of results. The Supreme Court reviewed whether these flaws were significant enough to affect the election's outcome. The Supreme Court upheld the election results, emphasizing that the procedural flaws were minor and did not affect the election outcome. The court applied the principle of substantial compliance, reinforcing that the election process was valid despite minor errors. The principle of substantial compliance ensures that elections are not invalidated by minor errors or procedural lapses, thus upholding the democratic process while ensuring that the core requirements are met.

## **9. Conclusion**

The doctrine of substantial compliance is deemed essential in Nigerian electoral jurisprudence as it upholds electoral stability while ensuring that the will of the people is respected. It reflects a balanced approach where minor irregularities do not automatically lead to the nullification of election results unless they substantially affect the outcome. This doctrine is supported by numerous case laws and statutory provisions that guide Nigerian courts in election dispute resolution. The problem with this doctrine is that there is no yardstick to measure this doctrine and the politicians have utilized this loophole to perpetuate all forms of electoral malpractices including violence during elections. The doctrine unintentionally encourages electoral malpractices, undermining the overall integrity of elections and democracy in general. The doctrine equally leads to such problems like judicial discretion and inconsistency, uncertainty and increased litigation, potential for judicial bias, difficulty in proving substantial non-compliance, impact on electoral integrity and tension between legal formalism and practical realism.

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<sup>46</sup> (2016) LPELR-40484(SC).

<sup>47</sup> (2017) LPELR-41922(CA).

<sup>48</sup> (2022) LPELR-59470(SC).