

**AN EXAMINATION OF THE BURDEN, STANDARD OF PROOF AND COMPETENT
PARTIES IN ELECTORAL MATTERS UNDER THE ELECTORAL ACT 2022.**

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2019/LW/12338**

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OCTOBER, 2024

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**BEING A PROJECT SUBMITTED TO THE FACULTY OF LAW, ALEX EKWUEME
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APPROVAL

The Long Essay titled “An Examination of The Burden, Standard of Proof and Competent Parties in Electoral Matters under the Electoral Act 2022” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo.

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CERTIFICATION

This is to certify that this long essay titled “An Examination of The Burden, Standard of Proof and Competent Parties in Electoral Matters under the Electoral Act 2022” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Ifeanaonwu Rosemary Kosiso, with registration number: 2019/LW/12338 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr.C.CItuma.

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DEDICATION

This research work is dedicated to God Almighty for His love, mercies and grace all throughout my undergraduate days and to my family, my lovely parents for their support and encouragement throughout the period of my LL. B journey.

Finally, I dedicate this work to all researchers who have gone before me and those that will come after me.

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UN-	United Nations
Cap-	Chapter
Pt-	Part
P-	Page
LFN-	Laws of the Federation of Nigeria
NCLR-	Nigeria Constitutional Law Report
NWLR –	Nigeria Weekly Law Report
SCJN-	Supreme Court of Nigeria Judgment
All FWLR –	All Federation Weekly Law Report
All NLR-	All Nigeria Law Report
CHR-	Chancery Report
SACLR-	South Africa Constitutional Law Report
PLC-	Public Limited Company
Ltd-	Limited
SC-	Supreme Court

AC-

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ABSTRACT

From time immemorial, conducting of Free and fair elections gives incentives to the advancement of democracy in any given country as it gives the citizens the leverage to select leaders of their choice. In Nigeria for instance, elections are likened to a crime prone exercise where electorates right to select their leaders are truncated by a lot out irregularities like violence, vote buying among other vices. This leaves one whose mandate is stolen, to seek remedy at the court of law. The judiciary has always provided a last port of call when the right of the electorates to free and fair has been breached. In Nigeria, like other jurisdictions, election petition is widely known and acceptable legal means of expressing contestant's dissatisfaction with an election result as declared. Not only may an election result be challenged by petition, flawed processes of nomination of a candidate for an election can also leads to replacement of a wrongly filed candidate with the right one. There is indeed a heavy dose of public policy content involved in election petition and that is also why both the constitution and the Electoral Act have made elaborate provisions to ensure free and fair elections. The burden and standard of proof in relation to election petition without criminal allegation is in tandem with the extent Evidence Act, as election petition is *sui generis*. This study critically appraised burden and standard of proof in election matters in Nigeria, it used doctrinal research method and analyzed standard of proof in election matters. In the course of this research, we discovered among others that the standard of proof in election petitions where crime is on the balance of probability as stipulated in Section 135(1) of the Evidence Act. We recommended among others that that the Supreme Court when faced with the interpretation of provision of the law as regards election matters should adopt a liberal judicial attitude that allows the aggrieved persons to be heard rather than a strict interpretation that slams the door of the court against the litigants. The research work concluded that in every election circle in Nigeria, the electorates and not really the politicians end up being the victims of electoral fraud through the diabolical imposition of unpopular candidates on the electorates by a few individuals who stand to benefit themselves from the loyalty of such candidates.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The Nigerian Electoral Act 2022 provides a comprehensive framework for handling electoral disputes. This framework specifies the onus of proof, the basis upon which that proof can be said to have been discharged, and the competent parties in electoral matters. The burden of proof lies on the petitioner who challenges the conduct or results of an election. This principle is consistent with general legal principles where the party making an assertion has the responsibility to prove it¹.

An election petition shall be proved by cogent, credible, and compelling evidence², this means that the petitioner must present sufficient evidence to convince the tribunal or court that the election was not conducted in substantial compliance with the law, and that the non-compliance affected the result of the election. The Electoral Act 2022 does not explicitly redefine the burden of proof from previous legal principles but follows established judicial interpretations. In *Buhari v. INEC*³, the Supreme Court held that the petitioner has the burden of proving that non-compliance with the Electoral Act substantially affected the election results⁴.

The standard of proof in electoral matters under the Electoral Act 2022 is designed to ensure that elections are not overturned on frivolous grounds. The petitioner must meet a higher threshold than in ordinary civil cases. This aims at preserving the sincerity of the electoral process while ensuring

¹ Evidence Act Cap. E14 LFN 2011, S 132.

² Electoral Act 2022, S 136 (1)

³ *Buhari v. INEC* [2008]19 NWLR (Pt. 1120) 246.

⁴ *Wike V. Peter side* [2016] LPELR-40036(SC),

that substantial injustices can be addressed by the courts. The standard of proof determines the level of certainty required for a tribunal or court to rule in favor of the petitioner. For most civil matters, including electoral disputes, the standard is typically a “preponderance of evidence” (balance of probabilities) as the Evidence Act clearly stipulates.⁵ If the petition includes allegations of criminal conduct (e.g., fraud or corruption), the standard of proof is “beyond reasonable doubt,” as specified in cases like *Nwobodo v. Onoh*⁶. The court reiterated that the petitioner must establish their claims by providing credible evidence.

The standard of proof in electoral disputes is generally higher than the balance of probabilities because there is always likelihood of crime, corruption and other irregularities that mar elections in Nigeria, the standard of proof in these circumstances is often referred to as "proof to the satisfaction of the court". In *Ibrahim v. Shagari*⁷ it was established that the standard of proof in election petitions is on the balance of probabilities, but the evidence must be clear, cogent, and credible. In *Omoboriowo v. Ajasin*⁸, the Supreme Court emphasized that while the standard of proof is not beyond reasonable doubt, it is more stringent than the balance of probabilities due to the significant implications of nullifying an election.

The Electoral Act 2022 outlines who the competent parties are in electoral disputes. These parties include: Candidates who contested in the election, Political Parties (that is, political parties that sponsored the candidates), and Electoral Commission (that is, Independent National Electoral Commission) can commence electoral petition, especially concerning the conduct of the election and adherence to electoral laws. The Electoral Act 2022 States that an election petition can be

⁵ Evidence Act Cap.E14 LFN 2011, Ss 131 and 132.

⁶*Nwobodo v. Onoh* [1984] 1 SCNLR 1.

⁷*Ibrahim v. Shagari* [1983] 2 SCNLR 176.

⁸[1984]1 SCNLR 108.

presented by a candidate in the election or a political party that participated in the election⁹. The grounds upon which an election may be challenged, includes: Non-compliance with the Electoral Act, corrupt practices, and that the respondent was not duly elected¹⁰.The application of these principles has practical implications for electoral justice; For Petitioners, they must gather substantial and credible evidence to support their claims. Mere allegations are insufficient. Respondents can challenge the sufficiency and credibility of the petitioner's evidence. They do not have to disprove the petitioner's claims but can win if the petitioner fails to meet the required standard of proof. Judges must carefully evaluate the evidence presented, ensuring it meets the higher standard of proof required in electoral matters.

However, the Nigerian electoral system has faced significant challenges and irregularities over the years, despite provisions in the Electoral Act aimed at ensuring free, fair, and credible elections. The prevalent irregularities in Nigerian elections are vote buying and selling, violence and Intimidation, manipulation of results, God-fatherism among others. While the Electoral Act 2022 provides a legal framework to guide electoral processes in Nigeria, the effectiveness of these provisions is often challenged by practical issues such as proving allegations of electoral irregularities beyond a reasonable doubt. The roles and responsibilities of INEC and other competent parties are crucial in addressing and mitigating these irregularities to enhance the credibility and fairness of Nigerian elections but there are prevalent road blocks such as bribery and corruption, financial influence a party has over the commission, God-fatherism etc.

Also there are some significant shortcomings in its provisions (the Electoral Act 2022) concerning burden of proof, standard of proof, and the roles of competent parties. These deficiencies

⁹Electoral Act 2022, S 133.

¹⁰E.A 2022, S 134.

contribute to challenges in ensuring accountability, transparency, and the credibility of elections in Nigeria

1.2 Statement of the Problem

The Electoral Act of 2022 presents several shortcomings in its stipulations concerning the onus and standard of proof. These issues are particularly significant in the context of election petitions and disputes. The Electoral Act of 2022 does not clearly delineate who bears the burden of proof in election petitions especially the fact that electoral matter is *sui generis*. In legal practice, the petitioner is typically required to prove the allegations made.

However, the Act lacks specificity on this matter, leading to varying interpretations by different courts. This ambiguity can result in inconsistent rulings and a lack of uniformity in the application of the law¹¹. The Act implicitly demands a high standard of proof, akin to the criminal standard of "beyond reasonable doubt," rather than the civil standard of "preponderance of evidence" or "balance of probabilities." This high standard makes it exceedingly difficult for petitioners to succeed in election disputes, as they must provide overwhelming evidence to support their claims¹². The Act does not provide detailed guidance on the type and quality of evidence required to meet the onus of proof.

This lack of clarity can lead to varied judicial interpretations and uncertainty among petitioners about what constitutes sufficient evidence to prove their case¹³. Due to the high burden and standard of proof required, election petitions often involve lengthy and complex legal proceedings.

¹¹ Adewale Adigun, 'The Electoral Act 2022: Challenges and Implications for Electoral Justice in Nigeria' *Journal of African Law* [2023] 67(1) 89-110.

¹² Obinna Benjamin Nwabueze, 'Electoral Justice and the Nigerian Electoral Act 2022: An Analysis of the Burden and Standard of Proof' *Nigerian Law Journal* [2023] 54(2) 45-70.

¹³ Ifeanyi Chinedu Okeke, 'Evidentiary Challenges under the Nigerian Electoral Act 2022' *African Journal of Legal Studies* [2023] 9(3)121-138.

This can delay the resolution of electoral disputes, undermining the efficiency and credibility of the electoral process. The stringent proof requirements disproportionately affect petitioners, particularly those without substantial resources. The cost and complexity of gathering extensive evidence can be prohibitive, thereby limiting access to justice for many candidates and parties. The deficiencies prevalent in the provisions of the act with regards to competent parties in an election includes the ambiguity in Defining Competent Parties, exclusion of Independent Candidates, disproportionate Requirements for Party Registration, Lack of Provisions for Gender and Minority Representation, Unclear Guidelines for Coalition Formation, Inadequate Regulation of Party Primaries.¹⁴

These shortcomings highlight the need for a thorough review and amendment of the Electoral Act to ensure that the stipulations regarding burden, standard of proof and competent parties in an election are clear, inclusive, and supportive of a robust democratic process.

The irregularities Affecting Elections in Nigeria does not exempt electoral commissions and officials being bias or influenced by the ruling party leading to favoritism and lack of confidence in the electoral process, Vote buying and selling which undermines the democratic process, as electoral outcomes are influenced by financial inducements rather than the will of the people .The act of forcibly taking away ballot boxes from polling stations, often by armed thugs disrupting the voting process and can lead to the nullification of results in affected areas. Inflating or deflating voter registers to favor particular candidates or parties which gives room for fraudulent voting, including multiple voting by individuals or voting by non-existent “ghost” voters. The use of

¹⁴ Fagbemi Adebayo, ‘Access to justice in electoral disputes: A critique of the Nigerian Electoral Act 2022’ *Journal of Democracy and Governance* [2023] 15(1) 67-84.

violence or threats to scare away voters or force them to vote in a certain way and this reduces voter turnout and compromises the safety and fairness of the election process. The manipulation of election results through tampering with vote counts, falsification of results, and other illegal practices. All these produce outcomes that do not reflect the true choices of the electorate, undermining legitimacy. When elections are compromised, the foundational principles of democracy are undermined the resultant effect is the loss of public trust in the electoral process and democratic institutions.

Leaders who come to power through corrupt means are often more likely to govern ineffectively and unethically. Persistent electoral irregularities can tarnish a country's image on the global stage, affecting diplomatic relations and may result in sanctions or reduced foreign aid. The Constitution of the Federal Republic of Nigeria (1999) provides the fundamental legal framework for the conduct of elections, including the establishment of the Independent National Electoral Commission (INEC) and the roles of various electoral bodies, INEC and these electoral bodies should adopt measures that can ensure the conduct of free and fair elections such as implementing continuous voter registration and ensure the accuracy of the voter register by regularly updating it and removing deceased or duplicate entries, Implement and expand use of technology action, utilize biometric systems for voter registration and verification to prevent multiple voting and impersonation, Provide comprehensive training for INEC staff, electoral officers, and ad-hoc staff on electoral laws, Collaborate with security agencies to ensure the safety of voters, election materials, and polling stations, develop a security strategy to address potential hotspots of electoral violence, ensure transparency in election Processes, Conduct extensive voter education campaigns to inform the public about the electoral process, the importance of their participation, and how to

report electoral malpractices, Strictly enforcing electoral laws and regulations, including penalties for any default.

In clarifying the Burden and Standard of Proof the Electoral Act to specify the adequate burden of proof and standard of proof required in election petitions for example, shift from “beyond reasonable doubt” to "preponderance of evidence" in civil election cases for it makes it easier for petitioners to prove electoral fraud or irregularities without an overly stringent standard, A Clear definition of who can be competent parties in an election petition, including candidates, political parties, and voters affected by the election outcome to ensures that all stakeholders with legitimate interests can seek legal redress. The act should simplify and expedite the process for filing and hearing election petitions to ensure timely resolution. This can include setting clear timelines and reducing bureaucratic hurdles. Enforcement of stringent regulations on campaign financing, including transparent disclosure of funding sources and expenditure limits which will reduce undue influence of money in politics and promotes a level playing field for all candidates

Research Questions

Based on the background and issues identified in the statement of the problem, the researcher will count on the following questions to guide this study.

1. What does the concept the burden, the standard of proof and competent parties in an election petition in accordance with the Electoral Act 2022 entail?
2. What are the deficiencies in the provisions of the Electoral Act 2022 in relation to the burden, standard of proof and competent parties in an election?
3. What are the existing legal and institutional frameworks put in place to handle electoral disputes and to ensure the conduct of free and fair elections?
4. What are the challenges that affect the conduct of election in Nigeria?

5. What are the consequences of an irregular and corrupt election of government in Nigeria?

1.3 Aim and Objectives of the Study

The main objective of this study is to critically examine the burden, standard of proof and competent parties in an election in line with the provisions of the Electoral Act 2022. Specifically, this study aims at achieving the following objectives:

- (1) To extensively analyze the concept of the burden, standard of proof and competent parties in an election petition according to the Electoral Act 2022.
- (2) To unveil the deficiencies in the provisions of the Electoral Act 2022 with regards to the burden, standard of proof and competent parties in an election.
- (3) To discuss in details the legal and institutional frameworks established to address electoral disputes and to ensure the conduct of free and fair elections in Nigeria.
- (4) To unravel and discuss the irregularities that mar the conduct of free and fair elections
- (5) To appraise the consequences of an irregular and bad election of government.

1.4 Scope of the Study

This research focuses on the examination of the burden, standard of proof and competent parties in an election in accordance with the provisions of the electoral act 2022, the deficiencies in its provisions, the irregularities associated with the conduct of free and fair elections, examination of laws that address electoral disputes thereby ensuring free and fair elections and also divulging measures that can address the prevalent issues.

It exposes the resultant effects of bad election of government including an irregular election, failure of parties to comply with the required provisions of the act and corruption. The research appraises

the role INEC plays and is meant to embrace in ensuring the conduct of a free and fair election in order to avoid bad government. It further addresses the deficiencies in the provisions of the act stipulating measures that can be adopted.

Limitations of the Study

Undertaking this research was both enlightening and motivating, especially considering its exploration of a novel area of law. However, several significant challenges were encountered during the process:

1. **Limited Availability of Research Materials:** The scarcity of relevant materials on the topic posed a substantial challenge.
2. **Financial Constraints:** The researcher also faced financial limitations, further complicating the completion of the work.
3. **Time Constraints:** Insufficient time was available for thorough research, compounded by the researcher's academic commitments.
4. **Unreliable Power Supply:** Frequent power fluctuations significantly delayed the completion of this work.

1.5 Significance of the Study

This study will provide significant benefits to various stakeholders in the legal and academic fields. Specifically, it will serve lawyers specializing in electoral matters by offering valuable insights. Law lecturers will find it beneficial for their research and article publications with regards to electoral matters and provisions of the Electoral Act 2022 in respect of the burden, standard of proof and competent parties in an election. Judges and justices dealing with electoral disputes,

which often involve the burden, standard of proof and competent parties in an election will also find this research work useful.

Law students will benefit as it enriches the existing literature on electoral matters, aiding their research endeavors. Policy makers and legislators will find it particularly helpful as it sets a precedent for future law bills in relation to election matters. Overall, this research will educate the public on the necessity for the conduct of a free and fair election and the adverse effects of the irregularities that mar elections promoting corruption and bad governance.

1.6 Research Methodology

In this research work, the researcher adopted a doctrinal method of research. The researcher based her research work on the analysis of primary and secondary materials relevant to the area of discourse. Some of the materials include but not limited to the following:

- (a) Relevant textbooks
- (b) Journals or articles on the area of discourse
- (c) Legislations
- (d) Case laws/ judicial authorities
- (e) Internet sources

1.7 Chapter Analysis

This research work is divided into five distinct chapters. Chapter one introduced the work and laid a strenuous foundation as regards electoral matters in Nigeria and the evidential burden and standard of proof. The same chapter also looked out the problem that necessitated the study and as well analyzed research questions, scope of the study among others.

Chapter two discussed some key concepts to the topic of the research and reviewed the position of some scholars and explained in clear terms the gap in knowledge the work intends to fill.

Chapter three discussed the existing legal and institutional frameworks in relation to the topic under discourse. Such legal and institutional frameworks respectively include the Constitutional of Nigeria, Electoral Act 2022, INEC, Security Agencies and Non-Governmental Agencies.

Chapter four looked at some key issues in the topic of the study such as the legal defects in the burden, standard of proof and competent parties in electoral matters in Nigeria among others, while chapter five concluded the work.

CHAPTER TWO

CONCEPTUAL FRAMEWORK, THEORETICAL FOUNDATION AND LITERATURE REVIEW

2.1 Conceptual Framework

2.1.1 Concept of Election

Defining a given concept in law could be compared to the proverbial story of the three blind men who went to observe an elephant and after the observation; each described an elephant according to the part he touched. Different scholars have distinct meaning of what election really entails.

Election is the crucial element of democratic governments, but the significance of elections is so widely assumed that, it is rarely examined¹⁵. In Nigeria, there are various stages for election.

¹⁵ J.J Rousseau, *The Social Contract and Discourse* (Dutton Publishers, 1950) 27.

Elections are conducted periodically into various political offices across the thirty-six (36) states and the Federal Capital Territory. The Independence National Elections Commission (INEC) is the commission set up by the constitution to conduct and supervise elections in Nigeria for the office of the president, vice-president, members of the senate and House of Representative, Governors, Deputy- Governor, members of the state's House of Assembly¹⁶.

However, there are several stages and activities that are involved when conducting elections in Nigeria. These stages range from the Pre-election to the result declaration¹⁷.

Elections make a fundamental contribution to democratic governance. This is because direct democratic government must be conducted through representatives. Elections enable voters to select leaders and to hold them accountable for their performance in office. Accountability can be undermined when elected leaders do not care whether they are re-elected or when, for historical or other reasons, one party or coalition is so dominant that there is effectively no choice for voters among alternative candidates, parties or policies. Nevertheless, the possibility of controlling leaders by requiring them to submit to regular and periodic elections helps to solve the problem of succession in leadership and thus, contributes to the continuation of democracy.

Moreover, where the electoral process is competitive and forces candidates or parties to expose their records and future intentions to popular scrutiny, elections serve as forums for the discussion of public issues and facilitate the expression of public opinion. Elections thus provide political education for citizens and ensure the responsiveness of democratic governments to the will of the people. They also serve to legitimize the acts of those who wield power, a function that is performed to some extent even by elections that are non-competitive.

¹⁶ Aristotle, *Politics*, (Modern Library, 1943) p. 131

¹⁷ J. Rutledge, *The Records of the Federal Convention of 1787* (New Haven Publishers, 1911) 205.

Section 152 of the Electoral Act 2022 defined the concept of election to mean any election under this Act and includes a referendum.

2.1.2 Concept of Proof

Proving the existence of a fact is a manifold and somewhat ambiguous concept in the law of evidence. A fact is said to be “proved” when, after considering the matters before it, the court either believes that such facts do exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exist¹⁸. A fact can be seen to be disproved when after considering the matters before it, the court either believes that it either exists nor considers its non-existence so probable that a prudent man ought in the circumstances of the particular case, to act upon the supposition that it does not exist. However, in the case of *Adejumo v Agumagu*¹⁹, the court held that the law gives the court the latitude to take judicial notice of its record without proof. This goes to show that certain facts are within the cognizance of the courts, and such facts which the court shall take judicial notice need not be proved.

By virtue of Section 122 (1) and (2) of the Evidence Act, the court is empowered to take judicial notice of all laws, enactments and any subsidiary legislation under them by the National Assembly or a State House of Assembly. A duty is imposed on the court to give to a party to any proceeding since opportunity to make submission and to refer to relevant information, in relation to the acquiring or taking into account of such knowledge, as is necessary to ensure that the party is not unfairly prejudicial²⁰. The import of section 124 (3) of the Evidence Act is that where a court takes

¹⁸Eseni Azu Udu, *Introduction to the Law of Evidence and Practice in Nigeria* (Mbeyi& Associates, 2018) 118.

¹⁹ [2015] 12 NWLR (Pt. 1472) p. 1

²⁰ Evidence Act 2011, S 124.

judicial notice of certain facts without allowing a party affected and makes a finding that is unfairly prejudicial to the party, being perverse, the finding will be set aside on appeal.

Burden of proof simply means the responsibly placed on a person who alleges the existence of a fact or state of affairs to establish that those facts exist. While, standard of proof refers to the quantity and quality of evidence that need be adduced in respect of facts or proof of facts for the court to take same as established. The onus of proof in a criminal case always rests on the prosecution to prove the charge against an accused person and in civil cases, the burden of proof is usually but not always on the plaintiff to prove his case against the defendant. For where a party wishes to succeed in his clean relying on certain facts, the burden of proof rests on him to prove that those facts actually exist²¹.

It therefore follows, that the burden of proof in any litigation or proceeding or suit lies on that party who would fail. If no evidence at all is given on either side²²,

The term “burden of proof” can be used in two senses;

- a. It may be used as an obligation to prove an entire claim or assertion,
- b. It may also be used as to prove a particular fact in issue in the general claim.

The first is actually what is otherwise referred to as the general burden of proof or legal burden of proof and this burden doesn't shift. This simply means that, it is the burden on the prosecution to prove the charge against the accused person,²³and the burden on the claimant to proof his case against the defendant clearly and not even rely on the weakness of the defendant's case.²⁴

The evidential burden often known as the burden of going forward with evidence in the United States on the other, like where the prosecution has proved the guilt of the accused person beyond

²¹C.C Wigwe, *Introduction to Law of Evidence in Nigerian* (Mouncrest University Press, 2016) 262.

²² Evidence Act 2011, S 132.

²³*Bakare v State* [1987] 3 SC 1

²⁴*Shell Petroleum Develop. Co vPronthine Tel. Ltd* [2011] LPELR – CA /PH/10 2003.

reasonable doubt, the burden of disproving reasonable doubt shifts to the accused person.²⁵The point must however be made that the shifting of the evidential burden does not connote a specific fact. That is, it is not where a party has proved a fact, the burden shifts to the other party to disprove that particular fact. From the foregoing, it therefore means that while the legal or general burden of proof does not shift, the evidential burden does shift. This was the reason behind the decision of the court of appeal in the case of *Omotosho v B.O.N Ltd*²⁶ where the appellant had alleged that he was not indebted to the respondents, but did not adduce sufficient evidence to establish same in order to shift the burden of proof, the court per Ogunwumiju (JCA) explained this principle in this case thus: “the law is that the burden of proof rests on the person who asserts a fact... it is fixed at the beginning by the pleadings and rests on the party asserting an affirmation, the burden shifts when evidence given by one party gives rise to a presumption favorable to it and unless rebutted, satisfies the court that the fact sought to be proved is established, the legal burden is always fixed by the pleadings”.

In that case, the burden shift from one party to another as the scale of the evidence preponderates.²⁷

The standard of proof could mean the degree to which a party must prove its case to succeed.

2.1.3 Concept of Evidence

The law of Evidence is undoubtedly and without exaggeration one of the most important law subjects. This is because in the conduct and determination of the court, the rule of evidence where the prominent rule is that they determine which facts are legally admissible and the legal means

²⁵ Evidence Act 2011, S 135 (1).

²⁶ [2006] 9 NWLR (Pt 986) 573 at 590-591

²⁷ *Ezemka v Ibeneme* [2004] 14NWLR (Pt 894) 617

of attempting to establish both facts. Generally, where a litigant goes to court, the court by the rules of substantive and procedural law has to conduct an enquiry into the facts of the case, draw inferences from those facts and in addition listen to the legal argument of the truth; its primary objective is that the court discovers the truth in order to attain justice.

Although there is no axiomatic definition of the concept of Evidence as the subject matter of evidence connotes different meanings to different author and jurist who have set down various definitions of the concept of evidence.

One of the principal deficiencies of the Evidence Act was indeed the absence of provisions relating to the admissibility of computer and electronically generated evidence. Happily, the legislature enacted not only Section 84 to take care of the lapse but also other relevant sections on electronic records and e-signatures.²⁸

Before delving into the subject matter of electronic evidence, it will be proper to first start with the concept of evidence in Nigeria.

Evidence is the means by which facts are proved, but excluding inferences and arguments. It is the usual means of proving or disproving any facts or matter in issue in any judicial proceedings. The facts in issue in any case are determined by the applicable substantive law. The law of evidence deals with the legally acceptable means of proving or disproving the facts in issue and standard of proof required in any particular case. It means that the law of evidence also excludes certain facts from being proved or disproved it is exclusionary in nature.

Evidence in its legal or judicial sense was defined by the court of Appeal in *Onya v. Ogbuji*²⁹. *Per Salauwa JCA* as follows:

²⁸ Wigwe (n 21) 17

²⁹ [2011] All FWLR (Pt. 556) 493 at 517 CA.

The term evidence has been aptly described as any specie of proof or probative matter legally presented at the trial of any issue by the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc for the purpose of inducing belief in the mind of the court or jury as to their contentions

2.2 Theoretical Framework

2.2.1 Utilitarian Theory

The utilitarian theory of law was started by Jeremy Bentham. He propounded that life is full of pain and pleasure and that law should be used as a tool of social engineering or means to increase human happiness and minimize pain.³⁰

Every law should be enacted to secure or ensure the happiness of the greatest possible number of people. The aim of law should be to maximize human happiness by securing the greatest happiness of the greatest number of people. Every person in the view of utilitarian theorists should be allowed freedom to pursue his or her own happiness, advantage, and actualize himself, and to seek self fulfilment without interference by the state. This is a support of a free market economy.

All existing laws and consequently the institutions established by such laws should be reformed to ensure credible elections, and when this is done, the greatest happiness possible for the populace would be secured. A law could be seen as good or bad after assessing or evaluating its utility to individuals and society at large. To ensure the efficacy of any existing legal framework, every law

³⁰ B. Appadorai, *The Substance of politics*. (Oxford University Press, 2003), 23.

should seek to promote security, equality, and liberty, when these things are promoted, democracy can be fostered.³¹

2.2.2 Sociological Theory

In early times, rules and laws originated from the only custom to govern and transform the society which had only a social sanction. The main subject matter of sociological theory is Society and impacts of law. The theory puts into consideration the society, human behavior, and social changes brought by law. It advocates that the Law and society are related to each other and that the law is a social phenomenon because it has major impacts on society. It lays more emphasis on the legal perspective of every problem and every change that takes place in society. Law is a social phenomenon and law has some direct or indirect relation to society. In the words of Ehrlich,³² “At the present as well as at any their time, the center of gravity of legal development lies not in legislation, nor in the juristic decision, but in society itself.

According to Pound, “Law is social engineering which means a balance between the competing interests in society,” in which applied science is used for resolving individual and social problems.

Social Engineering is balancing the conflicting interest of Individual and the state with the help of law. With the help of law as a body of knowledge, a large part of social engineering is carried on. Law is used to solve conflicting interests and problems in society. He mentioned that everybody has their own individual interest and considered it supreme over all other interests. The objective of the law is to create a balance between the interests of the people. Law is used as a veritable instrument to bring changes in the environment and ensure that society confirms to the

³¹ J.K Jegede, 'The Rule of Law in Military Government- An Appraisal' [1999] (3) (2) *Nigeria Law and Practice Journals* 12.

³² B.N Mani, *Jurisprudence Legal Theory* (16 edn, Allahabad Book Agency, 1999), 23.

technological advancement. Roscoe Pound in his interest theory mentioned the three kinds of interest. To avoid the overlapping of interests, he put boundaries and divides the kinds of interests.³³

a. Interest of Individuals:

This individual interest refers to claims or demands involved from the standpoint of the individual life which consists of interest of personality, interest in domestic relations and interest of substance.

b. Interest of the general public:

This refer to the desires asserted by the individual from the standpoint of political life which means every individual in a society has a responsibility towards each other and to make use of things which are open to public use. Interest in the preservation of state

c. Interest of the society:

These are the claims or demands in terms of social life, which means to fulfill all the needs of society as a whole for the proper functioning and maintenance of it. Interest in the preservation of general peace, health, security of transactions, preserving social institutions like religion, politics, economics.

In line with sociological theory and especially Roscoe Pound's postulation of law being a veritable instrument for societal changes, the Electoral Act 2020 and other laws are veritable instruments in ensuring free and fair elections in Nigeria and helps to ensure accountability in governance.³⁴ In

³³A Sachdeva & C Gupta, *A Simple Study of Political Science Theory*. (Ajanta Publishers, 1980), 18.

³⁴ O Okpara, *The Nigerian Legislators Hand Book* (Innarok Enterprise, 2007), 42.

line with this theory, Evidence Act 2011 as amended enacted by humans made elaborate provisions for whom the onus of proof lies and the extent such onus can be said to have been discharged.

2.3 Summary of Literature Review / Gap in Knowledge

According to A.A Ogunjinmi,³⁵ the author tried to give the elementary and practical approach to conduct of Election Petition in Nigeria from the stage of presentation of the petition to the hearing and determination of the petition while highlighting the steps and things required of the parties thereon. The learned author in his attempt to cover all aspects of election petition failed to give much attention to the requirement of proof being the area of core interest in this research, even the little discussed does not substantially represent the current position of the law as the Electoral Act has been amended.

According to Afe Babalola (SAN),³⁶ he extensively discussed the historical development and legislative changes regarding election and election petition trials in Nigeria. The author traced the history of election in Nigeria from colonial time to independence and post independence election. He discussed issues up to Electoral Act era and trials before election petition tribunals and courts. However, the book appears to be merely interested in the historical development and legislative changes regarding Election in Nigeria than with the means and mode of proof of election cases. The book equally does not cover up with the provisions of the Electoral Act 2022 being the current applicable legislation on election in Nigeria and the amendments to the 1999 Constitution of Nigeria (as amended) and the Evidence Act. 2011 (as amended).

According to J. Joshua³⁷, the author appears to share the same theme with this research work in that, it is case law based. The author tried to analyze through judicial authorities the requirements

³⁵ A.A Ogunjinmi, *A Practical Approach to Election Petition Procedure in Nigeria*. (TWT Publishers, 2007) 62.

³⁶ Afe Babalola, *Election Law and Practice in Nigeria* (Evans Brothers, 2001) 12,

³⁷ J. Joshua, *Practical Guide to Election petition*. (University Press, 2005) 43.

of proof in election petition. As comprehensive as this book may look, it did not the book evaluate the soundness or otherwise of the judgments or decisions of the tribunals beyond reproducing them. Again, the book is authored on the basis of the Electoral Act 2023.

The book written by O. Aderemi³⁸ is another work consulted in this research. The author who tried to give a general overview of election in Nigeria dedicated a whole chapter of his work in analysis of the four statutory grounds and even delved into the constitutional ground as created by the Supreme Court in several cases. Although the book discussed the statutory grounds and the constitutional grounds, it was in a passive and general manner as the work equally failed to evaluate the various standards or yardstick evolved by courts or tribunals in resolving election disputes.

According to the famous scholar; Ben. Nwabueze.³⁹ The book although concerned about Nigerian Presidential System as contained in 1979 Constitution, also discusses the various aspects of election from the angle of the Electoral Commission to the holding of an election and post-election judicial process. It is aimed at providing guidance and general education to politicians, voters and lawyers alike. The book although of immense use in this research, does not put or proffer any suggestion on the efficiency or otherwise of the various tests evolved by election petition tribunals or court in resolving election dispute neither does it reflect the current constitutional and electoral changes to our current electoral legislation. The book also did not appear to be thematically interested in detail analysis of the requirements of proof in election petition.

The afore stated scholars have worked extensively on the electoral matters especially the legal frameworks like Evidence Act 2011 (as amended) which govern generally on the admissibility of evidence in Nigerian courts, 1999 Constitution of Nigeria (as amended) which is a grund norm

³⁸ O. Aderemi, *Electoral Law and Practice in Nigeria*. (Unilorin Press, 2006) 18.

³⁹ B. Nwabueze, *Nigerian Presidential Constitution (1979-1983)* (Evan Brothers Publication, 2008) 54.

and upon which other laws derive their validity, but the scholars fail to discuss the competence of parties, burden and standard of proof of electoral matters in line with the provisions of Electoral Act 2022. To fill this vital vacuum since Electoral matters are sui generis and as such, stands on its own, the researcher intends to extensively discuss the competence of parties, burden and standard of proof in election petitions alongside with the provisions of the Electoral Act 2022 and Evidence Act 2011 (as amended).

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Legal Framework

3.1.1 Evidence Act 2011 (As Amended)

In Nigeria, the Evidence Act 2011 as amended made clear provisions on whom the onus of proving the existence of an alleged fact and the standard upon which such can be said to have been discharged. These principles are as stipulated in Part ix and also the provisions of sections 131, 132, 133 and 134 of the Act which borders on the production and effect of evidence. The Evidence Act portrays the order and the distribution of the burden of proof in civil cases. The party who alleges has the burden of proving the existence or non-existence of the fact upon which an action was brought forth in court against the party whom the court would render judgment if no evidence was provided.

The case of *Onwuka v Omogui*,⁴⁰ restated the principle that he who asserts in the affirmative before adducing evidence bears the burden of proof. Upon the provision of reasonable evidence to the satisfaction of the court the burden shifts to the party opposing until all the issues stipulated in the pleadings are addressed. The doctrine of section 132 of the Act emphasizes on the consequent effect of the failure of a party who asserts in providing substantial evidence which amounts to such party facing adverse consequences at the end. An equitable distribution of the burden of proof throughout the legal process is the aim of the procedural framework.⁴¹In accordance with the provisions of the act the burden of proof is governed by the balance of probabilities requiring that

⁴⁰ [1992] 3 NWLR (Pt. 230) 393.

⁴¹ Evidence Act 2011, s 133.

a claim or defense be more likely true than not for it to prevail⁴². In civil cases in which electoral matters sometimes fall under, must be proved based on the balance of probability.

The Evidence Act 2011 makes provision for a comprehensive framework for determining the burden of proof, establishing rules and standards governing the effect and production of substantial evidence in legal proceedings.

By the application of sections 131, 132, and 133 of the Act and by the virtue of section 149 of the Electoral Act results declared by INEC enjoys a presumption of regularity and such declaration favors the respondent, based on the pleadings such presumption must be first rebutted by the appellant. A document made otherwise by a witness in a proceeding amounts to hearsay which contradicts the principle established in section 37 of the evidence act which stipulated that any statement, whether oral or documentary made by a person other than a witness is not admissible in a proceeding. However, the provisions of section 137 of the Electoral Act 2022 purports to make documentary hearsay evidence admissible.

It is my position that burden of proof as stipulated in the above sections of the Act is rigid on the part of the petitioner who in accordance with the provision of section 137 of the Electoral Act is to provide evidence from all unit he alleges non- compliance. Due to the necessity of election in Nigeria, which offers the citizens the opportunity of electing leaders of their choice, INEC is obligated to prove that the candidate they declared as being duly elected was actually elected by the people.

⁴² Evidence Act 2011, s134.

3.1.2. The 1999 Constitution of the Federal Republic of Nigeria as amended.

Under section 239 of the constitution, the Court of Appeal has the jurisdiction to hear and determine to any question of the validity of any person elected to the office of the president or vice president. The National assembly and State House of Assembly election tribunal is established for each state in the federation and the Federal Capital Territory by the virtue of section 285(1) of the 1999 constitution and is vested with the jurisdiction to hear and determine any question to the validity of any person elected as a member of the National Assembly or the State House of Assembly.

Similarly, section 285 (2) of the 1999 constitution sees to the establishment of the Governorship election tribunal who has the jurisdiction to hear and determine any question to validity of any person elected as Governor or Deputy Governor of a state. Section 239 provides for the formation of the presidential election tribunal to be the justices of the court of appeal whereas section 285(3) in alliance with the sixth schedule of the 1999 Constitution provides for the formation of the National and State House of Assembly election tribunal and the Governorship election tribunal. Section 285 (4) makes provision for the quorum for either a Governorship election tribunal or National or State Houses of Assembly election tribunal and any defect in this formation renders the proceeding a nullity.

In accordance with the provisions of section 285 (5) an election petition shall be filed within 21days after the declaration of the election results and failure to file an election petition by the petitioner at the stipulated time renders the petition incompetent. An election petition is not to be

filed on the day of the declaration for it is excluded⁴³. 180 days was provided for the hearing and disposal of election petitions and 60 days for the disposal of any appeal arising there from in accordance with the provisions of section 285(6) and (7) of the 1999 Constitution. In the case of *Mbina & ANOR v INEC & ORS*,⁴⁴ the insufficiency of time allocated to the parties clearly depicts the difficulties the petitioner encounter in the quest to prove his petition by the virtue of the burden of proof vested on him. The timeline stipulated by the constitution was aimed at eliminating the long period election petition takes to be determined. Therefore, there is need for a proper reflection on the provisions of the law for equitable distribution of the burden of proof rather than propounding the theory of the presumption of regularity associated with results declared by INEC in favor of the respondent.

The Independent National Electoral commission (INEC) is a body established by under section 153 (1) of the 1999 Constitution and are vested with responsibilities and powers which are provided in section 153(2) and are enumerated in item 15 of part 1 to the 3rd schedule which includes the registration of political parties, monitoring of political campaigns, undertaken and supervision of elections etc.

INEC is also charged with the responsibility to carry out all the stipulated duties provided in the above item for the conduct of credible elections in Nigeria. The Constitution places crucial obligation on INEC for the assurance of the credibility and fairness of elections in Nigeria. Legality is given to the commission's existence under the provisions of section 153(1) (f) of the Constitution. The above provisions indicate the burden vested on INEC aimed at achieving a fair and transparent election in Nigeria therefore pervading the need for a petition by a petitioner which

⁴³*Maku v Sule* [2022] 3 NWLR (Pt.1817)231

⁴⁴ [2017] LPELR-43248 (CA) Per Mustapha, JCA at pages 36-37, Paras A-B

also poses as a query to the Commission on the discharge of the responsibilities vested on it by the constitution.

3.1.3 Electoral Act 2022

In order to mitigate electoral threats, the Nigerian Government enacted the Electoral Act 2022 which provides for the use of card readers and other technological devices, time frame for the submission of lists of candidates, exemption of political appointees from contesting election while still in office, campaign spending limit for political parties, grounds for replacement of candidates necessitated the coming on board of the Act in 2022.

Results declared by INEC in favor of a respondent attains a presumption of regularity in accordance with section 149 of the Electoral Act. Petitioners in an election therefore has the onus to prove his assertions as it was held in *Buhari v Obasanjo*⁴⁵. The standard of proof is dependent on the allegations imbedded in the election petition. In a petition where an allegation of crime commission is made the standard of proof is beyond reasonable doubt. In *Emmanuel v Umana & Ors*,⁴⁶ it was held thus:

Although election petitions are specie of civil cases that are Sui generis, where allegations of crime form the fulcrum of the claim in them, the requisite standard is that of proof beyond reasonable doubt. I, most respectfully exhume Sowemimo, JSC (as he then was, later CJN) to address this issue. In *Nwobodoh v Onoh* (1983) IPELR-8049 (SC) 6-7, His Lordship held that: "... all the allegations complained of are crimes, and although, under Electoral Act 1982, election petition is a peculiar type of civil proceedings the proof of a

⁴⁵ [2005]2 NWLR (Pt. 910)241

⁴⁶ [2016] LPELR-40037 (SC) Per Nweze JSC at pages 17-18 Paras B-A

crime, requisite or burden of proof where alleged is that provided under section 137(1) of the Evidence Act, that is proof beyond reasonable doubt. The onus of proof is therefore on the petitioner and this has not been discharged. Having so decided I hold at this stage that the petitioner has not proved all his relevant complaints beyond all reasonable doubt against any of the respondents.

The Court further held that a petitioner is vested with the burden of proving non-compliance polling unit by polling unit ward by ward. In accordance with the provisions of paragraph 41(10) and 16(3) of the first schedule of the electoral act regardless of the standard of proof that is required on the part of the petitioner, the time frame is limited to between two and seven weeks for the petitioner which is dependent on the election and not exceeding 10 days the respondent is to present his defense. This time frame poses as a limitation on the part of the burden bearer (the petitioner) to prove his assertions from polling unit to polling unit as required by the Act which is prevalent in the case of *Mbina & ANOR v INEC & ORS*,⁴⁷ where the petitioner alleges non-compliance and the time frame provided was only 8 days for the petitioner to prove his Petition and the 8 days allocated were not the full working hours of the Court but only 2 hours for each day.

Section 133 of the Act makes provision of the parties to an election petition which includes candidates in an election or political parties in an election which was interpreted to mean candidate alone or candidate in conjunction with his political party in the case of *Tarzoor v Ioraer*⁴⁸. The sui generis nature of Election petitions exempts the electorates from challenging the declarations of INEC after election but it is very necessary to note that the ultimate goal of democracy is the government of the people by people so it is the electorate that needs justice by reinstatement of

⁴⁷ Mbina's case (n 44) 36-37

⁴⁸ [2016] 3 NWLR (Pt. 1500) 463

their authority which was imbedded freely on their own choice of candidate. “it is not merely of some importance, but is of fundamental importance that justice ... [for the electorate] should not only be done, but should manifestly and undoubtedly be seen to be done” which were the words of Chief Justice Hewart, in the case of *R. v. Sussex Justices, Ex parte McCarthy*⁴⁹

“He who asserts must prove” which is a provision of the Evidence Act in respect of the burden of proof under section 131 including other relative provisions in section 132,133 and 134, this provisions should be amended to allow fairer distribution of the burden of proof in any petition. INEC oversees the conduct of elections so most of the documents needed in proving the irregularities is in their possession. INEC should therefore share in proving the regularity of elections. The burden of proving the allegations in an election petition by the petitioner should be lessened due to the stringent provisions of the law regarding the method of establishing such claims and the time frame for an electoral matter to elapse.

3.2 Legal Institution

3.2.1 The Judiciary

Because Nigeria’s electoral processes are marred with grievous irregularities like vote buying, violence and electoral malpractices, the court plays pivotal roles in restoring a candidate whose mandates are stolen by the practices of irregularities. Instances of this are seen in the restoration of the election of Peter Obi as governor of Anambra, the current governor of Imo State, among other persons.

Section 239 of the constitution confers on the Court of Appeal with the powers to sit over elections of some candidates. Same thing applies to election petition tribunals. All these point to the veritable

⁴⁹ [1984] ALL ERR 233

roles the judiciary plays in guaranteeing the fostering of democracy in Nigeria and the conduct of credible elections.

An appeal court in an election matter has no jurisdiction to entertain an appeal beyond 60 days from the date of the delivery of judgment of the tribunal appealed against.⁵⁰ Thus, by implication, once an election petition is filed, or an appeal is lodged against the decision of an election tribunal, both the petitioner/appellant, the respondents themselves as well as the tribunal itself would be counting days and dates because the matter should be determined on or before the expiration of the duration prescribed by Section 285(6) and (7) of the constitution. The provision of that section did not give any further time to an election tribunal since the limitation rule enshrined in the aforementioned section of the constitution and Section 131 (9) of the Electoral Act 2022, requires the delivery of judgment in writing within the stipulated time.

Thus, a court that gives its decision and adjourns to another date to give reasons for its decision cannot be said to have concluded that matter until such reasons are given. Therefore, it is my submission that in an election matter where the final court of appeal decides to deliver its decision and fixes another date to give the reasons for that decision, it must perform that task within the stipulated time of 90 days allowed by law.

3.2.2 Police and other Law Enforcement Agencies

As early stated, the carrying of elections in all parts of Nigeria is characterized by violence and other impunities. To this therefore, the Nigerian police and other security agencies play their primary duty of ensuring peaceful, calm and irregularities free in Nigeria.

⁵⁰ Electoral Act 2022, S 132 (9).

To ensure that this all-important duty is performed, section 91 (1-4) of the Electoral Act 2022 clearly provides for the roles of the police in all electoral exercises. The Act in the above section mandates the head of police in every state of the federation including Abuja to ensure security of voters in the course of discharging their civil duty of electing candidates of the choice.

In order to stamp out ballot snatching and other activities that constitute electoral irregularity, movement of the people during the period the election will last is always limited and these orders are to be implemented by the security personnel who are primarily the police. All these point to the fact that there cannot be a credible election in Nigeria with police and other institutions playing veritable roles.

3.2.3 Independent National Electoral Commission

Elections are pivotal for the growth and advancement of democracy as it gives the people the latitude to select their leaders. To achieve this, the law established INEC as electoral body in charge of elections in Nigeria. For an election to be free and fair, eligible voters must be given the opportunity to register, by the creation of registration centers not too far from their residence, and publicity must be given as to how, when and where to register.

Where the Constitution allows for party registration as well as spells out the conditions, political associations which meet the conditions must be registered early enough for them to prepare for the next elections. Party campaigns must also be conducted freely, fairly and openly without any inhibition. All political party candidates must be given equal access to publicly owned electronic and print media. Thuggery and violence are to be prevented; voting must be secret to avoid victimization; there must be no rigging and voting centers must not be too far apart. All forms of voting malpractices must be avoided and checked by the electoral authority, security agents, and party agents. The counting and collation of votes must be done in the open, in the presence of party

agents, security agents, and electoral officials to avoid any form of manipulation. Results must be announced only by authorized officials designated to do so. When these conditionalities are achieved, in the pre-elections, during elections and post-election, we can say that such an election is free and fair.

Elections are very central to the principle and practice of democracy anywhere in the world and the management of elections by any election management body is significant to the electoral process and by implication, the consolidation of democracy in any country. The electoral process involves competition and it creates an avenue for competitive party politics. INEC is the election management body charged with the responsibility of conducting or organizing nation-wide elections in Nigeria. The actions or inactions of INEC in this regard were therefore of strategic importance to the results of the elections and their credibility, acceptance or rejection; since the Commission's omissions or commissions could make or mar the credibility of elections and the electoral process in general. No doubt, the goal of any election management institution is to ensure the realization of the will of the people in terms of making their votes count; in ensuring that the outcome of election results reflects the wishes and aspirations of the electorate.

In addition to powers conferred on the Commission by the Constitution, Section 2 of the Electoral Act 2022 summarized its functions as follows:

1. Power to conduct voter and civic education
2. Power to promote knowledge of sound democratic election processes
3. Conduct any referendum required to be conducted under the provision of the constitution or an Act of the National Assembly.

In order for the Commission to effectively discharge its functions, regards to perceptions of partiality on the part of electoral institutions and the election process, Election Administration, Crisis of Confidence, the impartiality, independence, and effectiveness of election administrators are critical to a credible and democratic electoral process. Actions taken by INEC in the lead-up to the election generated concerns over INEC's preparedness, independence and impartiality and prospect for a democratic process.

CHAPTER FOUR

ANALYSIS OF THE BURDEN OF PROOF, STANDARD OF PROOF AND COMPETENT PARTIES IN ELECTION MATTERS IN NIGERIA

4.1 Legal Defects in the Standard of Proof

The standard of proof refers to the level of proof required by the Court to determine if a litigant has immensely discharged the burden of proving his allegations before rendering a judgment. The required standard of proof in civil cases is proof on the balance of probability or preponderance of evidence. Election petitions are sui generis however where an allegation of commission of a crime is made in a petition, the standard of proof required is beyond reasonable doubt. The Supreme Court in *Ngige v. INEC*⁵¹ further held that where the petitioner in an election petition claims non-compliance with the Electoral Act, the Petitioner in accordance with the provisions of the law bears the burden of proving the non-compliance polling unit by polling unit and ward by ward.

In the case of *Uche V Elechi*⁵² the Apex Court per Rhodes-Vivour at Page 359 held thus:

⁵¹ *Ngige vs. INEC* [2015] 1 NWLR (Pt. 1440) 281.

⁵² [2012] 13 NWLR (Pt. 1317) 330.

The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary where a petitioner complains of non-compliance with provisions of the Electoral Act 2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance. Forms EC8A, election materials not stamped/ signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the respondents are to lead evidence in rebuttal. See *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) p.1; *Awolowo v Shagari* (1979) 6-9 SCp. 51; *Akinfosile v. Ijose* (1960) SCNLR p. 447.

In the case of *MBINA vs. INEC & ORS*⁵³, where the appellant claimed non-compliance in his petition, there is in fact a very short window of time to demonstrate non-compliance from polling unit to polling unit as required by statute. According to the Court of Appeal,

With regard to the allegation of disenfranchisement, where it is made, the need arises for the party making such allegation to call at least a witness each from the polling units in the affected areas to testify in support of that claim, anything short of that will simply not do; see *KAKIH V. PDP* (2014) 15 NWLR part 1430 Page 374. The petitioners in this case called only 30 witnesses to cover up for 30 wards and 292 units; clearly inadequate; And even at that none of the witnesses gave clear evidence of disenfranchisement and its attendant consequence, When indeed each voter is expected to give evidence of registration, and inability to vote, tender as

⁵³ *Ibid* (n 44)

exhibit his Voters card and voters register, as well as evidence that if not for the disenfranchisement their candidate would Have won the election.

With regards to the sheer number of election petition cases that have been dismissed due to lack of proof, it is quite obvious that the above required standard presents a difficult hurdle to scale for affected parties. The Independent National Electoral Commission (INEC) the body saddled with the conduct of elections in Nigeria in the lead-up to the 2023 election established 56,872 additional polling unit bringing the total number of polling units in Nigeria to 176,846⁵⁴. Assuming an aggrieved party is contesting the outcome of a presidential election on the grounds of non-compliance, such as over voting, lack or improper accreditation, or suppression of votes, such a petitioner must prove these allegations by presenting the electoral forms from all the polling units where the non-compliance allegedly occurred and call at least one witness who served as polling unit agents from each of those polling units. These witnesses would be cross-examined by the counsel for the respondents, and all of this must be completed within 180 days. If a petitioner submits the electoral documents without calling witnesses to support the documents, the petitioner will be deemed to have merely submitted the documents to the Tribunal, and the Tribunal will be unable to evaluate the submitted documents.” By eliminating the need to present oral evidence section 137 of the Electoral Act 2022 (as amended) provides for the admissibility of documentary hearsay evidence which appears to lighten the heavy burden on the petitioner. The above section permits a petitioner to rely on documentary evidence on the grounds that such document discloses the alleged non- compliance. According to section 38 of the Evidence Act, hearsay evidence is generally inadmissible. Irrespective of the provisions of the Act the petitioners must still prove

⁵⁴ <https://www.thecable.ng/just-in-inec-creates-additional-56872-polling-units-total-now-176846> accessed on 29th October, 2024

that the irregularities affected the election outcome. INEC control most of the relevant electoral materials and documents. Petitioners face difficulties in trying to gain access to these documents within the tight deadlines stipulated for filing election petitions. This issue is compounded by the courts' demand for substantial evidence to demonstrate electoral malpractices. It becomes nearly impossible for petitioners to present the required level of proof without proper access.

As posited by First Schedule Paragraph 8(1)(a) of the Act through personal means the Petitioner has a duty to serve on the respondent the petition and all accompanying documents upon the filing of an election petition, also paying the associated fees and depositing the security for costs. However, in cases where a reasonable attempt has been made to serve the Petition on the Respondent personally and this is not feasible, the Petition may be served by substituted service in accordance with First Schedule Paragraph 8(2). Significant delays in the processing of election petitions and appeals have resulted from the habit of a Respondent, especially the returning elected candidate, avoiding service, which forces the Petitioner to go through the trouble of requesting substituted service of the Petition. In many instances, more than 60 of the 180 days that the statute requires for a petition's decision are wasted on preliminary matters like service. The 1999 Constitution (as amended) provides that an election petition shall be filed within 21 days after the date of the declaration of the election under section 285(5). However in Section 285(6) of the 1999 Constitution of Nigeria (as amended) 180 days is the timeframe provided for the determination of election. Also in accordance with the provisions of the section judgment should be delivered within the 180 days from the date of filing of the petition. The aim of this provision is to accelerate the resolution of election disputes.

The Electoral Act should therefore be reformed to lessen the burden on the petitioner, the required standard of proof doesn't seem feasible due to large amount of polling units and the time

constraints on the part of the petitioner. The reformation should reflect equitable distribution of the burden of proof upon the reduction of the heavy burden vested on the petitioner giving room for a shift. INEC is the main regulatory body overseeing elections in Nigeria. It is responsible for maintaining official election data, including voter registration, election results, and other relevant statistics. INEC compiles and publishes these spreadsheets on its official website and through various reports so should share in accounting for the credibility of its functions. It is recommended that the Onus of proving non-compliance from polling units to polling adverse the large amount of units involved should be replaced by the provision of spreadsheet or data sheet of these units the provisions of the Electoral Act.

4.2 Legal Defects in the Competent Parties

Locus standi simply means Legal standing (standing to sue). It is the grounds available to an aggrieved party to approach a court of law for redress over an injury done to him. In *Adesanya v President of the Federal Republic of Nigeria*⁵⁵, the appellant filed a case challenging the constitutionality of appointing a sitting judge as the substantive head of the National Electoral Body (FEDECO) by the President of the Federation. Although the Supreme Court acknowledged the importance and desirability of encouraging individual citizens to question the constitutionality of government actions, the court held that an individual plaintiff does not have the locus standi to pursue such a case unless he is personally and directly affected by the contested act or if his personal rights have been violated. In the past, efforts by individuals who did not contest an

⁵⁵ [1981] All NLR(Pt 1) 1

election to initiate election proceedings through election petitions were quickly dismissed, with the court referring to such individuals as “busy bodies” and “meddlesome interlopers”. However today, the Electoral Act has clarified who is eligible to file an election petition or challenge the outcome of a primary election. In election in Nigeria, the competence of the candidates to that election is imperative. This also applies to election matters so much so that not every person has the locus standi to sue in respect to that election. By Section 133(1) of the Electoral Act 2022, it showed remarkable difference the capacity of people to commence legal actions generally and the capacity of one to commence petition in respect to any particular election in Nigeria.

Section 133 (1) of the Act 2022 have resolved the extent legal position on locus standi, makes sense to anyone and to common sense and sound legal reasoning that persons who are capable to commence election matters including the following:

- (a) A candidate who contested the election
- (b) A political party which sponsored the candidates for an election.

Accordingly, either a candidate in an election or a political party which participated in the election or both may present an election petition. The above provision of the Act clearly and categorically disclosed that the following categories of persons and entities at different epoch had been given locus standi on election matters. They are:

- a. A registered voter in the appropriate constituency
- b. A person claiming to have had a right to be elected or be returned at an election
- c. A person alleging himself to have been a candidate at an election.
- d. A person claiming to have had a right to contest or be returned at an election
- e. A candidate at an election
- f. A registered political party and

g. A political party which participated in an election.

In the case of *Nnamani v Nnaji*,⁵⁶ the appellant was the one who commenced the petition in the National Assembly Election Tribunal, he was a candidate in the senatorial election for the Enugu East constituency held on 20th February 1999. He lost the election. He filed an election petition. The first respondent entered memorandum of conditional appearance. Consequently, the first respondent filed a motion praying for an order dismissing the petition for being incurably bad and incompetent. The motion was predicated on three grounds such as:

- a. Lack of capacity to sue.
- b. Lack of jurisdiction of the tribunal to hear and determine the petition
- c. Absence of mandatory parties

Similar motions were filed by the second to the ninth respondent on 1st April, 1999. All motions came up on 9th April 1999. Following an argument on which motion to take, the National Assembly Election Tribunal decided to take the motion and struck out the petition. The learned chairman of the Tribunal, Edet J, held thus “on the whole, we allow the motion on the grounds that the petitioner did not specify his right or the capacity as required by law. Dissatisfied with the ruling, the appellant then appealed to the Court of Appeal and the court held in clear terms that where a statute confers on a plaintiff or a petitioner, locus standi, a court of law has no jurisdiction to deny him of the standing of sue.

In the case of *Egwu v Eke*,⁵⁷ the Court of Appeal stated with judicial precision, the appropriate order to be made when a petitioner is adjudged not to have locus standi. According to the court, the appropriate order in the circumstances was one killing the petition dead. An order merely

⁵⁶ [1999] 1 LREC N

⁵⁷ [1999] 3 LREC N 1

striking it out would have implied that it was in a coma and could be retrieved if and when the technical or other defects that afflicted was rectified. Lack of locus standi in an election petition is not a mere technical defect but a fundamental and fatal disease from which the afflicted petition never ever recovers.

Similar to Election, democracy appears to be an everyday concept in the Social Sciences. This is prevalent in Abraham Lincoln's famous definition of democracy as 'a government of the people, by the people and for the people'. Election which is a means of reflecting the will of the people is the official process of choosing a person for public position, or the formal Process of accepting or rejecting a political proposition through voting. One of the cardinal pillars of democratic governance is free and fair elections. Elections gives room for citizens to exercise their constitutionally imputed Sovereignty over those responsible for the exercise of executive and legislative powers in the Society. Through free and fair elections, citizens in a democratic society exercise their franchise and will. Election observation has come to be an integral aspect of contemporary representative democracy. Election observation is the process by which non-partisan state and non-state actors collect, organize and analyze election-related data and using same to draw objective conclusive reports which could be used in assessing the overall electoral cycle. The United Nations (UN, 2005, para.4)⁵⁸ defines international election observation as:

The systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions Related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the Drawing of conclusions about the character

⁵⁸ Chinemerem Alvan Nwankwo & Robert Oghenedoro Dode, 'International Election Observers, Perception of Nigeria's 2023 General Election: Lessons for 2027' [2024] 17(1) *African Journal of Politics and Administrative Studies* 584-602.

of electoral Processes based on the highest standards for accuracy of Information and impartiality of analysis. International Election observation should, when possible, offer Recommendations for improving the integrity and Effectiveness of electoral and related processes, while not interfering in and thus hindering such processes. International election observation missions are: organized Efforts of intergovernmental and international Nongovernmental organizations and associations to conduct International election observation.

However reports from this international Observers are being swept under the carpet in Nigeria. These election observers are non-partisan, non-state actors so on their part a high level of objectivity and neutrality (or impartiality) can be guaranteed.

Various civil society organizations and advocacy groups monitor elections and may create their own spreadsheets to track voter turnout, electoral malpractices, and the overall electoral process. They often analyze INEC's data and provide independent assessments. A Collection of individual participation translates to majority participation and on these grounds international Observers should be a competent party in an election petition. The sui generis nature of Election petitions precludes the electorates from challenging the result of such imposition, in the ultimate, it is the electorate that deserve justice by restoration of their mandate, freely given, to the candidates of their choice so the Act should be reformed towards achieving the people's will. Under the Act Locus standi should be given to these International observers and civil society Organization which are independent bodies and are witnesses to the conduct of election in various polling unit.

European Union Election Observation Mission (EU EOM) in Nigeria report appears to be one of the most comprehensive, elaborate and explicit reports of the 2023 election cycle. According to the report:

The 2023 general elections did not ensure a well-run transparent, and inclusive democratic process as assured by the Independent National Electoral Commission (INEC). Public confidence and trust in INEC were severely damaged during the presidential poll and was not restored in state level elections, leading civil society to call for an Independent audit of the entire process. The pre-poll environment was volatile and challenging, affected by economic crises. Fundamental freedoms of assembly and movement were broadly respected, yet the full enjoyment of the latter was impeded by insecurity in some parts of the country. Abuse of incumbency by various political office holders distorted the playing field and wide-spread vote buying detracted from an appropriate conduct of the elections. Incidents of organized violence shortly before and on election days in several states created an environment deterring voter's participation. Media raised voters' awareness, fact-checkers stood up against disinformation and civil society demanded INEC's accountability. The widely welcomed Electoral Act 2022 (the 2022 Act) introduced measures aimed at building stakeholder trust. However, the Act's first test in a general election revealed crucial gaps in terms of INEC's accountability and transparency, proved to be insufficiently elaborated, and lacked clear provisions for a timely and efficient implementation. Weak points include a lack of INEC independent structures and capacities to enforce sanctions for electoral offences and breaches of campaign finance rules. Furthermore, the presidential selection of INEC leadership at federal and state level leaves the electoral institution vulnerable to the perception of partiality (EU EOM, 2023, p.7).

4.3 Legal Defects of the Burden of Proof

The presumption of regularity is a legal doctrine which is based on the assumption that the conduct and results of elections are made in accordance with the provisions of the law by INEC. This simply implies that results upon declaration by the electoral body is deemed legitimate until a petitioner presents substantial evidence which challenge these presumption. The above stipulations aligns with the provisions of section 149 of the Electoral Act 2022. According to the provisions of the 1999 Constitution and the Electoral Act 2022 the stipulated timeframe was 21 days for filing election petitions for all elections conducted under their provisions. These elections include those for the State Houses of Assembly, the House of Representatives, the Senate, state governorships, and the President of the Federation. It is noted, however, that while the 21-day limit may be adequate for filing petitions related to elections for the State Houses of Assembly, the House of Representatives, and the Senate, it is significantly insufficient for filing petitions against gubernatorial and presidential election outcomes.

In most cases the interest of petitioners already Constrained by the time provisions in our Constitution is suffers injury when INEC delays or refuses, tactically, to afford the petitioner the important documents which includes Forms EC8, EC25, EC40, etc., required to make a success of his allegations at the election tribunal. The provision for front-loading in election petitions in Nigeria is found in Section 137(3) of the Electoral Act, 2022. This section specifically addresses the requirement for election petitions to be accompanied by all necessary documents and evidence at the time of filing. Front-loading aims to speed up the election petition process by requiring the petitioner to submit all essential documents, including written statements, witness depositions, and other supporting materials along with the petition. The aim of front-loading is to promote

transparency, eliminate unnecessary delays, and ensure that all parties are aware of the evidence and issues right from the beginning of the case.

However the standard of proof in election petitions often requires that allegations of malpractice be established beyond reasonable doubt, similar to criminal cases. This high standard can be a significant barrier for petitioners, as they must provide clear and convincing evidence to substantiate their claims. This contrasts with the more lenient standard of “preponderance of evidence” used in most civil cases, creating an imbalance in the legal process. The electoral laws impose strict procedural requirements for filing and proving election petitions. Petitioners are often required to produce specific evidence, such as signed result sheets from polling units or testimonies from election officials. Failure to meet these requirements can result in dismissal of the petition, regardless of the merit of the allegations. Petitioners frequently face challenges in accessing relevant electoral materials controlled by INEC or other election bodies. This restricted access makes it difficult to gather the necessary evidence to meet the burden of proof, especially within the short timeframes prescribed for filing petitions.

In the case of *Peter Obi v. Tinubu*⁵⁹ at the Presidential Election Petition Court (PEPC) in 2023, Peter Obi and the Labour Party challenged the election results, claiming irregularities and other issues. To support their case, they subpoenaed several witnesses and presented numerous documents, including certified copies of election results from multiple states. Peter Obi’s legal team relied on evidence from these subpoenaed witnesses, which included video evidence as well as official documents despite these efforts, the tribunal dismissed their petition on multiple grounds. The Presidential Election Petition Court (PEPC) made an error by striking out the witness

⁵⁹ *Peter Obi v INEC & ORS (CA/PEPC/03/2023)*

statements on oath of ten (10) out of the thirteen (13) witnesses they called. The PEPC's decision was based on the fact that these statements were filed after the 21-day period prescribed by the 1999 Constitution (as amended). The Petitioners contend that the Supreme Court and Court of Appeal decisions cited by the PEPC in support of its ruling do not apply to the specific facts of this case. The Presidential Election Petition Court erred in striking out the witness statements on oath of the Petitioners' expert witnesses (PW4, PW7, and PW8) based on the assertion that they had an interest in the outcome of the Petition. The PEPC failed to consider the Supreme Court's interpretation of "a person interested," which refers to someone with a pecuniary or material interest in the proceedings—specifically, someone whose interest would be affected by the outcome and who might thus be tempted to distort the truth for personal gain. In this case, there is no evidence on record indicating that any of the Petitioners' witnesses had a financial or material interest in the result of the proceedings. Furthermore, the Petitioners argue that, according to Supreme Court rulings, "an interest" does not refer to mere intellectual curiosity or interest on behalf of a party but instead indicates a legal interest that implies a potential gain or loss. The interest of PW4, PW7, and PW8 in the documentary evidence they produced under subpoena was simply an exercise in intellectual inquiry. Therefore, the PEPC should not have struck out their evidence on these grounds.

The rules of court should provide clear guidelines on whether and when subpoenaed witnesses must file their statements. If the intent of previous rulings is to allow subpoenaed witnesses more flexibility in filing their statements, this should be expressly stated in the Electoral Act or court rules. This would reduce ambiguity and ensure consistency in judicial decisions. The relevant sections of the Electoral Act and other procedural laws could be amended to specifically exempt subpoenaed witnesses from the 21-day filing period. This amendment should state that their

statements can be filed at a reasonable time after the issuance of the subpoena, recognizing the practical difficulty of submitting their statements within the initial filing period for the petition.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

Election petition cases are within the realm of civil proceedings. However, they are not seen as civil proceedings in the ordinary sense nor are they treated as normal civil proceedings. Uwaifo

JSC stated in the case of *Buhari v Yusuf*⁶⁰ election petitions are distinct from the ordinary civil proceedings and in certain circumstances, the slightest default in complying with procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in fatal consequences to the petition. It therefore means that electoral petition cases are of its own kind or class, unique or peculiar. The election petitions therefore belong to a special class of their own and enjoy special treatment by the constitution and under the law regulating the practice and procedure in civil proceedings. In Nigeria, it may be apt to describe the right to vote as a constitutional right since it is conferred by the constitution. In the determination of any form of litigation submitted for adjudication, one fundamental question that must arise is that of who bears the burden of proof of the case. The utmost determination of this question is fundamental because if the party, on whom the burden of proof lies, fails or neglects to discharge the burden of proof in a case, and party is confronted with the risk of losing the case. This was seen in the case of *Gundiri v Nyako*⁶¹ where the petitioner failed because they were unable to discharge the burden of proof on them for their failure to call their polling agents as witnesses of what transpired at the polling station. The court categorically declared that where non-compliance with the Electoral Act is alleged, it raises the mandatory duty on the petitioner to call their polling agents in proof of the allegation.

The legal burden in an election petition lies on the petitioner. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. It thus follows that the Electoral Act, Evidence Act imposes a strict burden on the petitioner and the petition fails if the petitioner fails to discharge the duty of proof. The petitioner's task is made more arduous by the fact that the election tribunals do not just

⁶⁰[2003] 14 NWLR (Pt 841) 446

⁶¹[2014] 2 NWLR (Pt 139) 211, SC.

require a petitioner, who alleges non-compliance with the Electoral Act, to prove such but also, to prove that the non-compliance substantially affected the result of the election. Even when the petitioner has had a good shot at discharging these requirements of proof, the tribunal may yet dismiss his petition on the belief that there are no perfect elections anywhere.

Whereas the provisions of Section 134 of the Evidence Act, states the general rule, that the burden of proof shall be discharged on the balance of probabilities or preponderance of evidence in all civil proceedings. In election petitions, Section 136 (1) of the Evidence Act States emphatically the onus of proof is not static. It oscillates and vacillates like a pendulum, from one side of the litigation to the other and vice versa from time to time as the petition progresses and ultimately rests on the party who would fail if no further evidence is given on either side.

In the course of this research work, the following are the summary of the findings:

- (i) That the standard of proof in electoral matters is on the balance of probability. Where an aspect of election petition involves the commission of crime, such aspect of crime must be severed and proved beyond every reasonable doubt. .
- (ii) That the petitioner's task is made more arduous by the fact that the election tribunals do not just require a petitioner who alleges non-compliance with the Electoral Act to prove such, but the petitioner should also prove that the non-compliance substantially affected the result of the election.
- (iii) That election petition cases are sui generis. This is because it is of class of its own, it is unique and peculiar
- (iv) That election petition cases can only be filed by a candidate who lost the election, or any political party which participated in the election or both.
- (v) That the onus of proof is not static, it rotates from time to time.

- (vi) That election petition cases involve tendering of electronically generated evidence and such evidence can only be admissible after meeting up with the provisions of Section 84 of the Evidence Act.
- (vii) That the burden of proof in an election petition just like in other matters lies on the petitioner who alleged

5.2 Recommendations

In the course of carrying out this research work, a lot of findings are made and the researcher goes on to recommend the following:

- (1) It is recommended that the Onus of proving non-compliance from polling units to polling adverse the large amount of units involved should be replaced by the provision of spreadsheet or data sheet of these units than relying on polling agents.
- (2) It is recommended that the burden proof in election matters should be on the institution (INEC) that conducted the election to prove that the candidate they declared as the winner is duly elected, and not the petitioner.
- (3) It is also recommended that the decision of the appellate court that subpoena witness' statement on oath should accompany the petition, should not be the case. This is because subpoena witness is a witness of the court and that electoral matters are time bound.
- (4) It is also recommended that it iss not feasible for all agents in every polling unit to testify before the petitioner can be said to have proved his case.
- (5) It is recommended that the Electoral Act 2022 should be amended so as to make civil societies and international observers as competent parties to election petition. This is because they carry out observations during the election and those constitute viable evidence.

- (6) There should be a proviso to Sections 285 (6) and 285 (7) of the 1999 Constitution to the effect that, where however, in the determination of election petitions and appeals. The sittings of the tribunals and courts is prevented by labour strike, judges' vocation and unforeseen circumstance, such circumstances should be excluded from the 180 days or 60 days provided respectively in Section 285 (6) and (7) of the constitution.
- (7) It is recommended that the Supreme Court when faced with the interpretation of provision of the law as regards election matters should adopt a liberal judicial attitude that allows the aggrieved persons to be heard rather than a strict interpretation that slams the door of the court against the litigants. The right to be heard and to be heard fairly is a cardinal principle of justice that ought not to be tampered with.
- (8) There remains a high need to ensure the welfare of the judges involved in Election petitions and the independence of the body INEC preventing God-fatherism. This will go a long way in mitigating corrupt practices in election matters and guarantee total impartiality in the adjudication.

5.3 Contributions to Knowledge

The scholars referred to have worked extensively on the electoral matters especially the legal frameworks like Evidence Act 2011 (as amended) which govern generally on the admissibility of evidence in Nigerian courts, burden and standard of proof, 1999 Constitution of Nigeria (as amended) which is a grund norm and upon which other laws derive their validity, but the scholars fail to discuss the competence of parties, burden and standard of proof of electoral matters in line with the provisions of Electoral Act 2022. To fill this vital vacuum since Electoral matters are sui generis and as such, stands on its own, the research will contribute to body of knowledge on burden

and standard of proof in election petitions alongside with the provisions of the Electoral Act 2022 and Evidence Act 2011 (as amended).

5.4 Areas for Further Studies

The area of further research that will help appreciating this top of discourse are as follows:

- (a) Critical review of the roles of Electoral Act 2022 to stamp out electoral irregularities in Nigeria.
- (b) An examination of the position of courts in determining the onus of proof of electoral malpractices in Nigeria between the petitioner and INEC.
- (c) Nigerian elections and the provisions of the Electoral Act 2022, vis-a-via the international best practices.

5.5 Conclusion

It is distillable from the foregoing that the consent of the governed is the bedrock of democracy which admits of regular and periodic elections. In every election circle in Nigeria, the electorates and not really the politicians end up being the victims of electoral fraud through the diabolical imposition of unpopular candidates on the electorates by a few individuals who stand to benefit themselves from the loyalty of such candidates. It is therefore incumbent on election petition tribunals to always bear in mind that through the sui generis nature of election petitions precludes the electorates from challenging the result of such imposition, in the ultimate, it is the electorate that deserves justice by restoration of their mandate, and freely given to the candidates they chose.

It is therefore important for the legislature to make electoral laws from the beginning to the end, voters centered. While it will not be possible, for instance, to give voters the locus standi to challenge election result as that would be too wide a flood gate to contemplate, voters should be

made an indispensable part of the process of proving the validity of election results. INEC officials and documents as well as party agents, in so far as there is always the possibility of compromising them, should not be accorded so much place of importance in matters relating to the proof of validity of election results.

It does not accord with logic and fairness to expect the petitioner to satisfactorily prove irregularities in the conduct of elections, as the documents he needs to assist him in this regard may not even be readily and fully disclosed to him by INEC. The presumption of regularity in election petition does not and cannot serve the end of justice; if only aids INEC to be reckless in the conduct of elections, knowing it has the presumption of regularity in its favour.

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