

**ROLES AND ATTRIBUTES OF ELECTION TRIBUNALS IN ELECTORAL PROCESS IN NIGERIA: A CRITICAL APPRAISAL\***

**Abstract**

*This paper deals with the formation, role and attributes of the election tribunals in Nigeria. Therefore, in the course of carrying out its constitutionally assigned duties of adjudication, election tribunals have failed to address the age long agitation of technicalities in the dispensation of electoral disputes. Writing on the above topic is like embarking on the hazardous journey as it is a near impossibility to prove election petitions anchored on some grounds. This often time is not far from the attributes and personal idiosyncrasies of some of the judges manning the tribunals. In this paper, the judiciary is critically appraised in a broad manner by interrogating the role of the judges in courts and also their attributes which are brought to bear in the conduct of their judicial business. In this paper, it is demonstrated in lucid terms that these attributes work together to make tribunal judges give decisions that may or may not have the backing of the relevant laws or acceptable by the majority of the electorates. This calls for caution and we made some useful recommendations on how these can be properly addressed to avoid the members of the general public or electorates, losing the confidence they have in the tribunals in Nigeria as it relates to their judgments/decisions in election disputes.*

**Keywords:** Election Tribunals, Electoral Process, Roles and Attributes, Nigeria

**1. Introduction**

The Constitution<sup>1</sup> provides for the establishment of the election tribunals on election matters. By the combined effect of sections 36 and 285 of the Constitution<sup>2</sup> the election tribunals belong to the judicial arm of government. In discussing the role of the election tribunals, we shall discuss holistically the role of the judiciary as a whole. An independent judiciary is an indispensable requisite of a free society under the rule of law. Such independence implies freedom from interference by the Executive or Legislative with the exercise of the judicial functions, but does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it<sup>3</sup>. The concept of judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or individual to decide any case in a particular way. He should be free to give orders, which must be respected In the Legislature, the Executive and the citizens, whatever their status in society. As noted by Mr. Louis Joinet<sup>4</sup>:

It is now universally recognized that fundamental rights and liberties can best be preserved in a society where the legal profession and the judiciary enjoy freedom from interference and pressure. Justice requires that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal, in accordance with the principles proclaimed in the Universal Declaration of Human Rights (Article 10), the International Convention on Civil & Political Rights (article 14), and other United Nations instruments.

The importance of the judiciary has been described by Justice Oputa<sup>5</sup> thus:

Who can doubt the primacy of the judiciary in the social experiment? It is only the judiciary which can in the final result and as the last resort translate the dreams of Nigeria, dreams inscribed boldly in her Constitution, her dreams for national unity,

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<sup>1</sup> Section 285 of the Constitution of the Federal Republic of Nigeria, 1999 as (amended).

<sup>2</sup> Ibid

<sup>3</sup> International Congress of Jurists, New Delhi, 1959.

<sup>4</sup> The UN Rapporteur on the Independence of the Judiciary and the protection of practicing Lawyers. The Independence of Judges & Lawyers: A compilation of International Standards - CIJL Bulletin.

<sup>5</sup> Quoted in Hon. Justice A. G. Karibi-Whyte, 'The place of the Judiciary under the Constitution'- All Nig Judges Conference, 1999.

for domestic tranquilly, for individual freedom and personal happiness through the full release of her citizens from prejudice and oppression, through the full utilization of all her human and natural resources, and potentials towards the creation of a great nation characterized not by power alone but respect for the human dignity and by the assurance of equal justice under the law for all.

The judiciary is an independent organ of the government, but it is still part of the Government. Nigeria operates in a democracy where there are three branches in a presidential system of government. The three branches are equal in status and the relationship between them is one of check and balances. The constitutional arrangement is designed to assure that each branch operates within the parameter of its authority and no branch has unlimited powers. As *Montesquieu* puts it:

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

The Legislature is vested with power to make laws, while the executive is vested with the power to execute the administrative functions of the government, and the Judiciary is vested with the judicial power of the government, that is, the power to adjudicate conflicts according to the laws of the land. Unless or as otherwise provided in the Constitution, each branch must not usurp the functions of the other, if the system is not to break down. As *Hon. Justice M. E. Ogundare JSC* said ‘though in theory, the three branches are equal, in reality they are not’<sup>6</sup>. The potential of the Judiciary is enormous. Its importance lies in its constitutional role as the ultimate interpreter of the provisions of the Constitution and the determination of disputed rights. It is the only department of government that can declare a violation of the Constitution void, be that violation an act of the Legislative department or an action of the Executive branch. Its strength therefore lies in its wisdom in meaningfully and honestly interpreting the provisions of the Constitution for the attainment of the rule of law and the defence of the civil rights of the citizen. It is in this area of constitutional rights that the Courts have had unwittingly to be led into the political arena.

While the consequences of judicial decisions may be far-reaching, the Judge's position in the political order is clearly after the Legislature has made the laws and the Executive has applied them. Judges are quite different from politicians. Politicians openly seek access to state power and are primarily initiating and making laws to advance their own or supporters' vision of what the State's government should be doing. They have a purposive function to advance public policy proposals in whatever area of life they think appropriate in a democracy, to seek support for them from the citizenry and to translate them into law binding upon the inhabitants of that State. ‘They are movers and shakers. They are part ml. committed, goal oriented. They are - the means in a modern polity by which popular demands are transmitted to governmental structures and then acted upon.’<sup>7</sup> The tool of the Judge is fundamentally different from that of the politician. The Judge is bound to decide cases in accordance with his oath of office, and yet in so doing he may give decisions adverse to the government's wishes. What looks like a confrontation may arise, and if permitted to persist, then the Judiciary cannot come out of it unscratched. In the long run, as *Aguda*<sup>8</sup> pointed out thus -

It is the citizen that suffers from such a confrontation or from the subservience of the judiciary to the Executive. In the latter case, the Executive will see itself free to trample upon the rights of the citizen with impunity since the ‘co-operation’ of the

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<sup>6</sup> ‘Commentary on: The place of the Judiciary under the Constitution’- All Nigeria Judges Conferences 1999.

<sup>7</sup> Richard Hodder - Williams, ‘Judges and Politics in Contemporary Age.’

<sup>8</sup> ‘The Judge in Developing Countries’ NIALS Publication, 1980.

Judiciary is assured. The Judiciary must by all means attempt to prevent a situation of this type. It must maintain an aura of impartiality in all that it does.

It has been said that the Judiciary by the nature of its function and role is the citizen's last line of defence in a free society. As Justice A.N. Aniagolu<sup>9</sup> said – ‘to the Judiciary is assigned the duty of directing society for the attainment of justice. People look up to the Judiciary as a haven of last resort for the protection of society and particularly for protecting the weak and the oppressed’. He further stated as follows-

A Judge who does not believe in even-handed justice and does not bother to work hard to achieve it, who deliberately strays away from the right path of rectitude; who panders in the words of Hon. Thurgood Marshall, Justice of the Supreme Court of the United States of America, to the ‘sirens of power and influence’ in the discharge of his judicial duties is wrecking society from the very roots and is committing an act equivalent to that of armed saboteurs but only with the difference that he is overthrowing society, not by direct armed conflict, but by corrosive means, namely that of undermining and contaminating society, for its eventual breakdown by the insidious method of effecting its decay from within.

Thus, the duty of the Judge is crucial, and he must be free to give orders, which must be respected by the Legislature, the Executive and the citizens, whatever their status. In 1925, Charles Evans Hughes said as follows in his Presidential address to the American Bar Association<sup>10</sup> -

A poor Judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are hauled before a Judge whose mental or moral goods are inferior. An honest, high minded, able and fearless Judge is therefore the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law; as he makes clear the benefits and the shortcomings if the standards of individual and community rights among a free people.<sup>11</sup>

Hon. Thurgood Marshall is also reported to have said that ‘Judges sit astride the crucial nexus where the citizen meets his government, the Courts deal with people and their individual problems on a case by case, day to day basis. If the system is working inequitably, the Judges are likely to be the first to know, since they are the ones called upon to send innocent defendants to prison or to deny legal claims, which in justice, should be granted.’ Hon. Justice Nnaemeka-Agu also observed that ‘without Judges, good Judges, there can be no democratic State.’ He described a ‘good Judge’ as follows<sup>12</sup> -

A Judge who, by good general and professional education, experience and expertise exhibits on continuous bases, a sound exposition of the law; who has a high index of good character that he is always capable of, and seen as resolving the issues in controversy coming before him with absolute sense of justice - impartially and uninfluenced by bias or prejudice or any extraneous considerations. He should be always conscious of the fact that in a case involving the exercise of power by any of the arms of government or their functionaries he is the designated guardian of constitutionality; in a case involving protection of rights, he is the ultimate protector of rights; and in a case which raises issues of conflicting rights of citizens, he can preserve or mar the stability of society by his decision.

A good Judge, he noted, is ever conscious of all these, and realizes that he has, by his judicial oath, sworn to be a mirror of unalloyed justice - the constant and perpetual disposer of disputes in such manner as to render to every man his due. These days, however, we are regaled with disturbing reports

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<sup>9</sup> ‘Constraints in the Administration of Justice’ - All Nigeria Judges Conference, 1999.

<sup>10</sup> Quoted by Hon. Justice Umar F. Abdullah! in a Paper presented at the All Nigeria Judges Conference 2003 - ‘The Role of the Bar and Bench in the Sustenance of Democracy.’

<sup>11</sup> Justice of the Supreme Court of the United States of America.

<sup>12</sup> ‘The position and Role of a Judge in a Democratic State’ -Justice in the Judicial Process.

of abuse and/or perversion of the judicial process by the very Judges, who by their judicial oath, have sworn to - 'do right to all manner of people without fear or favour, affection or ill will' and to preserve, protect and defend the Constitution of the Federal Republic of Nigeria.' The root of this abuse and/or perversion is traceable to corruption, which is an abuse itself as it creates a vicious circle where human rights awareness is constantly paired with and undermined by the very harsh realities of poor economic and political performance.

A Judiciary that is independent, and which is perceived to be independent within the community, protects both itself and the freedoms enshrined in the Constitution from invasion and corrosion. But a Judiciary, which is not, impairs both. A situation decried by the Chief Justice of South Africa, Hon Justice Ismail Mohamed, who said<sup>13</sup> -

Unlike parliament or the Executive, the Courts do not have the power of the purse or the army or the police to execute their will. The highest Courts in constitutional democracies do not have a single Soldier at their command. They would be impotent to protect the Constitution if the agencies of the State, which control its massive financial and physical resources, refuse to command those resources to enforce the orders of the Courts. The Courts could so easily be reduced to paper tigers with a ferocious capacity to snarl and to roar but no teeth to bite and no sinews to execute their judgments which may then be mockingly reduced to pieces of sterile scholarship, toothless wisdom or pious poetry. As has already happened many times, the potentially awesome power of the Judiciary in the Constitution, could, in those circumstances, implode into nothingness. Judges, in such circumstances, would visibly be demeaned. But there is much worse: human rights could irreversibly be impaired and civilization itself dangerously imperiled.

Lord Atkin<sup>14</sup> has emphasized clearly the role the Judge must play -

I view with apprehension the attitude of Judges who on a mere question of construction, when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive. In this country, amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting that Judges are no respecter of person and stand between the subject and any attempted encroachment on his liberty by the executive, alert to see that any coercive action is justified in law - -

A Judge takes an oath, which involves observance of the Constitution and the rule of Law, and he must fearlessly keep to that oath. The rule of law involves holding the scale of justice evenly before the parties. The Court exists to promote Justice and thus to serve the public interest. It is therefore the duty of the Judge to strive to avoid, and to abstain avidly from any act, which savours of injustice. So public interest demands that the Judge should scrupulously observe the rule of law.

## 2. Attributes of Election Tribunals

Election tribunals occupy very important, significant and strategic position in our nascent democracy. A good, independent, upright and incorruptible election tribunals precipitate happiness and orderliness of our society. Before independence and through to the post-independence era, Judges including the election tribunals in Nigeria were never accused of corruption, whether rightly or wrongly.<sup>15</sup> Indeed, corruption or any type of vice which was predominant in other arms of government and/or within the general public was seen as an abomination and anathema within the judicial circle. One fine example will suffice for this purpose and that was the case of *R. v Egwuatu*<sup>16</sup> whereat, a corrupt interpreter at the

<sup>13</sup> 'The Judiciary and Constitutionalism in a Democratic Society' -The Judiciary in a Globalized World

<sup>14</sup> *Liversidge v. Anderson* (1942) AC 206.

<sup>15</sup> <http://www.newswatchngr.com/index.php?option=com.content&task=view&id=1>, (accessed on 18/12/2008).

<sup>16</sup> 6 WACA 79.

Local Authority Court in the Province of Onitsha was charged with and convicted of official corruption contrary to section 98(1) of the Criminal Code in that he did corruptly receive for himself one bottle of gin from One Bello Amadi as a reward for showing favour to the said Bello Amadi in taking him before the Local Government Authority Panel at Enugu. I have zeroed on this case deliberately to bring to the fore that as far back as the 1930s, a Native Court official was charged to Court for corruptly receiving a bottle of gin.

Alas, things have changed and nowadays, a lot of editorials and other opinions are written constantly, criticizing what are perceived as the shortcomings of our election tribunals. A bad or corrupt election tribunal is the bane of the society. No wonder that the erudite Niki Tobi JSC in *Eriobuna v Obiorah*<sup>17</sup> declared that:

A Judge by the nature of his position and professional calling is expected to be straight forward, upright, diligent, consistent and open in whatever he does in Court and in other places of human endeavour that he happens to find himself. This is because his character as a Judge is public property. He is the cynosure of the entire adjudication in the Court, and like Caesar's wife of Ancient Rome, he is expected to live above board and above suspicion, if the judicial process should not experience any reverse or suffer detriment. A Judge should know that by the nature of his judicial functions, he is persistently and consistently on trial for any improper conduct immediately before, during and immediately after the trial of a case.

The indomitable Niki Tobi JSC is well groomed in both Common and Ecclesiastic laws. His exposition as quoted above is not surprising. The said exposition tallies and rhymes with what God expects from Judges.

Now, let us have a glimpse into some passages from the Holy Bible and the Holy Koran to buttress the point we are making. In Exodus<sup>18</sup>, Jethro, Moses father-in-law advised him to appoint Judges having the following characteristics in mind:

Moreover, choose able men from all the people, such as fear God, men who are trustworthy and who hate a bribe and place such men over the people as rules of thousands, of hundreds, of fifties and of tens. And let them judge the people at all times, every great matter they shall bring to you, but every small matter they shall decide themselves.<sup>19</sup>

The same Holy Bible<sup>20</sup> commands thus:

Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee, throughout the tribes and they shall judge the people with just judgment.<sup>21</sup>

Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise and pervert the words of the righteous.<sup>22</sup>

Just like the Holy Bible, the Holy Koran<sup>23</sup> states concerning justice in the following language:

Allah commands you to hand back your trust to their rightful owner and to pass judgments upon men with fairness. Noble is that which Allah exhorts you. Allah is hearing and seeing.

The Koran goes further to direct as follows:

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<sup>17</sup> (1999) 9 NWLR (pt. 616) 622 at 630.

<sup>18</sup> Exodus Chapter, 8 Verses 21-21.

<sup>19</sup> *Ibid.*

<sup>20</sup> Deuteronomy Chapter 16, Verses 18-19.

<sup>21</sup> *Ibid*; Verse 18.

<sup>22</sup> *Ibid*; Verse 19.

<sup>23</sup> Chapter 4, Verse 58.

Be dutiful to Allah and bearers of just witness. Do not allow your hatred for other men to turn you away from justice. Deal justly; justice is nearer to true piety. Have fear of Allah; He is cognizant of what you do.<sup>24</sup>

The teachings of Christianity and Islam to which I dare say most members of the election tribunals in Nigeria belong, enjoin them to be upright, sober, calm, and exuding rectitude and uprightness at all times. They are commanded by the Creator to shy away completely from bribery and impartiality. To the best of their ability, their proceedings must be speedy and fair. They must ensure equality of all litigants before them and neither should they be biased or prejudicial to anyone of them on any account whatsoever.

Finally on this, a school of thought is of the opinion that the tribunal members are products of our society and therefore, are bound to reflect some of the ills of the society in their attitudes, judgments and pronouncements. I beg to differ and like Niki Tobi JSC, align myself with the school of thought that believes that election tribunal members like Caesar's wife must be above board in every material particular.

### **3. Conclusion and Recommendations**

Technicalities should be avoided in all election disputes. It is over a decade now since the Supreme Court made this declaration that days of techniques are over, in spite of this declaration, technicalities still flourish from the Nigerian Supreme Court down to the Election Tribunals thereby making our much cherished principle of *stare decisis* unpopular or mere caricature. Our tribunals/courts must first and foremost look at the intendment and spirit behind every legislation rather than adhering to the words of statute even when it is manifestly unjust. We took the view that every case shall be determined on its substance and merits rather than on technicalities. This being so, the election petition tribunals should be reflective of the worthiness of a tribunal! By this I mean it should be flexible in the conduct of its proceedings as opposed to strict legal approach and it maximizes the need for speed and cheap justice. The personal idiosyncrasies and attributes of the judges manning the tribunals should be divorced from their judicial and constitutional roles while interpreting the laws in the adjudication of electoral disputes. It is hoped that our judges should live up to the required standards and uphold their oaths of office at all times in the discharge of their judicial business without fear or favour and to administer justice to all manner of persons according to law. This will no doubt result in effective and fair judicial process.

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<sup>24</sup> Chapter 5, Verse 8.