# THE DETERMINATION OF ELECTION PETITIONS WITHIN 180 DAYS IN NIGERIA: THE ISSUE IN CONTENTION*

**Abstract**

*In order to address the problem of prolonged litigation of electoral disputes the 1999 Constitution as amended and the Electoral Act as amended provided 180-day timeframe for the determination of election petitions by Election Tribunals. This article examines the provision of the 180 days for the determination of election petitions and the attendant challenges. It is found that the 180 days cannot be extended nor can an appeal court order a tribunal to trial a petition de novo where the petition is not determined on the merit and the 180 days have expired. There could also be instances where in the course of the determination of an election petition, the judiciary may embark on strike, unforeseen circumstances may ensue that will make it impractical for the tribunal to sit, etcetera. Against this background, the article recommends that the Constitution and the Electoral Act be amended to provide exception to the 180 days to accommodate instances where a tribunal could not determine a petition before the expiration of the 180 days due to circumstances beyond its control or where the appeal court can order for de novo trial where necessary to achieve the end of justice. In writing this article, doctrinal research methodology was used to collate materials.*

**Keywords**: Election, Election Petition, Determination, Fair hearing, Justice

## 1. Introduction

Elections are essential to the progress of any democracy as it gives citizens the opportunity to choose who will lead them and Nigeria is not an exception. The Court of Appeal in *Omobude v Imoisili*,[1] stated that election is the selection of a person from a specific class to discharge certain duties in a state, corporation or society. Similarly, Black's Law Dictionary[2] defined election as 'The process of selecting a person to occupy an office (*usu*, a public office) membership, award or other title or status.' On the other hand, election petition is 'a complaint by a petitioner against an undue election or the undue return of a candidate at the election.[3] Through the years, Nigeria has amended its Electoral Act to accommodate the changes as well as the challenges that come with running a democratic system of government as it concerns the electoral process. In the Fourth Republic, just as in the other civilian regimes before it, there was hardly any state in Nigeria where one election or the other was not annulled and fresh or rerun elections held. Since the 1999 elections, courts at various levels have throughout the country voided the victory of a couple of governors, scores of senators (including a sitting Senate President) and several federal and state legislators as well as local government chairmen and councilors.[4] The issue was well captured by Ikenna[5] when he stated thus: 'If there have been 2000 electoral contests since 1999, there have been at least 4000 disputes arising therefrom. In some cases, one election has up to 4 petitions from cheated/defeated opponents.' It is now an impossibility to have an election without election petitions arising thereafter as petitioners seek redress in tribunals for perceived wrong.

The extant law that regulates elections in Nigeria is the Constitution of the Federal Republic of Nigeria, 1999 as amended,[6] and the Electoral Act 2010 as amended[7]. In order to curb the incidence of prolonged

***By Paul Ali BOBAI, LLM, (ABU),** Senior Lecturer, Nigerian Law School Yola Campus; Email:paulbobai@gmail.com. Phone No.: 08061573301; and
***Ugochukwu Charles KANU, LLM (Northumbria),** Senior Lecturer, Nigerian Law School, Lagos Campus; Email: Kanu@lawschoollagos.org. Phone No.: 08137403649; and
***Nkemjika Anthony ONYEWUCHI, LLB (NAU), ACIARB (UK),** Legal Practitioner; Email:nkemjikaanthony6@gmail.com; 08139061127

[1] (1999)5 NWLR (Pt.603) 427 at 431
[2] Bryan A Garner, *Black's Law Dictionary* (9th edn, West Publishing Company 2009) 595
[3] *ANPP v INEC & ORS* (2004)7 NWLR (Pt.871) 16 at 55
[4] A G Umar Kari, 'Issues in Election Petition Adjudication in Nigeria's Fourth Republic: A Sociological Critique of the Role of the Judiciary', *Global Journal of Politics and Law Research* [2017] (l 5) (7) 75-87,
[5] Emewu Ikenna, '12 out of 36 Guber Results Annulled by Court' *Saturday Sun,* (29 May 2010) 28
[6] Subsequently referred as the 1999 Constitution as amended
[7] Subsequently referred to as the Electoral Act as amended

adjudication of electoral matters the Constitution was amended to stipulate time frames for various stages of the election petition process. An election petition must be presented or filed within 21 days after the date of the declaration of the result of the election.[8] There is no extension of time within which to file an election petition. Once a petitioner fails to file his petition within 21 days, he loses his right of action.[9]An Election Tribunal must also deliver its judgment in writing within 180 days from the date of filing of the petition.[10] An appeal from a decision of an Election Tribunal or Court must be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or court.[11] The requirement as to time within which the tribunal or court shall deliver its judgment is strict and not extendable. This 180 day period includes a trial *de novo*, ordered on appeal.[12] Such trial *de novo* can only take place within 180 days from the filing of the petition. In *ANPP v GONI*,[13] the Supreme Court, while interpreting the provisions of section 285(6) of the 1999 Constitution as amended, held that the period of 180 days is not limited to trials but also to *de novo* trials that may be ordered by an appellate court. The issue as to whether time frame should be given for determination of election petitions has been a subject of debates amongst legal practitioners, judges, jurists, politicians, etcetera in view of the fact that the 180 days time frame had led to injustice to some persons in recent times. This article is divided into six parts namely part one contains the introduction, part two looks at Court/Tribunals with jurisdiction in election petition; part three deals with the grounds of election petition; part four considers filling and determination of election petition; part five examines the issue in contention and part six concludes the article and stipulates the recommendations.

**2. Court/Tribunals with Jurisdiction in Election Petition**

Election petitions are *sui generis* and therefore are determined by specialised courts called tribunals, established by law. The 1999 Constitution as amended established three categories of Election Tribunals namely:

(i) National and State Houses of Assembly Election Tribunals[14]
(ii) Governorship Election Tribunals[15]
(iii) Court of Appeal[16]

The National and State Houses of Assembly Election Tribunals shall to the exclusion of any court or tribunal have original jurisdiction to hear and determine as to whether any person has been validly elected as a member of the National Assembly to wit: Senate and the House of Representatives; or as a member of a State House of Assembly across the 36 States of the Federation.[17] The Governorship Election Tribunals shall to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine election petition as to whether any person has been validly elected as a governor or deputy governor of a state.[18] The Court of Appeal functions as the Election Tribunal to hear and determine petition as to whether a person has been validly elected as a president or vice-president of the Federal Republic of Nigeria arising from a presidential election.[19] The Electoral Act as amended provided for the establishment of Area Council Election Tribunal and Area Council Election Appeal Tribunal for the Federal Capital Territory.[20] The Area Council Election Tribunal has the jurisdiction to hear and determine petition as to whether a person has been validly elected as a chairman, vice chairman or a member in any of the six area councils of the Federal Capital Territory, Abuja.[21] Appeals from the

[8] Section 285(5) 1999 Constitution as amended
[9]D I Efevwherhan, *Principles of Civil Procedure in Nigeria* (2nd edn, Snap Press Ltd. Enugu) 543; *Moghalu v Ngige* (2005) 4 NWLR (Pt. 914) 1.
[10] Section 285(6) 1999 Constitution as amended
[11] Section 285(7) Ibid
[12]D I Efervwherhan (n 9) 543
[13] (2012) 7 NWLR (Pt. 1298) 147
[14] Section 285 (1) of the 1999 Constitution o as amended; section 133(2) (b) Electoral Act as amended
[15] Section 285(2) of the 1999 Constitution as amended
[16] Section 239 of the 1999 Constitution as amended; section 133(2) (a) Electoral Act as amended
[17] Section 285 (1) of the 1999 Constitution as amended
[18] Section 285 (2) Ibid
[19] Section 239 (1) Ibid. The Court of Appeal while determining a petition as to whether a person has been validly elected to the office of the president or vice-president is called 'Presidential Election Petition Tribunal'
[20] Section 135 Electoral Act as amended
[21] Ibid

Area Council Election Tribunal go to the Area Council Election Appeal Tribunal and its decision is final.[22] The Electoral Act as amended does not create Election Tribunals to entertain election disputes arising from Local Government Council Elections. However, Local Government Election Tribunals are usually established by state laws of for such purpose. The laws established various levels of election tribunals to hear and determine disputes arising from Local Government Election in the various states. Possibly taking a cue from the Federal Capital Territory Abuja, the election tribunals have two levels consisting of the trial tribunals and the appellate tribunals.[23] The power to legislate on Local Government Councils is vested with the states[24]. It should be noted that while an appeal may lie from the Court of Appeal to the Supreme Court in respect of the Presidential and Governorship Election,[25] the decision of the Court of Appeal on appeal from National and State Houses of Assembly Election Tribunal is final.[26]

**3. Grounds of Election Petition**

By virtue of the Electoral Act as amended an election may be challenged on any of the following grounds:[27]

That a person whose election is questioned was at the time of the election not qualified to contest the election.[28] A candidate will be deemed not qualified when not a Nigerian citizen contests for election;[29] fails to meet the age requirement;[30] not educated up to school certificate level or its equivalent;[31] presented a forge certificate to the Electoral Commission;[32] not sponsored by a political party;[33] being a lunatic or person of unsound mind;[34] has been sentence to death or imprisonment or fine for an offence involving dishonesty or fraud;[35] adjudged or declared an undischarged bankrupt;[36] convicted or sentence within a period of less than ten years before the date of the election of an offence involving dishonesty or has been found guilty of the contravention of the code of conduct;[37] fails to retired 30 days before the election as a civil servant or public officer;[38] and being a member of a secret society[39].

[22] Section 136 of the Electoral Act as amended

[23] P A Bobai & D U Dewan, A *Practical Approach to Civil Litigation in Nigeria* (1st edn, Jos University Press Limited 2020)505

[24] *AG (ABIA STATE) & ORS v AG (FED)* (2000) 6 NWLR (Pt.763) 764

[25] Section 233(2) (e) of the 1999 Constitution as amended

[26] Section 246 (3) Ibid

[27] See also Ikenga K.E. Oraegbunam, 'Rethinking the Standard of Proof of Criminal Allegations in Election Petition Determination in Nigeria', *The Nigerian Law Journal*, Vol. 19 No. 2, 2016, pp. 226-243. See further Ikenga K. E. Oraegbunam & Ifeoma M. Erondu, 'Election Petitions in Nigeria: Questioning the Standards of Proof of Criminal Allegations' in Wahab O. Egbewole & Akin O. Oluwadayisi (eds), *Electoral Process, Law and Justice,* New Delhi, India: AkiNik Publications 2020, 237-271.

[28] Section 138 (1) (a) of the Electoral Act as amended

[29] Sections 131-137 for Presidential election candidates; 177-182 for Governorship election candidates; 65-66 for National Assembly election candidates and 106-107 for State Houses of Assembly election candidates of the 1999 Constitution as amended. See also section 28 of the 1999 Constitution as amended

[30] Sections 131 (b), 177 (b), 65 (1) (a) (b) and 106 (b) of the 1999 Constitution as amended

[31] Sections 131 (d), 177 (c), 65 (2) (a) and 106 (c) of the 1999 Constitution as amended for Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[32] Sections 137 (1) (j), 182 (1) (j), 66 (1) (i) and 107 (1) (i) of the 1999 Constitution as amended for Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[33] Sections 131 (c ) of the 1999 Constitution as amended for the Presidential election candidates and applicable to all elective positions

[34] Sections 137 (2) (a), 182(2) (a), 65 (2) (a) (b) and 107 (2) (a) and (b) of the 1999 Constitution as amended for Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[35] Sections 137 (1) (d), 182 (1) (d), 65 (1) (c) and 107 (1) (c) of the 1999 Constitution as amended for Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[36] Sections 137 (1) (f), 182 (2) (d), 65 (2) (d) and 107 (2) (d) of the 1999 Constitution as amended for the Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[37] Sections 137 (1) (e), 182 (1) (e), 65 (1) (d) and 107 (1) (d) of the 1999 Constitution as amended for the Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[38] Sections 137 (1) (g), 182 (1) (g),65 (1) (f) and 107 (1) (f) of the 1999 Constitution as amended for the Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

[39] Sections 137 (1) (h), 182 (1) (h), 65 (1) (g) and 107 (1) (g) of the 1999 Constitution as amended for the Presidential, Governorship, National Assembly and State Houses of Assembly election candidates respectively

That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.[40] This ground embodies the failure to comply with all electoral laws including the 1999 Constitution as amended, the Electoral Act, election guidelines and manual issued by the Electoral Commission. Section 139 of the Electoral Act provides that an election may be invalidated or set aside under this ground where the non-compliance substantially affected the outcome of the election

That the respondent was not duly elected by majority of lawful votes cast at the election.[41] This ground is related to complaint of malpractice in the votes cast. Where it is established that the candidate returned as the winner of the election did not obtain the majority of lawful votes cast, his declaration will be invalidated and the person with the highest votes will be returned as the winner.

That the petitioner or its candidate was validly nominated but unlawfully excluded from the election.[42] This ground underscores the situation where a candidate is validly nominated by his party but excluded by the Electoral Commission. It should be noted that the exclusion of a candidate from an election by his political party does not fall under this ground. The disqualification of a candidate by his party is a domestic affair which falls within the purview of pre-election matters.

That the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election.[43] This is a ground introduced by the Electoral (Amendment) Act 2015. The return of a candidate who submitted false information can be challenged and if successful, the return will be nullified.[44]

**4. Filing and Determination of Election Petition**

An election petition shall be filed within 21 days after the date of the declaration of the result of the election.[45] There is no provision for extension of time within which to file an election petition. Once a person fails to file his petition within 21 days, he loses his right to action.[46] It is pertinent to note that by paragraph 4 sub-paragraph 5 of the first schedule to the Electoral Act, as amended, the concept of frontloading has been introduced into electoral proceedings. A petition which fails to comply with sub-paragraph 5 paragraph 4, shall not be accepted for filing by the Secretary.[47] Hence, the election petition shall be accompanied by:

1) A list of the witnesses that the petitioner intends to call in proof of the petition;
2) Written statement on oath of the witnesses; and
3) Copies of or lists of every document to be relied on at the hearing or the petition.[48]

A respondent's reply to the petition is also expected to be accompanied by the documents listed above.[49] It should also be noted that an election petition can only be amended within the time frame limited for filing it; that is 21 days from the date of declaration of the result of the election.[50] In *Oke vMimiko*[51], it was held that where the time to effect substantial amendment had passed by the effuxtion of time, no amendment will be allowed. However, after the effuxion of time, minor amendments may be allowed.[52] This rule applies to substantial amendments involving the contents of a petition, such as alteration of the names of parties, right of the petitioner to present the petition, the holding of the election, the scores of the parties, ground and facts of the petition and the prayers.[53] The same rule also applies to

[40] Section 138 (1) (b) of the Electoral Act as amended
[41] Section 138 (1) (c) of the Electoral Act as amended
[42] Section 138 (1) (d) of the Electoral Act as amended
[43] Section 138 (1) (e) of the Electoral Act 2020, inserted by the Electoral (Amendment Act) 2015
[44] *Atiku & Anor v INEC & Ors* (Unreported) (2019) CA/PEPC/002/2019
[45] Section 285 (5) of the1999 Constitution as amended
[46] *Sule v Kabir* (2011) 2 NWLR (Pt. 1232) 504
[47] Paragraph 4(6), First Schedule to the Electoral Act as amended
[48] Paragraph 4(5), First Schedule of the Electoral Act as amended
[49] Paragraph 12(3), Ibid
[50] *Ngige v Obi*(2006) 14 NWLR (Pt. 999) 1 at 226-227
[51] (2013) ALL FWLR (Pt.693) 1853; *Opia v Ibru* (1992) 3 NWLR (Pt.231) 693
[52] 658 at 693
[53] Paragraph 4 (1) (a)-(d) 1st Schedule to the Electoral Act as amended

amendment of a reply to a petition. Such amendments must be within the time limited for filing which is 14 days from the service of the petition on the respondent.[54]However minor amendments as to typographical errors may be allowed any time before judgment. The Tribunals have 180 days to deliver their judgment in writing from the date of filling the petition.[55] An appeal from a decision of an Election Tribunal or court shall be heard and disposed within 60 days from the date of the delivering of the judgment of the tribunal.[56]

**5. Issue in Contention**

Before the Electoral Act of 2010 and the alteration of the 1999 Constitution as amended one of the major problems of election petitions was the lengthy time it took to determine a petition. In a plethora of cases it took more than two years to conclude an election petition. In *Dr Chris Ngige v.Peter Obi*[57], the petitioner waited 35 months to receive justice out of a mandate of 4 years. It was against this background that the 1999 Constitution was amended and provided 180 days for the determination of election petitions.[58] The amendment of the Constitution was done in order to remedy the delay in the determination of election petitions. However, the issue with this is that its application is strict and non-derogable no matter the circumstance. This has a way of defeating the ends of justice it was created to achieve as seen in a number of cases. While justice delayed is said to be justice denied, justice rushed due to time constraint may occasion the miscarriage of justice, therefore, there is the dire need for balance. In *ANPP v. GONI*[59] the 1st and 2nd Respondents filed an election petition at the Governorship Election Tribunal for Borno State on 17 May 2011. At the close of pleadings, the 1st and 2nd Respondents filed a motion *ex-parte* for the issuance of a pre-hearing notice which was opposed by the 1st and 2nd Appellants. In the Tribunal ruling delivered on 10 August 2011, it held that filling a motion *ex-parte* was not the proper procedure for the issuance of a pre-hearing notice and struck out the application. The 1st and 2nd Respondents being dissatisfied appealed to the Court of Appeal. The Appellants in the appeal under review and the other Respondents filed an application for the dismissal of the petition on the ground that it had been abandoned. The 1st and 2nd Respondents then filed an application for an order extending time within which to apply for pre-hearing notice. The applications were taken together and the ruling was reserved for 20 September 2011. Meanwhile, the appeal against the ruling of 10 August 2011 was fixed for hearing on 21 September 2011 which date was later brought to 19 September 2011. On that date, the Court of Appeal ordered the trial tribunal not to deliver its ruling fixed for 20 September 2011. The order resulted in the Appellants' appealed to the Supreme Court which eventually led to the 1st and 2nd Respondents appeals being adjourned *sine die* by the Court of Appeal to await the decision of the Supreme Court in the Appellants' appeals. The order was made on 26 September 2011 with which the 1st and 2nd Respondents were again dissatisfied and consequently appealed to the Supreme Court. The Supreme Court consolidated the Appeals No: SC/332/2011; SC/333/2011 and SC/352/2011**.** At the conclusion of hearing of the consolidated appeals, the Supreme Court allowed the appeals of the Appellant and that of the 3rd Respondent (Alhaji Kashim Shettima) and ordered the trial tribunal to continue with the proceedings. The 1st and 2nd Respondents Appeal No: SC/532/2011 was dismissed in the consolidated judgment delivered on 31 October 2011.The trial tribunal however re-convened on 12 November 2011 and delivered its ruling where it dismissed the petitioner's petition on the ground that it was deemed abandoned. Aggrieved, the 1st and 2nd Respondents appealed to the Court of Appeal. On 23 December 2011, the Court of Appeal allowed the appeal and remitted the petition to be heard *de novo* by a different panel. The Appellants' preliminary objection on the ground that the appeal was incompetent and had become an academic exercise was dismissed. Dissatisfied, the Appellants in Appeal No: SC/1/2012 and No: SC/2/2012 appealed to the Supreme Court. The appeals were consolidated. In determining the appeals, the Supreme Court considered the provisions of sections 285(6) and (8) of the Constitution of the Federal Republic of Nigeria 1999 as amended and section 134(2) of the Electoral Act 2010 as amended and in a unanimous decision, allowed the appeal. The Supreme Court held that the provision of section 285(6) of the 1999 Constitution as amended on the

[54] Paragraph 12, 1st Schedule to the Electoral Act as amended
[55] Section 285 (6) of the 1999 Constitution as amended and section 134 of the Electoral Act as amended
[56] Section 285 (7) of the 1999 Constitution as amended and section 134 of the Electoral Ac as amended
[57] (2006) 14 NWLR(Pt.999) 1 ; (2006)ALL FWLR (Pt.330)1041
[58] Section 285 (6) of the 1999 Constitution as amended by virtue of the ( First Alteration t No. 5) Act 2010
[59] (2012) 7 NWLR (Pt.1298) 147

period within which an Election Tribunal shall deliver its judgment is clear and unambiguous. The Supreme Court held that an Election Tribunal must deliver its judgment in writing within 180 days from the date the petition was filed and this means that the judgment cannot be delivered after 180 days from the date the petition was filed. The Supreme Court while emphasising the extent of the 180 days and its non-negotiable status stated thus:

> The period of 180 days…is not limited to trials but also to de novo trials that may be ordered by an appeal court. Once an election petition is not concluded within 180 days from the date the petition was filed by the petitioner, an Election Tribunal no longer has jurisdiction to hear the petition and this applies to rehearing. The period of 180 days shall at all times be calculated from the date the petition was filed[60]

The Court further stated:

> Courts do not have the vires to extend the time assigned by the Constitution. The time cannot be extended, or expanded or elongated, or in any way enlarged. The time fixed by the Constitution is like the rock of Gibraltar or Mount Zion which cannot be moved. If what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter[61]

Similarly, the Supreme Court in *Udenwa v Uzodinma*[62] held that, where there is an appeal against an order made by a tribunal within 180 days, the time continues to run until the 180 days is exhausted. Appellate court has no competence or jurisdiction to extend or enlarge the 180 days once it expires. A retrial ordered by an appellate court is a continuation of the trial as such the court is bound by the initial 180 days which commenced at the filling of the petition. Interestingly, the phenomenon of interlocutory appeals painted in *ANPP v GONI* and many others developments led to the amendment of the Constitution[63] that provided a new sub-section (8) of section 285 which provides that ruling on a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre-election matter or on the competence of the petition shall be suspended and deliver at the stage of final judgment.

It should be noted that the non-negotiability of the 180 days as enunciated above has the potentiality of breeding injustice to a party in an election petition. A mischievous respondent counsel could capitalise on the rigidity of the time frame and occasion delays so that the time will elapse before the matter is determined. There could also be unforeseen circumstances such as sickness, strike, an act of God that could prevent the court from sitting. The 180 days rule is a laudable initiative to correct the grim phenomenon of prolonged litigation of election petitions but where it is not managed properly and 'reasonable time' not given to parties to present their cases, the principle of fair hearing will be trampled upon and of course the essence of recourse to the tribunal/court will be defeated. The Oyo State Governorship Election Petition between Governor Seyi Makinde of the People Democratic Party and Mr Adebayo Adelabu of the All Progressive Congress is a classic example in this regard. The Court of Appeal sitting in Ibadan the Oyo State Capital on 11 November 2019 upheld the appeal filed by the Governorship candidate of the All Progressive Congress Mr Adebayo Adelabu against the victory of Governor Seyi Makinde of the People Democratic Party at the Governorship Election Tribunal. The Court of Appeal set aside the Tribunal judgment that upheld the election of Governor Seyi Makinde. The Court of Appeal held that Mr Adebayo Adelabu was not given fair hearing. However, the Electoral Act as amended only gives 180 days for petition to be determined at the Tribunal and the Tribunal has exhausted its time; therefore the case could not be sent back to it for review or retrial. The Court of Appeal ordered that the status quo before the Tribunal Judgment should remain, by implication the declaration of Mr Seyi Makinde as the Governor of Oyo State remains. The Court of Appeal further

[60] Ibid at 191, per Rhodes-Vivour, JSC
[61] Ibid at 182, per Onnoghen , JSC
[62] (2013)5 NWLR (Pt.1346)96 at 118
[63] The Constitution of the Federal Republic of Nigeria (Fourth Alteration No:21) Act 2017

held that if not for time, it would have ordered a retrial at the Tribunal, noting unfortunately that the time limit of 180 days for the Tribunal had been exhausted.[64]

The Supreme Court in *Unongo v. Aku*[65] defined 'reasonable time' as 'the period of time which in the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to be done.' Therefore a period of time that dims or loses the memory or impressions of witnesses, is certainly too long and is unreasonable.[66] Where a period of time dims or loses the memory or impressions of witnesses, it occasions a miscarriage of justice, contravenes the fair trial provision of our Constitution and vitiates the whole proceedings. Justice Nnamani opined that the fundamental right to a fair hearing within a reasonable time 'is basic to the concept of the rule of law' and in adopting the opinion of Obaseki JSC (as he then was) in *Ariori v Elemo*[67] as apposite, the Learned Justice of the Supreme Court went on to offer his own definition of reasonable time when he said:

> Briefly put, it assumes that a litigant would be allowed sufficient time in court to put forward his case. In other words, he would be allowed sufficient time to call such witnesses or tender such documents as he deems necessary for the purpose of proving his case in court. What is reasonable or sufficient time for this purpose ought to be left in the discretion of the court to determine according

It is submitted that the determination of presidential election petition can be fast tracked when the Supreme Court is vested with original jurisdiction to decide such petition. Nigeria can borrow a leaf from certain foreign jurisdictions like Kenya, Ghana, Zambia, Uganda etcetera; where electoral disputes arising from presidential election directly goes to their Supreme Courts. The time use at the Court of Appeal as the Court of first instance to determine presidential election petitions can be saved when the petitions directly go to the Supreme Court. This will certainly save time and guarantee the speedy dispensation of justice in this respect.

**6. Conclusion and Recommendations**

The pious and good intentions of the National Assembly in creating a time frame for the determination of election petitions and appeals in the 1999 Constitution as amended and Electoral Act as amended is not in doubt. It was done to forestall long delays and ensure quick and expeditious hearing and determination of electoral matters to avoid situations where a person not elected by the people is foisted on them. The problem lies in the strict interpretation of the law by the Court of Appeal and the Supreme Court. It is against this backdrop that it is recommended thus:

(a) A proviso to section 285(6) and 285(7) of the 1999 Constitution could be created to read that where in the determination of election petitions and appeals the sitting of the court is disrupted by industrial actions, judges' vacation, and unforeseen circumstances such days should be excluded from the 180 days.
(b) The 180-day time frame provided in section. 285(6) should be interpreted to read only for trials not *de novo* trials. Considering the snail's pace of litigation process in Nigeria, the possibility of determining a petition, appeal from it and another retrial within 180 days from the time of filing the petition is very slim. Retrials ought therefore to be excluded from the 180 days.
(c) The system adopted by Kenya, Ghana, Uganda, Zambia and some other foreign jurisdictions in the determination of election petitions where presidential election petitions are determined directly by the Supreme Court could be adopted. For presidential election petitions, the Constitution can be amended to vest original jurisdiction on the Supreme Court and to be determined by a panel of 7 Justices within 180 days.

[64]Atanda Adebayo. 'Oyo Governorship: Appeal Court rules in Favour of APC, but Leaves Makinde in Office < https://www.premiumtimesng.com>news.> accessed on 27 December 2020
[65] (1983) 1 SCNLR 1per Obaseki JSC
[66] C J Ubanyionwu,, 'Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria'*Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2012] (3) 114
[67] (1983) 1 SCNLR 1 at 24

(d) In view of the enormous responsibility on Justices of the Supreme Court and Court of Appeal, the Constitution should be amended to increase the number of justices for each of the courts in order not to over burden the present Justices and create room for speedy determination of electoral matters and adjudication of cases generally.