

MANUAL TRANSMISSION OF RESULTS UNDER THE ELECTORAL ACT 2022: THE VALIDITY, AUTHENTICITY AND ACCEPTABILITY OF RESULTS*

Abstract

The 2023 presidential election which was concluded on the 25th of February, 2023 has been the talk of the country, Nigeria and other countries beyond Nigeria. It is observed that many disheartened citizens have levelled various complaints as to the outcome of the election when the declaration of the winner of the election was made by the Independent National Electoral Commission (INEC). From the foregoing, a lot of debate has been brought up with respect to the declaration of the winner of the presidential election, as a result of the procedure adopted by the Independent National Electoral Commission in the transmission of the election results which led to the conclusion and declaration of the said winner of the election. This debate is as regards to the question, whether the act of the manual transmission of results as against the extant provision of the law which brought about the electronic transmission of results by INEC is valid or not and whether the result declared by the INEC should be acceptable. It is observed that the legislators enacted a new Electoral Act, 2022 which made new provisions and coverings of some things not found in the Electoral Act, 2010. Also, a new guideline and regulation was made by INEC to guide the procedure for the presidential election, 2023. One of the remarkable provisions of the Electoral Act, 2022 is the provision of the Electronic transmission of election results, as against manual transmission of results. In line with this, there are certain pertinent questions that beg for answers. These questions are whether or not the right procedure for transmission of election results was properly followed by INEC which is the body responsible for transmission of the said result? Is there any resultant effect for the breach of the provisions of the extant law with respect to the electronic transmission of election results? These questions shall be properly addressed in the body of this work. The author strongly recommends, inter alia, for the strict compliance with the extant law on the provisions of the new Electoral Act and the invalidation of any result which was not gotten in accordance with the provisions of the extant law.

Keywords: Manual transmission, electronic transmission, election results, mandatory, directory.

1. Introduction

Prior to 2022 when the recent Electoral Act was amended, Nigeria adopted the manual mode of transmission of election results. The amended Act was devoid of the electronic transmission of election results and even the court even recognized that this was lacking in our system. This can be seen in *Abubakar & Anor v. INEC & Ors*¹, where the court held that there is no provision for transmission of election results electronically either by the use of smart card reader or other means. As time went on and due to the speedy rolling of the world into the digital and technology era, there were demands on the Independent National Electoral Commission (INEC) to adopt modern technology for the conduct of elections. The body was established by virtue of Section 153(1)(f) of the Constitution of the Federal Republic of Nigeria 1999. In accordance with Section 148 of the Electoral Act 2022, the body was vested with the power to make its own regulations and guidelines for the purpose of giving effect to the provisions of the Electoral Act. The electoral body in the exercise of its discretion through its regulations adopted the electronic means of transmitting the results of elections. Such information is accessed, for accountability, at a speed necessary to create watertight defence from the manipulation of results.² A community reading of a section in the Electoral Act 2022³ and a clause in the *INEC Regulations and Guidelines for the Conduct of Election, 2022*⁴ shows the introduction of electronic transmission of results which, of course, overrides the former provision for manual transmission of results. However, the 2023 presidential election which was held in Nigeria on the 25th day of February has brought about a lot of controversies in Nigeria and beyond the country. The crux of these controversies is hinged on the manual transmission of election results as against the provision of the Electoral Act as amended. The law laid down the new procedure for the transmission of election results which is to be done electronically. However, despite the express and unambiguous provision of the law on the electronic transmission of election results, the Independent National Electoral Commission (INEC) deviated by choosing to transmit election results manually. This singular act seems to derogate and desecrate the provision of the Electoral Act, 2022, thereby defeating the vital purpose of the enactment of the new Act.

An outstanding provision of the Electoral Act 2022 is the transmission of election results electronically. This provision was made to repeal the former provision for the manual transmission of election results. With the enactment of this provision came many advantages which is for the good of the citizens and the INEC (because it ought to have shown credibility and accountability on their part). The advantages of electronic transmission may include the reduction of human error, which boosts voter turnout and improvement of voters' convenience.⁵ Furthermore, it reduces the possibility of election rigging which is one of the serious problems faced by Nigerians during elections. It is submitted that these disadvantages of rigging and other election vices which deals with the tampering of election results must have been considered before the enactment of the Electoral Act, 2022. Otherwise, there may be little need for the enactment of the new Act. It is, therefore, expected that there should be strict observance of the Act to avoid these vices mentioned above. The Electoral Act, 2022⁶ makes a provision for the transfer of results which is to be made in the manner prescribed by the commission. Questions have been raised as to whether the provision of this section is merely directory or mandatory. In this work, this question as to whether it is mandatory or merely directory and the effect of the failure to strictly observe the provision of the said Act shall be aptly considered.

*By **Nwamaka Adaora IGUH, PhD**, Reader and Head, Department of Private and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: zinachidi2014@gmail.co

¹ LER (2019) CA/PEPC/002/2019

² Wahab Shittu, 'INEC, Electronic Transmission of Results, Electoral Act and Matters Arising' <<https://www.premiumtimesng.com/opinion/589746-inec-electronic-transmission-of-results-electoral-act-and-matters-arising-by-wahab-shittu.html>> March 23, 2023, accessed May 23, 2023

³ S 60(5)

⁴ Clause 38

⁵ Innocent Ogbanje 'Benefits of Electronic Transmission of Results in an Election' <<https://radionigeria.gov.ng/2021/11/19/benefits-of-electronic-transmission-of-results-in-an-election/#:~:text=Human%20error%20is%20reduced%2C%20which,waste%20and%20improves%20voters'%20convenience.>> November 19, 2021, accessed May 21, 2023

⁶ S. 60(5)

2. The Controversy on the Transmission of Results

The provisions of both the Electoral Act 2010 (as amended) and Electoral Act 2022 (as amended) shall both be dissected for the better understanding of this article. The Electoral Act 2010 made provisions for the transmission of election results manually, without more. That was the practice before the enactment of the Electoral Act 2022 as amended. For further clarity, the provision of the relevant section shall be produced hereunder. The *Electoral Act (2010)* provided in *Section 63* thus:

- 1) The Presiding Officer shall, after counting the votes at the polling unit, enter the votes scored by each candidate in a form to be prescribed by the Commission as the case may be.
- 2) The forms shall be signed and stamped by the Presiding Officer and counter signed by the candidates or their polling agents where available at the polling unit.
- 3) The Presiding Officer shall give to the Polling Agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided in subsection (2) of this section.
- 4) The Presiding officer shall count and announce the result at the polling unit.

However, a perusal of the recent Electoral Act enacted in 2022 shows that a pertinent subsection was added to the above section of the former law. *Section 60(5)* of the *Electoral Act 2022* provides that, ‘*The presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.*’ This ‘manner as prescribed by the commission’ is laid down in *Clause 38* of the *INEC Regulations and Guidelines for the Conduct of Elections, 2022*. It provides thus: On completion of all the Polling Unit voting and results procedures, the Presiding Officer shall:

- i. Electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission.
- ii. Use the Bimodal Voter Accreditation System (BVAS) to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission.
- iii. Take the BVAS and the original copy of each of the forms in tamper evident envelop to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre.

The recent provision is quite lucid and express as to the manner which is to be adopted by the INEC in transmission of election results. However, INEC adopted the manual mode of transmission of election results, thereby causing a lot of controversies in Nigeria. There are various issues that need to be addressed in order to determine the validity of the manual transmission of results. Firstly, what is the mischief that the new Electoral Act came to cure? Secondly, is the provision of the law with respect to electronic transmission mandatory or directory? Thirdly, was the right procedure for transmission of election results properly followed by INEC and are there any effect of not following the procedure for transmission established by the law? These questions shall be addressed *seriatim*.

What is the Mischief the Electoral Act, 2022 came to Cure?

Under this heading, it is pertinent to resort to *Heydon’s Case*⁷ which introduced the mischief rule into the statutes of interpretation. This case illustrates the Mischief Rule of statutory interpretation whose main aim is to determine the ‘mischief and defect’ that the statute in question has set out to remedy, and what ruling would suppress the mischief and advance the remedy.⁸ In accordance with what the court held in *AG Lagos State v. Keita*⁹, the mischief rule traces the mischief or defect which the old law did not meet and the remedy the enactment is intended to cure. Mischief rule appears relevant and applicable at this point because it will aid in determining what remedy the recent Electoral Act seeks to advance, to cure the defect of the amended Act. It will aid in determining the lacuna which the recent Act seeks to bridge.

The mischief rule of interpretation seems applicable in this instant putting the following into consideration:

- a. one of the lacunas in the Electoral Act 2010 is the absence of the provision for electronic transmission of results. This has created some defects when it comes to the conduct of elections and these defects include the manipulation of manually transmitted results by compromised INEC officials. The provision for the manual transmission of results encourages rigging, as the manual wherein the election results are transmitted can be tampered with.
- b. the Electoral Act 2022 seeks to bridge this lacuna and cure this defect by bringing in a remedy. This remedy is the introduction of compulsory electronic transmission of results in such a way that it will be difficult for the election results to be tampered with or manipulated.

Flowing from the above, it can simply be said that one of the mischiefs or defects in the amended Act which the recent Electoral Act came to cure is the provision for the manual transmission of election results. It is indeed a defect in this instance because it creates room for the excessive manipulation and rigging of the results. At times, the results announced after elections in Nigeria do not reflect the intention of the people on who they want to put in power as their leader. However, by the introduction of the e-transmission of results into the system, it remedies the defect of the former Act and makes it difficult for the manipulation of results. In the case of the election which was conducted on the 25th of February, 2023, it is rather observed that INEC adopted the manual transmission of election result. This is a drawback on the part of the commission and a blatant violation of the law. The legislators who enacted the recent Electoral Act made a laudable attempt to bridge the gap in the repealed Act by introducing the electronic transmission of results into INEC portal as against manual transmission. This was done to cure the mischief and defect in the former Act which enabled compromised INEC officials who may want to manipulate the election results to do so while manually transmitting the said results. Despite the laudable provisions of the recent Act which is expected to be strictly adhered to by INEC officials, the same body which made the regulations and guidelines for the conduct of elections which equally laid down procedures for the e-transmission of results especially in Clause 38, derogated from

⁷ (1584) 76 ER 637

⁸ Peters Ifeoma, ‘Place of Clause 48 (c) & 93 of the 2022 INEC Guidelines in Light of Provisions of the Electoral Act on Use of E-Transmitted Results During Result Collation in Nigeria’ <<https://dnlegalandstyle.com/2023/place-of-clauses-48c-93-of-the-2022-inec-guidelines-in-light-of-provisions-of-the-electoral-act-on-use-of-e-transmitted-results-during-result-collation-in-nigeria/>> April 28 2023, accessed May 23 2023

⁹ (2016) LPELR-CA/L/477/2012

their own regulations. This is quite ludicrous and unfathomable. There was no justification for the resort to the provision of the repealed Act by INEC when there is a recent Act with novel provisions which ought to have given a fair election.

Is the Provision of the Law with Respect to Electronic Transmission Mandatory or Directory?

When can a provision be said to be mandatory? The provision of a statute can be said to be mandatory if the omission or failure to follow such provision renders the proceedings to which it relates illegal and void. On the other hand, a provision is merely directory if its strict observance is not necessary to void the proceedings which it relates, or render it illegal. Jim Evans in his article explains that ‘mandatory rules are those procedural rules the breach of which necessarily invalidates the process to which they relate, while directory rules are procedural rules the breach of which does not necessarily have this effect.’¹⁰ Where the provisions of a statute are mandatory, it is submitted that not even the courts can deviate from applying the statute the way it is. In *Calabar Central Co-Operative Thrift & Credit Society Ltd & Ors. v Bassey Ebong Ekpo*,¹¹ the Supreme court per Tobi JSC held that ‘A court of law cannot ignore provisions of a Statute which are mandatory or obligatory and to the line of justice in the event that the Statute has not done justice... In other words, courts of law cannot legitimately brush the provisions aside just because it wants to do justice in the matter.’ Furthermore, in *Bashir v FRN*,¹² the court held that when an Act makes a mandatory stipulation, the operators of the Act must comply strictly with such provisions and the compliance must be exact.

Having considered the meaning of ‘mandatory’ and ‘directory’ above, it can be boldly said that the provision of the law for electronic transmission of election results is mandatory because of the sanction attached in any event where the section is contravened. It is noteworthy that *Section 60(6)* of the *Electoral Act 2022* provides that a presiding officer who willfully contravenes any provision of the section commits an offence and is liable on conviction to a fine not more than N500,000 or imprisonment for a term of at least six months. It is still the same section that pointed out that the presiding officer shall transfer the results in accordance with the manner prescribed by the commission and this manner prescribed by the commission has been enumerated above. It simply follows that where there is not strict compliance with the provisions of Section 60 of the recent Act which provides for the e-transmission of result, it is not merely void but illegal, as there is a penalty of imposition of fine or imprisonment attached to the section. In furtherance, it is pertinent to consider the meaning of the word ‘shall’ as used in Section 60(5) of the recent Act. There is a plethora of cases on the effect of the word ‘shall’ as used in a provision. Various courts have made resounding pronouncements to the effect that the word has an obligatory effect. In *Gbadamosi v Nigerian Railway Corporation*,¹³ the Court of Appeal per Ogunbiyi JCA held that, ‘The use of the word ‘shall’ in a provision makes the provision mandatory and pre-emptory and the failure to comply with it would amount to a fundamental error in a proceeding.’ Also, in *Mohammed & Anor v Abdulaziz*,¹⁴ it was held that it is basic that invariably, when the word ‘shall’ is used in an enactment, it is not permissive. It is mandatory especially where it is sanctioned. Importing the pronouncements of the courts into the section 60(5) of the recent Electoral Act, it follows that the effect of the provision ‘...shall transfer the results... in a manner as prescribed by the commission’ is a mandatory phrase. There is no ambiguity to that effect. Therefore, the wordings of the law in this case should strictly be observed.

Was the Right Procedure for the Transmission of Election Results Properly Followed by INEC and are there any Effect of not Following the Procedure for Transmission Established by the Law?

Flowing from the arguments earlier canvassed, the answer to the question as to whether the right procedure was followed appears to be in the negative. Where a statute has provided for the method of doing a thing, it must be done in accordance with the express provisions of the statute or rules. In *Orakul Resources Limited v. NCC*¹⁵, the court held that when the law prescribes the mode in which a thing is to be done, it is only that method that must be followed, and any act to the contrary is a nullity. The law has made provision as to the method for transmitting results. It is only proper for the commission to adhere to this method, as non-adherence will defeat the purpose of the enactment. On the other hand as to the question whether there is any effect of not following the procedure laid down by the law, as seen earlier in the case of *Orakul Resources Limited v. NCC*¹⁶, the court held that any act contrary to the method laid down by the law is a nullity. This is where the acceptability of result comes in. That being the case, it appears that the contrary act by INEC with respect to the manual transmission of result is a nullity and should not be accepted as the election result. One of the essence of making provision for the electronic transmission of results is to prevent manipulation. Therefore, if things are to be done properly, then it will be better to jettison the results transmitted manually and opt for that transmitted electronically.

3. Conclusion and Recommendations

A lot of controversies have arisen as a result of the 2023 presidential election. The manual transmission of result which INEC adopted is the major force of these controversies. The INEC Regulations and Guidelines made express provisions for the electronic transmission of election results. However, the current provision for the electronic transmission of result was not followed to suit the recent demands for the electronic transmission of results. This does not seem to go well as arguments have been made that it defeats one of the main purposes of the enactment of the recent Electoral Act which is the electronic transmission of results to avoid manipulations of the election results. In this study, the summary of the arguments canvassed above is that the mode of transmission of result adopted by INEC defeats the purpose of the new Electoral Act. The commission adopted the manual transmission of election results as against the extant provision of the law and it greatly questions the validity of the election results, its authenticity and poses a question as to whether it should be acceptable. Arguments have been made above pointing to why the election results should be invalidated and why it should not be accepted. It is high time the Nigerian government and its agencies started paying attention to whatever procedure is laid down for a particular conduct as going contrary to the procedure defeats the whole purpose it was created at the first place.

¹⁰Jim Evans, ‘Mandatory and Directory Rules’ (Cambridge University Press 02 January 2018) <<https://www.cambridge.org/core/journals/legal-studies/article/abs/mandatory-and-directory-rules/70E6CBF84A2FA805>> accessed May 22 2023

¹¹SC (2008) 1-2 S.C. 229 at 259-260 lines 35-15

¹²(2016) LPELR-CA/K/201/2012

¹³(2007) ALL FWLR (Pt. 367) 855 at 880; Para. A (CA)

¹⁴(2008) LPELR-CA/K/EP/SHA/11/07

¹⁵(2007) 16 NWLR (Pt. 1060) 270 at 302, paras D-G, 303 paras C-G

¹⁶Ibid

Finally, several recommendations have been made pointing out certain places where the commission needs to improve on, for a better election which should be a transparent one. The author strongly believes that adherence to these recommendations will aid in improving the Nigerian Electoral system. Certain problems need to be addressed and many improvements made, for the betterment of the country's election and in order to secure voters' confidence and faith in the electoral system. It is not enough for there to be a law on a particular conduct without more. There should be observance of the law and adequate means for implementing the law. In line with the researches carried out above, the author recommends the following:

1. **Strict Observance of the Law:** It is one thing to enact a law and another thing for such law to be observed to the latter. Where a law is enacted, measures should be taken to ensure that the law is observed as it is pertinent for the purpose of a law to be achieved. This will also decrease the chance for unnecessary or unwarranted controversy.
In the instant case, had INEC strictly kept to the wordings of the law as laid down in the regulation it provided, there may not have been much controversy surrounding the transmission of results in itself. It is, therefore, advised that the body should observe its laws and guidelines to ensure healthy and transparent elections.
2. **Provision of Adequate Means for the Electronic Transmission of Results:** It is observed that during the election period, there were complaints that some INEC officials could not electronically transmit the results due to bad network. It should be noted that where a law has been made, the means for carrying out such law should be put in place. Measures should be put in place, especially in rural areas of the country, to ensure good network for the electronic transmission of results.
3. **Employment of Qualified and Neutral INEC Staff:** It must be noted that INEC should employ trained and qualified staff who are to give out their best expertise in election matters. These set of persons should also be neutral and non-partisan. This will also ensure transparency and accountability.
4. **Enlightenment of Voters on some Election Procedures:** The body should ensure that the staff is properly enlightened on necessary procedures concerning elections and also ensure that voters are well aware of these procedures. Where both the INEC staff and the voters are enlightened on the procedure for voting and even uploading of results, it will keep them at alert to know when an INEC staff is going contrary to the provision of the law (with respect to uploading of results as in this instant case).