

**APPRAISING THE JURIDICAL CHALLENGE TO THE VALIDITY
OF ELECTION RESULTS IN NIGERIA***

Abstract

Election is a decision-making process by which a people chooses individuals as their representatives to hold public office. Elections sustains the continuity of a democratic system, which gives the people participatory right to select those that their government. The conduct of a free and fair election in a nascent democracy as Nigeria is usually a herculean task. Successive elections in Nigeria have been marred by all manner of malpractices ranging from rigging thuggery to violence leading to maiming and killing of opposition party faithful and the conductors of a given election. These malpractices have consistently defied the effort of electoral regulatory bodies and the security agents, thereby producing a travesty of election results. This paper is aimed at appraising the juridical mechanism in verifying the validity of election results in Nigeria. The paper employed the doctrinal method anchored on the expository of judicial authorities. It was found that there is prevalence of electoral abuses and misconducts largely on account of the absence of electronic voting system, and the dearth of security measures to check such electoral malpractices. Besides, the absence of forensic measures in checkmating election rigging renders the election results a democratic farce. The paper recommends a complete replacement of manual accreditation with the use of smart card reader machine and voting by electronic voting machine. In this way, the sanctity of the electoral process would be assured and the result would reflect the choice of the electorate in keeping with the dictates of democracy.

Keywords: Election Results, Validity, Juridical Challenge, Nigeria

1. Introduction

The Electoral Act, 2010 (as amended) makes elaborate provisions for the manner in which elections shall be conducted by the subsisting electoral body, the Independent National Electoral Commission (INEC), beginning with the pre-election stage to the conclusion of elections. As a regulatory body, the INEC administers the Act by ensuring that candidates and their respective political parties comply with the provisions of the Electoral Act in all the stages of an election process. The conclusion of an election process is the declaration or returning of a winner after all the lawful votes have been counted. Some theoretical basis underscoring scholarly debates on democratic deepening are worth mentioning. The first set of theories view technology as useful to the credibility and integrity of the electoral process, and by extension the consolidation of democracy. The other theories identify setbacks in the digitalisation of the electoral process. However, the significance of technological innovations, especially smart cards, is a viable means of realising credible elections in developed democracies. The smart card reader machine reduces the chances of electoral manipulation, hence, occasioning fairness and transparency regarding the outcome of elections process. In addition, smart card technology usually makes the functioning of the election regulatory body more robust and efficient.¹

The Electoral Act also makes provision for the manner in which election disputes should be ventilated by a candidate and his political party, and settled by the relevant court or tribunal. In the event of cancellation of an election by a tribunal, the Act empowers the INEC to conduct a fresh election. However, where the election is inconclusive, the INEC shall hold a supplementary election. General elections and primary elections in Nigeria are characterized by malpractices of various forms and dimensions. The malpractices range from circumvention of the provisions of the relevant laws to certificate forgery; making false statement in affidavit submitted to the electoral regulatory body;

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¹ A. Fatai, 'The Use of Biometric Technology in the Success of the 2015 General Elections in Nigeria', available at https://www.researchgate.net/publication/324018571_The_Use_of_Biometric_Technology_in_the_Success_of_the_2015_General_Elections_in_Nigeria, accessed on 26th September, 2020.

rigging and physical clashes, assault, maiming and murder. The paper shall, among others, appraise the electoral jurisdiction of courts, the presentation of election petitions, and the challenges on the legality of votes in election petition.

2. Presentation of Election Petition

Generally, a petition is a written request signed by a person or a group of persons demanding a specific action from an electoral regulatory authority or government. In legal parlance, petition could generally be said to mean a pleading in a civil action by which the plaintiff sets down the cause of action and invokes the court's jurisdiction. Election petition is therefore, said to mean a petition for inquiry into the validity of an election when the said election is allegedly characterized by malpractices and substantial non-compliance with the Electoral laws.² Election petition refers to the procedure or mechanism for challenging the result of an election. It refers to the procedure for challenging the result of an election.³ Election matters are said to be *sui generis* with a unique character and as such the proceedings are not treated like ordinary civil proceedings where certain lapses and irregularities may be cured by invoking certain rules of court of competent jurisdiction.⁴ Essentially, the court has held in *Nyesom v. Peterside*⁵ that by virtue of section 285(6) and (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), election matters are time bound. This presupposes that election petitions are presented with promptness before an election tribunal for efficient and expeditious determination.⁶ Election matters are governed by election specific statutory provisions which regulate the practice and procedure of election petitions. By virtue of section 145 of the Electoral Act, 2010 (as amended), the rules of procedure to be adopted for election petitions and appeals arising therefrom shall be set out in the First Schedule to the Electoral Act, and that the President of the Court of Appeal may issue practice directions to election tribunals. Accentuating the foregoing, paragraph 54 of the First Schedule provides that subject to the express provision of the Act, the practice and procedure of the tribunal or the court in election petition shall be as nearly as possible, similar to the civil practice and procedure of the Federal High Court. Besides, the civil procedure rules governing election petitions shall apply with such modifications as may be necessary to render them applicable having regards to the provisions of the Act as if the petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action. Accordingly, any recourse to the Federal High Court (Civil Procedure) Rules must be subject to the express provisions of the Electoral Act. This necessarily implies that it is only where the Electoral Act or its First Schedule does not provide for a particular situation that reference would be made to the Federal High Court (Civil Procedure) Rules *mutatis mutandis*.

Generally, election matters are commenced by petition and because election petitions are *sui generis*, a proceeding which is not commenced by petition is a nullity *ab initio*. This is in addition to all the corollary processes frontloaded in keeping with the Practice Directions, made under the authority of the Electoral Act, 2010 (as amended).⁷ Just as the Court expounded in *A.P.G.A. v. Al-Makura*,⁸ the rationale for the statutory endorsement of the concept of frontloading is that through its espousal, the configuration and delineation of the contours of forensic contests may be attained with considerable

² P.A. Onamade, *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) p. 235.

³ The Lawyers Chronicle, 'Election Petition in Nigeria', available at <https://www.thelawyerschronicle.com>, accessed on 3rd July, 2020.

⁴ P.A. Onamade, 'Tendering Documentary Evidence in Election Petitions', in A. Akeredolu (ed.), *Election Petition Practice & Procedure in Nigeria: A Practitioner's Guide, in Honour of Hon. Justice Olufunmilola O. Adekeye, JSC, CON* (Ibadan: St. Paul's Publishing House, 2012) p. 6. 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. Erundu, '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.

⁵ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 468.

⁶ J.O. Okeaya-Inneh, 'Timeline for Presenting Election Petition in Nigeria', in A. Akeredolu (ed.), *Election Petition Practice & Procedure in Nigeria: A Practitioner's Guide, in Honour of Hon. Justice Olufunmilola O. Adekeye, JSC, CON* (Ibadan: St. Paul's Publishing House, 2012) p. 95.

⁷ A. Onibokun, 'Fundamentals of Commencement and Filing of Election Petitions', in A. Akeredolu (ed.), *Election Petition Practice & Procedure in Nigeria: A Practitioner's Guide, in Honour of Hon. Justice Olufunmilola O. Adekeye, JSC, CON* (Ibadan: St. Paul's Publishing House, 2012) p. 67.

⁸ (2016) 5 N.W.L.R. (Pt. 1505) p. 316 at 320.

facility such that their resolution could be achieved at the earliest opportunity and with minimal cost. Thus, it ensures that only serious and committed litigants with *prima facie* good cases and witnesses to back up their claims would come to court. The court proceeded to highlight that the manifest intention of the totality of the provisions on frontloading in the Election Tribunal and Court Practice Directions is to ensure that only a petition on its face and in the face of the accompanying written statement on oath discloses a reasonable cause of action that can go for trial. The ultimate objective of this technique and the other equally innovative features of the rules are for the evolution of a user-friendly trial procedure in which the judge can effectively and efficiently manage the flow of cases in the court. The court proceeded to emphasize that apart from sieving out what the court described as 'lame duck claims' in the courts, the frontloading is a potent weapon for halting the tide of avalanche of writs whose only values lie in their irritation, annoyance and vexation of the defendant. A petition which on the face of it is defective or which on the face of the written statements on oath discloses no reasonable cause of action should be struck out on the application of the respondent.

Notably, the essence of frontloading statements of witnesses in an election petition is to facilitate the speedy disposal of the petition. It does not justify the dumping of exhibits and urging the electoral tribunal and the court to proceed in a manner that opens them to unnecessary and avoidable suspicion of bias. The court in *Maku v. Al- Makura*,⁹ has maintained that all facts that entitle the party to the court's indulgence must be demonstrated in open court to ensure that in arriving at its decision on the matter, the court is as detached and neutral as anyone could easily see. This presupposes that the examination of exhibits outside the court and behind the litigants stands in the way of these necessary and laudable traits of justice which the court represents.

Unarguably, adequate provisions are made for the issuance and service of election petitions under paragraph 6-8 of the First Schedule of the Electoral Act, 2010 (as amended). Thus, the court in *Nyesom v. Peterside*¹⁰ has held that it is not necessary to resort to the Federal High Court (Civil Procedure) Rules or the provisions of sections 97, 98 and 99 of the Sheriffs and Civil Process Act. The provisions of section 99 of the Sheriffs and Civil Process Act, which gives a defendant not less than thirty (30) days to respond to a writ of summons is obviously in conflict with paragraph 10(2) of the First Schedule to the Electoral Act, which gives a respondent no more than twenty-one (21) days to file a reply to a petition. However, there are no specific rules governing service of election petition outside jurisdiction, and same is not incorporated in paragraphs 6-8 of the First Schedule to the Electoral Act, 2010 (as amended).

It is pertinent at this point to capture the necessary element of *locus standi* as the legal capacity to institute an action in a court of law. Basically, the petitioner must have *locus standi* in order to competently bring petition before the court or tribunal. According to the court in *Al-Hassan v. Ishaku*,¹¹ the rule of *locus standi* developed primarily to prevent the court from being used as a playground by professional litigants and or meddlesome interlopers and busybodies who really have no stake or interest in the subject matter of the litigation. Thus, a petitioner satisfies the court that he has *locus standi* if he is able to show that his civil rights and obligations have been or are in danger of being infringed. Hence, it is threshold issue which affects the jurisdiction of court. In the event that a plaintiff lacks *locus standi* to maintain an action, the court lacks the competence to entertain his complaint. In determining whether a plaintiff has the necessary *locus standi* to institute an action, it his pleadings that would be considered by the court. The plaintiff must show sufficient interest in the matter of the dispute. There are two categories of persons that have the legal capacity to question the result of an election i.e. a candidate in an election or a political who participated in the election.¹² In *Nyesom v. Peterside*,¹³ the court held that by virtue of section 137(1)(a) and (b) of the Electoral Act, 2010 (as amended), an election petition may

⁹ (2016) 5 N.W.L.R. (Pt.1505) p. 201 at 206.

¹⁰ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 468.

¹¹ (2016) 10 N.W.L.R. (Pt. 1520) p. 230 at 244.

¹² J.O. Okeaya-Inneh, 'Timeline for Presenting Election Petition in Nigeria', in A. Akeredolu (ed.), *Election Petition Practice & Procedure in Nigeria: A Practitioner's Guide, in Honour of Hon. Justice Olufunmilola O. Adekeye, JSC, CON* (Ibadan: St. Paul's Publishing House, 2012) p. 96.

¹³ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 467.

be presented by one or more of the following persons: (a) a candidate in an election; (b) a political party who participated in the election.¹⁴ Accordingly, any person who did not participate in an election does not have the *locus standi* to present an election petition let alone being declared the winner of the election. The court in *Isah v. I.N.E.C.*¹⁵ however, recalled that in the case of *Amaechi v. I.N.E.C.* (2008) 5 N.W.L.R. (Pt. 1080) 227, the Supreme Court held that Mr. Rotimi Amaechi was the elected governor of Rivers State notwithstanding the fact that he did not participate in the gubernatorial elections; the reasoning being that only a political party could sponsor a candidate and canvass for votes. In effect, it is the party that wins the election. The appellant could not benefit from the decision for the following reasons: (i) He did not win the rescheduled primaries conducted on 22/9/11 and so he was not PDP's candidate for the rescheduled gubernatorial elections fixed for 3/12/11. Governor Amaechi won the only primaries conducted for the gubernatorial elections in Rivers State; and (ii) By virtue of section 141 of the Electoral Act, 2010 (as amended), an election tribunal or court shall not under any circumstances declare any person a winner at an election in which such a person had not fully participated in all the stages of the said election. Thus, section 141 of the Electoral Act, 2010 (as amended) put to rest or set aside the decision in *Amaechi v. I.N.E.C.* (2008) 5 N.W.L.R. (Pt. 1080) 227. The position of the law now is that a person must have participated in an election before he can be declared the winner of the election. It pertinent however, to mention that only the Independent National Electoral Commission (INEC) or a member of a political party concerned, who is adversely affected as a result of inadequate notice to INEC, that is competent to complain of the inadequacy of the notice.

3. Jurisdiction of Courts and Tribunals over Election Petitions

Jurisdiction refers to the official power to make legal decisions and judgements. It is the power, right or authority to interpret and apply the law in a given matter. Essentially, every court or tribunal is a creation of statutes or of the Constitution. Its jurisdiction is clearly defined in the law creating it and its powers are thus circumscribed by the provisions of its enabling statute. Hence, the court in *Labour Party v. Bello*¹⁶ held that parties cannot by agreement or acquiescence confer jurisdiction on a court where it has none.

Notably, the Federal High Court, High Court of a State and the High Court of the FCT have no requisite jurisdiction to nullify an election conducted by INEC nor to order a re-run. It is only an election tribunal that is conferred with the jurisdiction to entertain election petitions. By virtue of section 133(1) of the Electoral Act, 2010 (as amended), no election and return at an election under the Act shall be questioned in any manner than by a petition (complaining of undue election or undue return) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of the Act, and in which the person elected or returned is joined as a party. In *A.P.C. v. Karfi*,¹⁷ the court held that it is only an election tribunal established under section 285(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and duly empowered by section 140 of the Electoral Act, 2010 (as amended) that has the requisite jurisdiction to nullify an election conducted by the Commission (INEC), and may consequentially order a re-run election. The election tribunal includes the Governorship Election Tribunal, the National Assembly and State Houses of Assembly Tribunal and the Court of Appeal, which have jurisdiction to entertain election petitions against the election of persons into the office of a Governor of a State, a Member of the National Assembly and a State House of Assembly and the President respectfully. In *Isah v. I.N.E.C.*,¹⁸ the court observed that section 285 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has established election tribunals and time frame for the determination of election petitions.

Generally, a tribunal is any person, group of persons or institution with authority to judge, adjudicates on, or determines claims or disputes by hearing evidence from witnesses. Election tribunals are special

¹⁴ P.A. Onamade, *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) p. 318.

¹⁵ (2016) 18 N.W.L.R. (Pt. 1544) p. 175 at 190.

¹⁶ (2017) 2 N.W.L.R. (Pt. 1548) p. 145 at 151.

¹⁷ (2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 492.

¹⁸ (2016) 18 N.W.L.R. (Pt. 1544) p. 175 at 188.

courts established by law to resolve disputes arising from federal elections and certifying their validity.¹⁹ In Nigeria, by virtue of section 285(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), there shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether:

- (a) any person has been validly elected as a member of the National Assembly;
- (b) the term of office of any person under this Constitution has ceased;
- (c) the seat of a member of the Senate or a member the House of Representatives has become vacant; and
- (d) a question or petition brought before the election tribunal has been properly or improperly brought.

There is the Presidential Election Tribunal established by the Constitution of the Federal Republic of Nigeria. Accordingly, the Court of Appeal, to the exclusion, of any other court of law in Nigeria, has original jurisdiction to entertain petition as to whether any person has been validly elected to the office of the President or Vice President under the constitution. It is also conferred with the jurisdiction to determine whether the term of office of the President or Vice President has ceased²⁰ or the office of the President or Vice President has become vacant under any valid circumstance.²¹ The Court of Appeal, thus, exercises original jurisdiction over Presidential election disputes. The court, when it assumes jurisdiction to determine any question as to whether any person has been validly elected to the office of the President or Vice President, sits as the Presidential Election Petition Tribunal and shall be duly constituted if it consists of at least three justices of the Court of Appeal.²² There is also the Governorship and Legislative Houses Election Tribunal. By virtue of section 285(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), there shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunal which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house. Election petition challenging the gubernatorial election can only be heard before a governorship election tribunal. In *Isah v. I.N.E.C.*,²³ the court has held that section 285(2) of the Constitution confers original jurisdiction on Governorship Election Tribunals to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. Section 285(2) of the Constitution is pertinent as it establishes in each State of the Federation one or more election tribunals to be known as the Governorship Election Tribunals. The composition of the election tribunals, whether the Presidential or the Governorship and Legislative Houses Election Tribunal, shall consist of a Chairman and four other members as provided in section 285(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and paragraphs 1(1) and 2(1) of the Sixth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). However, by virtue of section 285(4) of the Constitution, the quorum of an election tribunal shall be the Chairman and two other members. This implies that the position of a chairman of an election tribunal is very important because no legally valid quorum can be formed without him.

After hearing of a cause or matter, each member of a panel of justices must express and deliver his opinion in writing. It is only the judge or judges who took part in the hearing of a case or application can take part in the writing and signing of the judgment or ruling of the court. Thus, the opinion delivered must be the opinion of the justice who participated in the hearing. Although the provision of section 294(1) and (2) of the Constitution²⁴ refers specifically to Justice of the Supreme Court and the Court of Appeal, the principle is applicable to any court or tribunal that sits in a panel of two or more members. In *Nyesom v. Peterside*,²⁵ the court held that if a judicial officer of whatever jurisdiction who

¹⁹ 'Tribunals: Judicial Appointment Commission', available at <https://www.judicialappointments.gov.uk>, accessed on 3rd July, 2020.

²⁰ *Ibid.* section 239 (1) (b).

²¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 237-239.

²² *Ibid.* section 239 (2).

²³ (2016) 18 N.W.L.R. (Pt. 1544) p. 175 at 188.

²⁴ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

²⁵ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 480.

did not participate in court proceedings in respect of a case has no legal right or capacity to write a judgment or opinion to determine the dispute between the parties to the case. If such a judicial officer does so, the decision is a nullity because the court is not properly constituted. However, such written opinion may be delivered by any other justice of the court on behalf of the justice who participated in the hearing but is unavoidably absent.

However, an election tribunal has no jurisdiction to inquire into the primaries of a political party. The tribunal has no jurisdiction to comment or examine how party primaries were conducted. In *Al-Hassan v. Ishaku*,²⁶ the court held that by virtue of section 138(1)(a) of the Electoral Act, 2010 (as amended), the power of an election tribunal to decide whether a person is qualified to contest an election is restricted to establishing the requirements of sections 177 and 182 of the 1999 Constitution against the adverse party. The disqualification of a person based on the domestic nomination exercise of his political party is a pre-election matter over which the election tribunal has no jurisdiction. Jurisdiction for such an exercise rather resides with the Federal High Court, the High Court of a State or the High Court of the Federal Capital Territory, and at the instance of a dissatisfied aspirant at the primary election.

4. Challenging the Validity of Election Results

Election process in Nigeria is usually characterized by unwelcome campaign strategies including skirmishes, calumny, propaganda and physical combat or clash prior to the election. The candidates, on their part, go out of their way to forging certificates and making untrue statements in affidavits just to seemingly qualify themselves to contest for an election. More so, both the candidates and members of their political parties, in desperation, engage in all manner of malpractices including rigging just to win an election. All these malpractices and non-compliance with the relevant laws, including the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended) constitute the grounds for questioning the validity of election results. In *I.N.E.C. v. Peterside*,²⁷ the court held that by virtue of section 138(1) of the Electoral Act, 2010 (as amended), an election may be questioned on any of the following grounds:

- (a) that a person whose election is questioned was at the time of the election not qualified to contest the election;
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act;
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.²⁸

The grounds for presenting an election petition are not only statutory but also constitutional. They are therefore not subject to the prejudices of the petitioner.²⁹ The Constitution, having such all-encompassing provisions for qualification and disqualification of persons seeking the elective office does not leave any room for addition to those conditions already set out. Accordingly, the court held in *Al-Hassan v. Ishaku*³⁰ that once a candidate sponsored by his political party has satisfied the provisions set out in section 177 of the Constitution and is not disqualified under section 182(1) thereof, he is qualified to stand for election to the office of Governor of a State; hence no other law can disqualify him. However, a person who participated in an election and desires to challenge the election of a winner on the ground that the winner was not qualified to contest the election can do so only under section 177 of the 1999 Constitution, if he failed to do so under section 31(5) and (6) of the Electoral Act, 2010 (as amended).

²⁶ (2016) 10 N.W.L.R. (Pt. 1520) p. 230 at 240.

²⁷ (2016) 7 N.W.L.R. (Pt. 1512) p. 555 at 558.

²⁸ P.A. Onamade, *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) p. 370.

²⁹ K.A. Gbadamosi, 'Review of the Legal Hurdles in Proving 'Grounds of Election Petition'', in A. Akeredolu (ed.), *Election Petition Practice & Procedure in Nigeria: A Practitioner's Guide, in Honour of Hon. Justice Olufunmilola O. Adekeye, JSC, CON* (Ibadan: St. Paul's Publishing House, 2012) p. 287.

³⁰ (2016) 10 N.W.L.R. (Pt. 1520) p. 230 at 240.

Election petition may challenge the legality of the number of votes a candidate polled at the conclusion of an election on the basis of which scores the candidate was returned duly elected. In the circumstance, it is incumbent on the petitioner, in addition to pleading material facts which constitutes miscalculation of votes or falsification of results, to plead such other malpractices and non-compliance with the Electoral Act and to further lead evidence in support of the pleadings. According to the court in *Maku v. Al- Makura*,³¹ a petitioner who contests the legality or lawfulness of the votes cast at an election and subsequent return must tender in evidence all the necessary evidence by way of forms and other documents used at the election. The documents are among those in which the results of the votes are recorded.

Thus, any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or the Federal Capital Territory against such person seeking a declaration that the information contained in the affidavit is false. If the court determines that any of the information contained in the affidavit or any document submitted by the candidate is false, the court shall issue an order disqualifying the candidate from contesting the election.³² Prior to hearing on merit, election petition may in deserving cases be set aside on the application of a respondent made within a reasonable time. The court held in *Nyesom v. Peterside*,³³ that by virtue of paragraph 53(2) of the First Schedule to the Electoral Act, 2010 (as amended), a respondent can apply to the court or tribunal to set aside an election petition or a proceeding resulting therefrom for irregularity or for being a nullity. The application to set aside a petition shall not be allowed unless made within a reasonable time and when the party making the application has not taken any fresh step in the proceeding after knowledge of the defect. In addition, the petitioner must call witnesses who saw it all on the day of the election. In other words, the petitioner must call eye-witnesses and not those who picked the evidence from an eye-witness. The court in *Maku v. Al- Makura*³⁴ and *Nyesom v. Peterside*,³⁵ held that by virtue of sections 138(1)(b) and 139(1) of the Electoral Act, 2010 (as amended), where a ground for challenging the return of a candidate in an election is by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, the petitioner has the duty of proving the following: (i) that the corrupt practice or non-compliance took place, and (ii) that the corrupt practice or non-compliance substantially affected the result of the election.

It is a trite principle that he who asserts must prove. The onus of proving the case pleaded and for which documents are tendered in evidence lies on the petitioner in an election petition despite the tendering of exhibits in proof of the petition or case. If the case of the petitioner is that there was no accreditation or there was over-voting, the voters' register is essential and must be pleaded and tendered in evidence as well as the results of the election, polling unit by polling unit. In *Nyesom v. Peterside*³⁶ the court held that in order to prove non-accreditation and or over-voting during an election, a petitioner must rely on the voters' register. This is usually confronted with the difficulty of accessing the voters register and other material, which are in the custody of the electoral regulatory body especially where the ruling party is likely suffer unfavourable outcome.

The election results declared by the Independent National Electoral Commission (INEC) enjoy a presumption of regularity. Accordingly, sections 179(1) and 181(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is applicable where results of election were declared and return made after conclusive election. However, where election is inconclusive, the court has in *Faleke v. I.N.E.C.*³⁷ held that the INEC shall have power to hold a supplementary election under section 160(1) of the Constitution and sections 73 and 153 of the Electoral Act, 2010 (as amended) as well as the Commission's (INEC) Manual for Electoral Officers. The nullification of election is essentially on

³¹ (2016) 5 N.W.L.R. (Pt.1505) p. 201 at 205.

³² Electoral Act, 2011, section 31(5) and (6).

³³ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 469.

³⁴ *Supra*, p. 206.

³⁵ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 473.

³⁶ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 471.

³⁷ (2016) 18 N.W.L.R. (Pt. 1543) p. 61 at 74 and 80.

ground of non-compliance with the Electoral Act, 2010 (as amended). In *A.P.G.A. v. Al-Makura*,³⁸ the court held that the doctrine of substantial compliance under the sacred principles consecrated in section 139(1) of the Act that its consideration will only arise where the petitioner succeeds in establishing substantial non-compliance with the principles of the Electoral Act or, in the alternative, substantial effect on the election result or any infraction of the Act, no matter how minuscule the transgression may be. However, in *Nyesom v. Peterside*³⁹ the court held that by virtue of section 139(1) of the Electoral Act, an election shall not be liable to be invalidated by reason of non-compliance with the provisions of the Act if it appears to the election tribunal or court that the election was conducted substantially in accordance with the principles of the Act, and that the non-compliance did not substantially affect the result of the election. However, the court in *Al-Hassan v. Ishaku*,⁴⁰ has held that where in an election petition, a court or tribunal comes to a conclusion that the person elected or returned in an election was at the time of the election not qualified to contest, the option open to the court or tribunal pursuant to section 140(2) of the Electoral Act, 2010 (as amended) is an order nullifying the election and an order for a fresh election to be conducted into the office in question. Once an election is nullified on the ground of a lack of qualification of the successful candidate, the election is regarded as not having taken place at all and in the eyes of the law; hence, it is void *ab initio*.

The Independent National Electoral Commission (INEC) has the authority, by section 57 of the Electoral Act, 2010 (as amended), to authenticate the identity of a voter when he presents himself to cast his vote. The function of the Smart Card Reader machines in elections conducted by INEC is solely to authenticate the owner of a voter's card and to prevent multiple voting by a voter. According to the court in *Nyesom v. Peterside*,⁴¹ the use of Smart Card Reader machine bolsters the transparency and accuracy of the accreditation process during an election. Nevertheless, section 49(1) and (2) of the Electoral Act which provide for manual accreditation of voters by reference to the voters' register is extant and remains a vital part of Nigerian electoral law. Although the failure to follow the manual and guidelines made by the INEC in exercise of its powers under the Electoral Act does not in itself render an election void, the introduction of the smart card reader machines in the conduct of election is not in conflict with the provisions of the Electoral Act. However, the court in *Nyesom v. Peterside*,⁴² has held that by virtue of section 52(1)(b) of the Electoral Act, the use of electronic voting machine is prohibited for the time being, but the Smart Card Reader machines are being used for accreditation of voters, and for voting. The court in *Nyesom v. Peterside*⁴³ has held that the Smart Card Reader cannot replace the voters register or statement of results in appropriate forms.

In the United States, the need for the introduction of electronic voting systems across the States arose in 2000 general elections. Although several types of errors were found, including voting for an opposing candidate, there was hope for improvement. In addition, certain voter characteristics related to the digital divide had an impact on their voting experiences. There were noteworthy differences in voters' assessments of the verification systems; these were related to ease of use, extent of distraction, and the need for help. This led to a periodic review of the functionality of electronic voting systems and vote-verification/election audit systems in the United States. The US electoral system has recorded necessary and significant improvement capable of securing quality assurance in the electoral process. Although there are significant difficulties of correcting mistakes, casting a write-in vote, or changing a vote, most voters succeed in casting their votes intentionally, and voting generally has been proved to be relatively free and fair.⁴⁴

³⁸ (2016) 5 N.W.L.R. (Pt. 1505) p. 316 at 320.

³⁹ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 468.

⁴⁰ (2016) 10 N.W.L.R. (Pt. 1520) p. 230 at 240.

⁴¹ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 475.

⁴² (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 474.

⁴³ (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 473.

⁴⁴ P.S. Herrnson, R.G. Niemi, M.J. Hanmer, B.B. Bederson, F.G. Conrad, and M.W. Traugott, 'The Current State of Electronic Voting in the United States', available at <https://link.springer.com/chapter/10.1007/978-0-387-71611-4_9>, accessed on 26th September, 2020.

It is pertinent to say that certifications and audits are imperative for building trustworthy and credible e-voting and counting systems. Complementarily, certifications and audits confirm the compliance of the e-voting system against a clearly defined set of functional and operational requirements. The requirements of e-voting and counting systems take into account legal, technical, operational and functional aspects. It also provides confirmation that an e-voting and counting system meets the requirements. Again, it verifies the proper functioning of the e-voting and counting systems through stringent testing before, during and after usage. A striking response to concerns about the integrity, reliability and security of e-voting systems and the need to conduct transparent audits has been the use of a voter-verified paper audit trail (VVPAT) process. In 2013, for instance, the Indian Supreme Court directed the Election Commission to introduce paper trails for voting machines. Accordingly, the voter is provided with a printout of the vote just cast, which can be checked on the spot and then placed in a ballot box, to be used if necessary to audit the validity of figures produced by the automated system. Many e-voting systems can provide audit trail facilities, including electronic voting machines (EVMs) that have been used in countries such as Belgium, the United States and Venezuela in recent years. The e-voting and counting systems in the Philippines, for instance, provides accurate, timeous and effective performances. In addition, it orchestrates the production of a paper ballot that can be physically examined in post-election disputes where it becomes exigent.⁴⁵

Essentially, the card reading machine was introduced in the conduct of 2015 and 2019 general elections in Nigeria to combat the numerous malpractices besieging electoral process such as thuggery, rigging and falsification of election results. The card reader was designed specifically for the accreditation process, authentication of eligible voters before voting. The machine was configured to read only the permanent voters cards (PVCs) of a particular polling unit and can only work on Election Day. However, despite the adoption of smart card reader machines, electoral process in the country is still plagued with myriads of challenges particularly, the malfunctioning of the card reader machines and thuggery aimed at subverting the electoral process.⁴⁶

5. Conclusion

It is regrettable to observe that the usage of the card reader machine has proved abortive in the successive 2015 and 2019 general elections in Nigeria. As a result of the malfunctioning of the machines, the electoral body resorted to the old method of manual accreditation, which gave way to irregularities. This practice has paved way for increasing abuse of voters' accreditation wherein even the deceased voters are accredited and absent voters are impersonated, thereby questioning the credibility of election results in Nigeria. It has become a notorious fact that some staff of the electoral regulatory body connive with some politicians to divert permanent voters' cards into the possession and custody of the latter in exchange of pecuniary benefits. These hoarded permanent voters' cards are rolled out during elections for bulk accreditation and voting. Usually, such desperate politicians engage the unguided youth referred to as thugs to do the thumb-printing and stock them in snatched ballot boxes. The prevalence of these malpractices is largely on account of the absence of electronic voting system in an era overwhelmed by digital technology, and the dearth of security measures to check electoral abuses. Accordingly, it is suggested that the Electoral Act should be amended to provide for a special independent security squad for the purpose of conducting general elections. The amendment of the Act should also incorporate electronic voting system which is best suited to our political clime to prevent electoral malpractices, as it is the practice in developed democracies such as the United States of America, Belgium and Venezuela. This will in no small measure ensure sanity in our electoral process with the end that democratic regime of government where votes really count will be enthroned in our political system. The strengthening of our political system as a democratic ideal is imperative for the economic and social development of Nigeria.

⁴⁵The Electoral Knowledge Network, 'Electoral Management', available at < <https://aceproject.org/ace-en/topics/em/emia/emia11>>, accessed on 26th September, 2020.

⁴⁶O. Tolulope, 'The Effect of the Smart Card Reader on Electoral Malpractices in Nigeria', available at < <https://www.grin.com/document/507143>>, accessed on 26th September, 2020.